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Office on Drugs and Crime

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INFORMAL EXPERT WORKING GROUP

ON

DRUG TREATMENT COURTS

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Summary

Key issues raised—key questions answered

Drug abuse, a global social, health, economic and criminal justice problem

1. Between 3 and 4 per cent of the world's population still regularly consumes illegal substances, with increasingly widespread consumption of some new drugs, especially among young people.^a Intravenous drug use is still one of the leading causes of the spread of acquired immunodeficiency syndrome (AIDS), with devastating consequences globally. Drug trafficking foments corruption, one of the most formidable obstacles to good governance.
2. No society has been left untouched. Drugs continue to blight and destroy far too many human lives, and the costs associated with their abuse continue to impose a heavy burden on the social infrastructure of numerous countries, whether developed or developing.^b Valuable human and financial resources are diverted away from productive activities essential for prosperity,^c and in the criminal justice system away from the most serious casework.^d

Why actively involve justice systems in treatment and rehabilitation programmes?

3. Experience shows that the public pays a high price for the untreated dependency of drug-abusing offenders, mainly through the direct and indirect costs of ongoing crime to finance drug abuse.^e A recent study in the United Kingdom of

^a Over 140 million people use cannabis, 30 million use amphetamine-type stimulants, such as Ecstasy, and 21 million use heroin and cocaine. United Nations International Drug Control Programme, *World Drug Report* (Oxford University Press, 1997), pp. 29-32.

^b No global cost data are available, but the costs are likely to be high. For example, in Australia, 22,000 died in 1998 from substance abuse (tobacco, alcohol, licit/illicit drugs) at an estimated cost to the economy of 18 million Australian dollars. (Commonwealth Department of Health, *Statistics on Drug Abuse in Australia 1998* (Government Printing Service, 1999)).

^c Estimates by the United States Department of Labor in the mid-1990s found that drug abuse in the workplace alone may have cost American business between 75 and 100 billion United States dollars per year, more than 1 per cent of the annual gross domestic product.

^d In terms of the global criminal justice system, drug trafficking and possession offences account for approximately 3 per cent of all crime recorded, 7 per cent of all arrests and all prosecutions, 9 per cent of all convictions and 13 per cent of the prison population. Possession offences far outweighed trafficking offences, and alone accounted for over 10 per cent of the global prison population (Office for Drug Control and Crime Prevention, *Global Report on Crime and Justice* (Oxford University Press, 1999, p. 310).

^e In Australia (New South Wales), for example, burglars using heroin commit a median of 13 burglaries per month, generating a median weekly income of \$A 3,000, compared with 9 per month generating \$A 1,000 for those not using heroin. R. Stevenson and L. Forsythe, *The Stolen Goods Market in New South Wales* (New South Wales Bureau of Crime Statistics and Research, 1998). According to the report of Belgium's parliamentary commission on the state of the art of the drugs in Belgium (1997), almost 35 per cent of detainees are incarcerated for drug-related crimes. In the United Kingdom, a study showed that offenders who acknowledged a connection between their drug use and their offending reported illegal incomes two to three times as high as those not reporting any such connection. These offenders emphasized their need for money to buy drugs (Trevor Bennett, *Drug Testing Arrestees* (Home Office Research and Statistics Directorate, 1998)).

Great Britain and Northern Ireland of 205 such offenders showed that 55 per cent financed their habit through shoplifting, 43 per cent through selling drugs, 32 per cent through burglary, 17 per cent through fraud, 9 per cent through auto crime and 5 per cent through sex work.^f

4. Experience also suggests that there is significant untapped potential for justice systems to better help reduce this ongoing criminality through greater involvement in the treatment and rehabilitation process, which for justice systems and other stakeholders is both a problem-solving and a preventive process.

What are drug courts? Is there a need for separate courts?

5. Drug courts are courts that deal with drug-related offences and offenders in new procedural ways that aim to stop future criminal behaviour through court-directed treatment and rehabilitation programmes. In dispensing justice, the judge is assisted by an integrated multidisciplinary team of professionals committed to the same common goal.^g Not every judicial officer will be appropriate for this work. In order to achieve the objective of reducing the ongoing criminal behaviour of offenders through effective treatment and rehabilitation, high levels of personal maturity, commitment and vision are necessary for both the court and its multidisciplinary support team. It also requires a constructive openness to change in traditional practices and procedures in ways that preserve, complement and advance the core underlying justice purpose.

6. Existing courts and judicial officers can be used. In some countries, judicial officers may sit for something like two half days per week to deal with drug court matters and spend the remainder of their time in their normal jurisdictions. However, their judicial role, functions and powers may need to be supplemented in the drug court context to give them the flexibility needed for best results (e.g. the power to impose intermediate sanctions).

7. Because special personal qualities and experience are required of drug court judicial officers, 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.

What is court-directed treatment and rehabilitation?

8. Court-directed treatment and rehabilitation is a court order, usually with the consent of the offender, that, instead of a more traditional final sanction such as imprisonment, he or she should undergo treatment and rehabilitation aimed at

^f Within 30 days of coming into contact with the criminal justice system, 68 per cent of these offenders had injected drugs, 26 per cent had overdosed, 17 per cent were taking prescribed methadone (all except one in combination with illicit opiates) and 60 per cent reported cannabis use as commonplace (M. Edmunds, M. Hough, P. J. Turnbull and G. T. May, "Doing justice to treatment: referring offenders to drug services", *Drugs Prevention Advisory Service Paper 2* (United Kingdom Home Office, 1999), pp. 21-23).

^g The team typically includes representatives from the law enforcement, prosecution, defence, treatment, probation, prison and parole services and has close links to education and employment support services.

eliminating his or her ongoing drug-related criminality and the underlying causal dependency.

9. Treatment can range from counselling sessions and the provision of drug abuse information to therapy in residential accommodations. Rehabilitation services designed to address issues such as illiteracy, housing and employment opportunities can also be offered.

10. Throughout the treatment and rehabilitation programme, the judge remains a central figure in a team effort, along with the prosecutor, the defence lawyer and treatment providers. The offender's progress is monitored closely and regularly, and sanctions or commendations, as appropriate, are ordered by the court. If the offender does not successfully complete the programme, he or she may be returned to the traditional criminal justice process for prosecution and sentencing, and could face imprisonment.

Would this not inappropriately change fundamental roles and functions of the court, judge, prosecutor, defence and health and social service providers?

11. Core traditional roles are not fundamentally changed, but rather adapted to suit the new process. So, for example, the judge remains the final arbiter of all facts at issue and exclusively exercises judicial powers, such as ordering sanctions. What changes is the context in which these functions are exercised, which becomes necessarily multidisciplinary and broader, in view of the wider aims of the treatment and rehabilitation programme, and emphasizes forward-looking problem-solving as opposed to backward-looking retribution and punishment.

12. Effective multidisciplinary work requires genuine respect and constructive working relations among all the professionals and disciplines involved. Professional confidentiality and privacy rules may need adjusting to enable the necessary flow of information, but this should be strictly limited to the purposes of the programme. Also, significant attitudinal adaptation is often required, both of legal personnel and of those providing health and social services to the court.

For which offenders is a court-directed treatment and rehabilitation approach appropriate?

13. Court-directed treatment and rehabilitation is appropriate for certain drug-dependent offenders whose dependency contributes to a wider ongoing criminality, whether it is crime committed for the purpose of obtaining money to fund addiction, or non-acquisitive crime such as violence to family members, or acts of hooliganism. A number of criteria are used to assess whether, from a criminal justice perspective, the case is an appropriate one for diversion from the traditional process of prosecution, sentencing and imprisonment, and, if it is, whether or not a treatment and rehabilitation programme has a good chance of success in respect of the offender. An effective filtering mechanism is needed to ensure that scarce resources are used only for the most appropriate cases.

14. A court-directed drug treatment and rehabilitation programme is often very appropriate for offenders whose dependency leads them to commit general crimes (in particular, crimes of dishonesty), but may also be appropriate for offenders who commit crimes of possessing illicit drugs or minor crimes of supplying illicit drugs in order to finance their own dependency. A number of jurisdictions have extended

court-directed treatment and rehabilitation programmes to those who are not drug-dependent, but whose drug abuse may lead to dependency and future ongoing criminal activity.

Does court-directed drug treatment and rehabilitation work? Is it cost-effective?

15. Evaluations undertaken to date in different jurisdictions show that this approach is more effective in reducing ongoing drug abuse and criminal behaviour (during the programme and afterwards) than either imprisonment or treatment and rehabilitation in which the court is not actively involved in an ongoing way.^h They also show that the approach is cost-effective when compared with the costs of prosecuting and imprisoning an offender, especially a repeat offender.

Is court-directed treatment and rehabilitation the solution for all drug dependent offenders?

16. Court-directed treatment and rehabilitation is not suitable for all drug-dependent offenders. Unsuitable candidates would include, for example, seriously mentally ill persons or persons who are not willing to participate in such a programme.

17. Experience shows that court-directed treatment and rehabilitation works best for drug-abusing offenders who commit crimes to maintain or support their drug use, rather than to commence using drugs. Addiction, and not a predisposition to criminal behaviour, explains why a large group of core drug abusers persevere in their behaviour despite tough criminal sanctions.ⁱ

18. If the target group and eligibility criteria are too broad, costly treatment and rehabilitation resources may be wasted through the resulting “net-widening” effect. To avoid this, where the person would otherwise have received a prison sentence, the length of the sentence should be taken into account when assessing whether he or she should enter a treatment and rehabilitation programme, together with other criteria to assess his or her suitability for entering into such a programme.

Is it a “soft” option?

19. These programmes are demanding for offenders, and many prefer prison, as they perceive it to be the easier option. The offender is subject to close monitoring throughout the programme, must attend court regularly and is highly accountable to the court and subject to sanctions for non-compliance. These sanctions can include short-term imprisonment in the course of the programme or, ultimately, expulsion and return to the traditional criminal justice process and likely longer-term imprisonment.

Is it a “boutique” option for rich countries?

20. A distinction needs to be drawn here between cost and cost-effectiveness. The latter takes priority for the purposes of judging programme impact and effectiveness in achieving its crucial goal.

^h See footnote 1 below.

ⁱ P. F. Hora, W. G. Schma, and J.T.A. Rosenthal, “Therapeutic jurisprudence and the drug treatment court movement: revolutionizing the criminal justice system’s response to drug abuse and crime in America” (*Notre Dame Law Review*, 1999), p. 465.

21. Court-directed treatment and rehabilitation can be expensive, particularly if a broad continuum of treatment services are provided at prevailing market prices and computerized information systems and mandatory drug testing are used to monitor programme compliance. But it is also highly cost-effective. As indicated above, in developed countries, court-directed treatment and rehabilitation is proving much cheaper than the full economic costs of untreated drug abuse dealt with through the traditional criminal justice process (e.g. law enforcement, prosecution, court, probation, prison and parole, health and social services). Where sustained recovery and rehabilitation takes place, former offenders are back in the community, working, paying taxes, with healthy lifestyles and family and community relationships.

What about developing countries?

22. Financial resources for treatment and rehabilitation are more scarce in developing than in developed countries. They often rank below other government budget priorities. Yet drug abuse carries high costs for developed and developing countries alike, particularly where drug-abuse related human immunodeficiency virus (HIV) is endemic.

23. Scarce government funding is often perceived as the only source of financial resources for treatment and rehabilitation. Yet private sector and community resources are often available but overlooked. Developing countries often have stronger community-based support systems to help encourage and reinforce drug abuse recovery than developed countries, where traditional community values and structures may be deeply eroded and ineffective.

24. Financial resources will be needed for the treatment facilities required for these programmes to work. They will also be needed for effective monitoring of offender compliance with court-directed treatment and rehabilitation programmes, in particular for expensive mandatory drug testing. Costs will need to be reduced if drug testing goods and services are to be affordable for developing countries. Efforts should be made to raise the awareness of the private sector of this potential market and to mobilize it to find ways to reduce costs. On the other hand, when the family is not willing or able to support the person, costs for institutions are much lower in developing than in developed countries.

25. Costs could be reduced, for example, through: (a) off-shore manufacture of urinalysis test sticks and cups of a quality sufficient to satisfy programme compliance requirements, not the stringent criminal standards of proof of an offence; and (b) testing multiple samples together, where the likelihood of a positive test is low. If a simple test result is seriously challenged, more costly and stringent laboratory testing could be done, particularly if sanctions would be imposed for the particular non-compliance.

Why not simply decriminalize the possession of illegal drugs and remove the problem from the criminal justice system?

26. First, this is simplistic and fails to address the fact that drug-abusing offenders commit crimes because they use drugs rather than in order to use drugs. Secondly, not so long ago, when some sceptics had given up and started to call for decriminalization

and legalization policies, 185 countries along with 32 Heads of State, pledged to reduce drug abuse and production significantly by 2008.^j

Underlying success factors—best practice recommendations and guidance

Success factors underlying court-directed treatment and rehabilitation programmes

27. In section II of the present report, the Expert Working Group describes diversion programmes in general. It focuses on one particular type, court-directed treatment and rehabilitation programmes, describes how they operate, then identifies 12 underlying success factors,^k namely:

(a) Effective judicial leadership of the court-directed treatment and rehabilitation programme team;

(b) Strong interdisciplinary collaboration between team members, while each maintains his or her professional independence;

(c) Good knowledge and understanding of addiction and recovery by the non-health-care professionals on the team;

(d) Operational manual to ensure consistency of approach and ongoing programme efficiency;

(e) Clear eligibility criteria and objective eligibility screening of potential participant offenders;

(f) Detailed assessment of each potential participant offender;

(g) Fully informed and documented consent of each participant offender (after receiving legal advice) before participating in a programme;

(h) Speedy referral of participating offenders to treatment and rehabilitation;

(i) Swift, certain and consistent sanctions or rewards for non-compliance or compliance;

(j) Ongoing programme evaluation and willingness to tailor programme structure to meet shortcomings;

(k) Sufficient, sustained and dedicated programme funding;

(l) Changes in underlying substantive and procedural law, if necessary or appropriate.

^j See resolutions S-20/2, 3 and 4, adopted by the General Assembly at its twentieth special session devoted to countering the world drug problem together, held in New York, from 8 to 10 June 1998.

^k The first 10 of these are based on principles first identified by the United States National Association of Drug Court Professionals Drug Court Standards Committee in 1997; see United States Department of Justice, *Defining Drug Courts: The Key Components* (1997). They were modified in minor ways by the Expert Working Group to permit implementation across the world's major legal systems.

Recommendations and guidance for best practice, including twelve key principles:

28. In section III of the present report, the Expert Working Group formulates a wide range of recommendations and guidance for best practice, beginning with 12 key principles for successful court-directed treatment and rehabilitation programmes, namely:

(a) The programmes should integrate substance dependency treatment and rehabilitation services with justice system case processing;¹

(b) A non-adversarial approach should be used, in this manner the prosecution and defence promote public safety while protecting offenders' due process rights;

(c) Eligible offenders should be identified early and promptly integrated into the programme;

(d) The programmes should ensure access to a continuum of substance dependency treatment and other rehabilitation services;

(e) Compliance should be monitored objectively through frequent substance-abuse testing;

(f) A coordinated strategy should govern responses of the court to programme non-compliance (and compliance) by offenders;

(g) Ongoing judicial interaction with each offender in a programme is essential;

(h) Monitoring and evaluation should be carried out to measure the achievement of programme goals and gauge programme effectiveness;

(i) There should be continuing interdisciplinary education to promote effective planning, implementation and operation of these court-directed programmes;

(j) Partnerships should be forged among courts directing treatment and rehabilitation programmes, public agencies and community-based organizations in order to generate local support and enhance programme effectiveness;

(k) Ongoing case management should include the social support necessary to achieve social reintegration, if necessary including the family of, or those who have close relationships with, the offender;

(l) There should be appropriate flexibility in adjusting programme content, including incentives and sanctions, to achieve better programme results with particular groups, such as women, indigenous people and minority ethnic groups.

¹ Some jurisdictions may wish to extend the concept of substance dependency to include substance abuse or other substance use problems. For such jurisdictions, the concept of treatment services may be extended to include education and other approaches.

I. Introduction

1. The United Nations International Drug Control Programme (UNDCP) convened the Expert Working Group on Improving Intersectoral Impact in Drug Abuse Offender Casework in Vienna from 6 to 10 December 1999. The experts comprised senior judges and other key justice system personnel (see annex I) who are leading multidisciplinary teams of prosecutors, defence attorneys and law enforcement, prison, probation, health care and social services, as well as other related sectors, in court-directed treatment and rehabilitation programmes. In the course of the meeting, special attention was given to the experience of what are becoming widely known as drug or drug treatment courts in countries with common law traditions and their counterparts in civil law countries.

2. Throughout this report, references to judges include magistrates and other persons (however locally designated) who perform judicial functions in drug-related casework. References to drug courts are references to courts that deal with drug-related offences and offenders through court-directed treatment and rehabilitation programmes. Existing courts and judicial officers can be used to administer such programmes.

3. Evaluations indicate that there are a number of alternatives to formal processing through the criminal justice system that can significantly reduce the ongoing serious criminal behaviour of offenders by reducing their drug dependency. They typically target offenders whose dependency contributes to serious criminal offences, such as burglary, property offences, domestic violence, and, depending on the jurisdiction, drug dealing, and who consent to participate in the programme and are deemed suitable to do so.

4. The programmes are rigorous and demand a high level of participant accountability. Compliance is closely monitored by the team and promptly reported to the court. The court responds swiftly to both compliance and non-compliance, using a range of graduated incentives and sanctions designed to induce and sustain attitudinal and behavioural change. If the offender ultimately succeeds in the programme, criminal proceedings may be terminated. If not, the programme may be terminated and the case returned for traditional criminal justice processing.

5. The Expert Working Group reviewed the collective experience and impact of such programmes in their own countries. They identified the core factors underlying effectiveness and success and what needed to change for success to be achieved. In developing practical guidelines for interested States on how best to establish and implement similar programmes, the Expert Working Group examined ways of making these initiatives affordable and effective for developing countries with serious problems of drug-abuse-related crime.

A. Background to the problem

6. The relationship between drug abuse and crime is well documented. Drug dependency can often lead to acquisitive and other drug-related crime, and the traditional response of the criminal justice system in dealing with drug abusers who have committed crimes is to arrest, prosecute and imprison them. Such an approach does not attempt to deal with the root cause of the drug dependency, with the result that when the offender is released, there is a high probability that the drug abuse and the commission of crimes will continue.

7. Many countries have looked for alternative strategies to break this cycle by diverting the offender from the traditional criminal justice procedure into a scheme of treatment designed to address the underlying drug dependency problems, accompanied, where appropriate, with rehabilitation services to enable them to play a more valuable role in society. Different countries have adopted different procedural approaches, but the overall aim of diversion remains the same—that the criminal activity of the offender will cease. Although this approach is a relatively recent innovation in most countries, diversion programmes have proved themselves to be an effective way forward.¹

¹ For example, in the United States of America, Columbia University's National Center on Addiction and Substance Abuse undertook a wide-ranging evaluation of 24 drug courts, and found that drug use and criminal behaviour are substantially reduced while offenders are participating in court-directed treatment. In Australia, the Court Referral Evaluation for Drug Intervention Treatment scheme operating in Victoria, which makes drug treatment available immediately after arrest on the

B. The legal context: the 1988 Convention and the twentieth special session of the General Assembly

8. The work of the Expert Working Group was undertaken in the legal context of the international drug control conventions, in particular the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,² and recent work of the General Assembly following its twentieth special session devoted to countering the world drug problem together.

9. Article 3 of the 1988 Convention is relevant here. Article 3, paragraph 1, of the 1988 Convention provides that each party must adopt the necessary measures to establish as criminal offences under its domestic law the various offences specified in that provision, which include the production, manufacture and sale of any narcotic drug or psychotropic substance contrary to the provisions of the Single Convention on Narcotic Drugs of 1961,³ the 1961 Convention as amended by the 1972 Protocol⁴ and the Convention on

Psychotropic Substances of 1971,⁵ and the cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs. Article 3, paragraph 2, of the 1988 Convention states that “subject to its constitutional principles and the basic concepts of its legal system, each party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended, or the 1971 Convention”. Article 3, paragraph 4, of the 1988 Convention empowers parties to provide, either as an alternative or in addition to conviction or punishment, that drug offenders must undergo measures of treatment, education, aftercare, rehabilitation or social reintegration.

10. Building on article 3, paragraph 4, the General Assembly, at its twentieth special session, held in New York from 8 to 10 June 1998, adopted the Declaration on the Guiding Principles of Drug Demand Reduction (resolution S-20/3, annex), paragraph 14 of which reads as follows:

“In order to promote the social reintegration of drug-abusing offenders, where appropriate and consistent with the national laws and policies of Member States, Governments 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 should develop within the criminal justice system, where appropriate, capacities for assisting drug abusers with education, treatment and rehabilitation services. In this overall context, close cooperation between criminal justice, health and social systems is a necessity and should be encouraged.”

11. Further, the Action Plan for the Implementation of the Declaration on Guiding Principles of Drug Demand Reduction, adopted by the Economic and Social Council on 28 July 1999 states as an objective the provision of prevention, education, treatment or rehabilitation services to offenders who misuse drugs,

offender being brought to court, shows encouraging results. The rate of reoffence while on bail decreased dramatically for those offenders who fully complied with the treatment programme. In the United Kingdom of Great Britain and Northern Ireland, initial results from the drug treatment and testing orders regime introduced in pilot areas have been encouraging, as have initial evaluations of other similar initiatives (e.g. the Substance Misuse Treatment Enforcement Programme (STEP)). In Sweden, of all offenders sentenced to contract treatment during the period from January 1988 to February 1990, 51 per cent completed the treatment, while 49 per cent were re-sentenced to prison, either because of recidivism or breach of conditions. Later figures (1993) showed a dramatic improvement: only 10 per cent failed to complete the treatment that year. A 1996 study on persons sentenced to contract treatment in the region of Gothenburg found that, out of 254 persons enrolled in treatment, only 76 were re-sentenced to prison after one year, so that 178 persons (70 per cent) had completed the treatment.

² *Official Records of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 25 November-20 December 1988*, vol. I (United Nations publication, Sales No. E.94.XI.5).

³ United Nations, *Treaty Series*, vol. 520, No. 7515.

⁴ *Ibid.*, vol. 976, No. 14152.

⁵ *Ibid.*, vol. 1091, No. 14956.

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 and the promotion of cooperation among institutions and organizations, both governmental and non-governmental, offering health, social, justice, correctional, vocational training and employment services, in order to provide preventive care, education, treatment and rehabilitation for offenders and, where appropriate, programmes to enable their integration into the community (resolution 1999/29, annex, para. 16).

12. Building on these principles and objectives by adapting the traditional role of judicial officers, prosecutors and defence lawyers in case work, and involving health and social welfare sectors in the judicial process, a growing number of countries are modifying the way their criminal justice systems function, with the ultimate aim of helping drug offenders to achieve sustained long-term recovery from their habit and to cease causing serious harm to the community.

13. Such schemes are also compatible with the relevant norms of United Nations guidelines on the rights of the child and juvenile justice.⁶

⁶ The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), adopted by the General Assembly at its forty-fifth session, state 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 (resolution 45/112, annex, paras. 9 and 45). The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted at the same session, state that imprisonment should be used as a last resort for juveniles, that every juvenile should 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 (resolution 45/113, annex, paras. 1, 49 and 51). The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), adopted by the Assembly at its fortieth session, state that consideration should be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, and that efforts should be made

C. Why a United Nations International Drug Control Programme initiative?

14. UNDCP is mandated, in the first place, to assist States to upgrade their national laws, policies and infrastructures in line with the international drug control conventions,⁷ secondly, to train those who will be responsible for implementing the new laws, and thirdly, to play a vital leadership role in bringing to wide international attention new approaches in demand reduction. UNDCP is in a unique position to provide a forum for States to bring together and share the best international practical experience of all major legal systems in reducing drug abuse and recidivism through the joint work of the criminal justice and health care systems, and to develop internationally agreed principles to ensure the maximum impact of that interdisciplinary approach.

II. International overview of relevant treatment and rehabilitation diversion programmes in operation

A. Diversion programmes in general

15. For the purposes of this report “diversion” means the re-routing to treatment and rehabilitation programmes of substance-abusing or substance-dependent offenders who would otherwise be convicted and penalized through the traditional criminal justice process, and includes the re-routing of such offenders at any stage of the criminal justice process.

16. The Expert Working Group noted that diversion schemes can operate at any point from police arrest to court sentence, but concentrated its attention on those schemes which target substance-dependent offenders who face imprisonment in the traditional criminal justice process.

to provide for community programmes and to involve community resources to contribute effectively to the rehabilitation of the juvenile in a community setting (resolution 40/33, annex, rules 11 and 25).

⁷ The Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, the Convention on Psychotropic Substances of 1971 and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

17. Participants in the Expert Working Group outlined the diversion schemes in their jurisdictions (see annex II below).

B. Court-directed treatment and rehabilitation

18. The goal of court-directed treatment and rehabilitation is to reduce the level of criminality that results from drug dependency. The means of achieving that goal is the treatment, rehabilitation and social reintegration of drug-dependent offenders. The imposition of a court-directed treatment and rehabilitation programme is not necessarily inconsistent with the infliction of punishment as well, if the circumstances warrant such an approach.

1. How does it work?

19. Where the offender satisfies the relevant eligibility criteria and the court considers it appropriate, the court can direct a treatment programme, at either the pre-trial, or post-trial stage, after pleading or at sentencing. The timing varies from jurisdiction to jurisdiction. The consent of the offender to participate in such a programme is a necessary prerequisite. The content of the programme is tailored to the needs of each offender and can comprise anything from counselling and the provision of drug abuse information to residential accommodation, therapy and, depending on the jurisdiction, pharmacotherapy using drugs such as methadone. Rehabilitation services such as facilitating access to housing, education and employment can also be offered. The programme is supervised by the court, and, at all times during the programme, the offender is accountable to the court. Various sanctions can be applied by the court for non-compliance with the programme; conversely, rewards can be given if the offender is progressing well. In some jurisdictions, treatment programmes offering advantages such as a “clean environment” are provided, even during imprisonment.

20. The dynamic relationship that must be established between the drug court team and the treatment team is at the core of the success of the programme. Although ultimate responsibility and decision-making rests with the judge, the input of the

treatment team (i.e. recommendations and feedback) is necessary and valued.

2. Target group and eligibility

21. The target group should be carefully defined in a way that ensures that appropriate cases, for which a directed treatment programme could make a real difference, are diverted from the criminal justice system (that is to say, there should not necessarily be a focus on low-risk offenders).

22. The definition of the target group should be linked to the type of offence, the level of penalty that offence incurs and the level of dependency. Firstly, there should be a substance-dependent offender; secondly, that offender’s substance dependency should have contributed to the commission of the relevant offence; thirdly, the offender must agree to participate in a programme; and fourthly, it must be considered that treatment and rehabilitation is likely to be effective for that offender.

23. A number of jurisdictions have deliberately chosen to extend the target group to drug-abusing offenders in recognition of the reality that drug abuse does occur prior to dependency in many cases and that intervention at the earliest possible time can, in fact, prevent some individuals from becoming drug dependent.

24. To avoid “net widening”, it is important to have a clear policy concerning which cases do not go to court, in accordance with article 3, paragraph 4, of the 1988 Convention (see sect. I above). When deciding whether the treatment option is appropriate when the offender would have otherwise incurred a sentence of imprisonment, in addition to the criteria used to assess the offender’s suitability for treatment referred to above, the length of the sentence the offender would have otherwise received should be taken into account.⁸

⁸ It would be inappropriate in most circumstances for an offender who would not have been sentenced to prison and who enters into a treatment and rehabilitation programme to face imprisonment as a sanction for non-compliance with that programme. This should not rule out, for example, short-term deprivation of liberty (24 or 48 hours), when the objective is not punishment for the original offence, but to encourage focus and the taking of responsibility for an ongoing serious problem. The court’s authority for such an order should preferably be statute-based.

The mere existence of a successful alternative may encourage police to make more arrests and the prosecution to file more cases. It is important that this be prevented in order to avoid overwhelming the court.

25. One of the reasons that the diversion movement of the 1960s and 1970s did not reduce the use of imprisonment was because it focused on drug-abusing or drug-dependent low-end offenders. Court-directed treatment and rehabilitation programmes have the capacity to deal with more serious offender casework, where considered appropriate, and by doing so may actually contribute to lower levels of incarceration. More serious, intensive responses must be reserved for more serious offenders if the diversion programmes are to have any impact on incarceration. Otherwise, we risk the danger of widening the net and increasing costs. However, cases involving very violent or predatory crimes should rarely, if ever, qualify as appropriate for diversion.

26. In addition, where possible, family and friends of the offender should be involved and integrated into the programme. This may have the advantage, for example, of strengthening support for the offender or reducing the risk of relapse if those closest to him or her are themselves drug dependent.

27. Local community input regarding the target group is important, and community interests, such as the need to maintain the safety and well-being of the community, need to be taken into account. The final decision concerning the target group will rest with relevant experts and practitioners, who will consult widely with community leaders prior to making such decisions. The target group can be differentiated, as appropriate (e.g. between adult or juvenile, indigenous or non-indigenous populations, etc.)

3. Success factors

28. The Expert Working Group identified 12 factors underlying successful court-directed treatment and rehabilitation programmes, as set out below.

(a) Effective judicial leadership of the court-directed treatment and rehabilitation programme team

29. Leadership by the judge in court is vital. Thus, his or her commitment to and understanding of the concept of court-directed treatment are a prerequisite.

The judge must be someone who is open to criticism, understands the community and can balance the needs of all stakeholders.

(b) Strong interdisciplinary collaboration between team members, while each maintains his or her professional independence

30. Strong interdisciplinary collaboration is recommended from the outset between the team members. The team would comprise the judge and other court staff, defence and prosecution lawyers, the treatment provider, the probation officer, rehabilitation personnel and others concerned with the case. The clear common goal of the team would be to reduce the level of criminal activity that results from drug dependency, by means of effective treatment and rehabilitation, through the performance of their usual roles, with some adaptation to suit the process.

31. Ongoing communication (through meetings, etc.) between the team members 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 for information between the court and the treatment team. 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.

32. Although justice system personnel need to cross established boundaries to work successfully as members of a team, there need to be limits, and thus "boundary-setting" in the context of the traditional roles of defence, prosecutor and judge will be important. Traditional roles are adapted to suit the new process, rather than fundamentally changed, so that:

(a) The role of the judge remains to independently, objectively and conclusively determine all the relevant facts in issue;

(b) The role of the prosecutor remains to secure a conviction in cases where the facts are sufficiently proven and it is in the public interest for proceedings to be brought;

(c) The role of the defence remains to secure the acquittal of any person charged where the evidence

is insufficient for conviction in accordance with the law;

(d) The role of the health care providers is to guide offenders to full health recovery and to minimize the risks that offenders will sustain further health damage;

(e) The role of the social services providers is to ensure that the person's opportunities to play a valuable role in society are maximized.

These roles are retained and the functions exercised in the wider context of reducing public harm through recovery of an offender from a dependency which contributes to ongoing criminality.

33. "Boundary-setting" is particularly important in order for defence lawyers to avoid conflict of interest, as a team member inherently on the side of the offender. One solution is not to have a defence lawyer present except when sanctions or termination of the programme is at stake; another is to have the same lawyer for all participant offenders. If the defence lawyer is paid on an appearance basis, cost is an additional issue. In some legal systems, there may also be problems for the prosecutor, who will, for the purposes of the programme, step out of the traditional adversarial role. In a post-sentence- or post-plea-based scheme, these problems are less significant.

(c) Good knowledge and understanding of addiction and recovery by the non-health-care professionals on the team

34. It is imperative that the non-health-care professionals on the team (e.g. the judge, prosecution and duty lawyers) have a good understanding of the processes of addiction, treatment and recovery.

(d) Operational manual to ensure consistency of approach and ongoing programme efficiency

35. The development of an operational manual for the court is essential. This will ensure consistency of approach and continued efficiency when there is a change in team personnel.

36. As a minimum, the manual should include the eligibility requirements for the court-directed treatment programme, information about who is responsible for getting the cases into the court, the participants required from the services standpoint, and, in respect

of each of them, who they are accountable to and what is expected from them. The manual should specify the kind of events which require an immediate response by the court, and include information on where assessment and treatment will occur and where and how often urine analyses will be done. It could also state when the court will be in session.

(e) Clear eligibility criteria and objective eligibility screening of potential participant offenders

37. There is a need for realism and pragmatism in setting the eligibility criteria. Eligibility screening should be carried out consistently in order to avoid inappropriate net-widening effects with minor offenders, and the inappropriate exclusion of more serious offenders who could benefit from the programme. 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. Care should be taken to avoid situations in which offenders admit guilt to offences which they did not commit in order to obtain placement in a court-directed programme. Care should also be taken to deter would-be offenders from committing crimes in order to gain access (or faster access) to treatment under such a programme.

(f) Detailed assessment of each potential participant offender

38. The assessment of each potential participant offender should be detailed and include an analysis of areas where they will need immediate support structures in order to be successful in the programme (e.g. stable and drug-free housing). Copies of these assessments should be written by the treatment provider and be made available to the drug court team. This will enable the court to fashion individualized treatment objectives for each offender and to determine the appropriate sanctions and rewards, taking into account the personal characteristics of each offender.

(g) Fully informed and documented consent of each participant offender (after receiving legal advice) before participating in a programme

39. Willingness to participate is a prerequisite for participation. It is important that the offender understand 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 that there will be no opportunity for manipulation. Any statements of the addict relating to his or her programme performance should be checked immediately where appropriate.

(h) Speedy referral of participating offenders to treatment and rehabilitation

40. The eligible offender must be referred quickly into the programme (if possible within 72 hours) so that intervention is immediate. The offender is likely to be at the most receptive to the programme having just been arrested, charged and brought to court.

(i) Swift, certain and consistent sanctions or rewards for non-compliance or compliance

41. 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. It is equally important to reward compliance with appropriate incentives and recommendations in order to encourage and reinforce progress. While sanctions and rewards need to be consistent, particular circumstances should be taken into account in imposing them.

(j) Ongoing programme evaluation and willingness to tailor programme structure to meet shortcomings

42. Evaluation procedures should be an integral part of the programme from the first planning stage, and should be ongoing. Both process and impact evaluations are necessary. The crucial test is whether the goal of reducing criminal activity is being met through court-directed treatment, compared to other "heavier" methods, such as traditional prosecution, sentencing and imprisonment.

(k) Sufficient, sustained and dedicated programme funding

43. Funding must be sufficient, certain, sustained and dedicated to the programme. The development of links between the private sector and the court is vital to ensure ongoing support and government funding. The expertise of the private sector in rallying public support may aid in securing employment, housing, child care and job training opportunities for participant

offenders. In addition, many drug treatment court programmes are started with seed or grant money only. The private sector is often a good source of ideas for developing strategies to obtain sustained and permanent funding. Links with the wider community are also important in this regard. Where practical, the appointment of a drug court coordinator to develop those links would be beneficial.

44. Health and social service funding should not be diverted from others in need in order to fund the treatment and rehabilitation of offenders. The source and control of funding requires careful consideration, bearing in mind that court-directed programmes are saving public expenditure in areas such as prisons and policing, rather than in the health care area.

(l) Changes in underlying substantive and procedural law, if necessary or appropriate

45. Many drug treatment courts are existing courts with flexible enough traditional legal frameworks to apply drug treatment court principles without amending legislation. Others are statutorily created as new courts with appropriate modifications to the traditional legal frameworks.

46. In some cases, new or amended legislation has proved necessary or desirable to permit the full range of tailored and calibrated court actions needed to best achieve the objectives of court-directed treatment programmes, for example:

(a) To authorize the court to make the wide range of provisional orders needed pending any final sentence, such as orders for mandatory drug testing or for short-term deprivation of liberty, where appropriate, for violation of those orders;

(b) To permit the court to be closely involved in the implementation of the provisional orders after making them, without violating the separation of judicial and penal system functions in the handing down and execution of sentences;

(c) To enable mandatory drug testing for the purposes of the programme;

(d) To encourage candour and the taking of responsibility by the offender, by providing that any admission of relapse cannot be used in any prosecution;

(e) To authorize the collection and communication of relevant personal information about the offender for the purposes of the programme;

(f) To permit the extended time needed for the court to finally dispose of the matter without violating any right to speedy trial.

47. One often misunderstood “boundary” in judicial function arises from the fact that trial judges in all major justice systems dispose of criminal cases through appropriate sentences and orders, while other criminal justice system authorities implement them (e.g. prison, probation or parole services). In one view, post-sentence court-directed treatment programmes appear to blur this separation of functions by directly involving the judge after pronouncing sentence and making orders, during the compliance monitoring phase of the treatment programme. However, in many jurisdictions, any such sentence or order made prior to or at the point of programme entry is “provisional” only, and remains properly within the jurisdiction of the court pending subsequent review and “final” sentence and orders by a court after completion or early termination of the programme. Accordingly, at the appropriate time, the traditional separation of functions with respect to execution of sentences and orders is given full effect. In jurisdictions where such a sentence or order would nonetheless be considered final, legislation may be needed if ongoing judicial function is considered appropriate.

III. Best practice guidelines and recommendations

A. Twelve principles for court-directed treatment and rehabilitation programmes

48. The Expert Working Group formulated the following fundamental principles for successful court-directed treatment and rehabilitation programmes:⁹

⁹ The first 10 of these are based on principles first identified by the United States National Association of Drug Court Professionals Drug Court Standards Committee in 1997 (see United States Department of Justice, *Defining Drug Courts: The Key Components* (1997)). They were modified in minor ways by the Expert Working Group to permit implementation across the world’s major legal systems.

(a) The programmes should integrate substance dependency treatment services with justice system case processing;¹⁰

(b) A non-adversarial approach should be used, in this manner prosecution and defence lawyers promote public safety while protecting offenders’ due process rights;

(c) Eligible offenders should be identified early and promptly integrated into the programme;

(d) The programmes should ensure access to a continuum of substance dependency treatment and other rehabilitation services;

(e) Compliance should be monitored objectively through frequent substance abuse testing;

(f) A coordinated strategy should govern responses of the court to programme non-compliance (and compliance) by offenders;

(g) Ongoing judicial interaction with each offender in a programme is essential;

(h) Monitoring and evaluation should be carried out to measure the achievement of programme goals and gauge effectiveness;

(i) There should be continuing interdisciplinary education to promote effective planning, implementation and operation of these court-directed programmes;

(j) Partnerships should be forged among courts directing treatment programmes, public agencies, and community-based organizations in order to generate local support and enhance programme effectiveness;

(k) Ongoing case management should include the social support necessary to achieve social reintegration;

(l) There should be appropriate flexibility in adjusting programme content, including incentives and sanctions, to achieve better programme results with particular groups, such as women, indigenous people and minority ethnic groups.

¹⁰ Some jurisdictions may wish to extend the concept of substance dependency to include substance abuse or other substance use problems. For such jurisdictions, the concept of treatment services may be extended to include education and other approaches.

B. Planning

49. Broad-based planning is best. Where appropriate, local needs should be taken into account. It is important to have specialized services, either at the disposal of the court or of networks that the court can easily tap into.

50. Clear roles should be set for the programme team, and the functions of each member should be determined and then reviewed regularly, with particular attention given to the role of the defence lawyer.

51. There should be certainty as to the target group and eligibility, with objective eligibility criteria to prevent subjectivity, supported by a single defined person, such as the prosecutor, or persons who are given the responsibility to refer all eligible offenders, or by a general obligation to refer eligible offenders or a reporting system.

52. Training and education should be provided at the planning stage (including for the judge), should be continuing and must deal appropriately with sensitivities (e.g. the independence of the judiciary and prosecution). “On-bench” visits and “mentor” courts are particularly valuable. Judges may also need training on teamwork.

53. The community (and in particular the private sector) should be encouraged to support the programme. A tangible example of corporate support would be if companies were to offer employment opportunities to participant offenders and/or pay for urine screenings; another possibility would be for the community to offer appropriate rewards as incentives to offenders.

54. Information systems should be considered. The information needs of the programme should be identified and appropriate systems to deliver those needs planned. Both the programme operational needs and the evaluation needs should be addressed. Direct data entry to a shared information system is ideal, enabling all the team members to access the necessary up-to-date information, with data system security firewalls to protect confidentiality of information from unauthorized incursions and ensure that data privacy protection requirements are met. If confidentiality is an obstacle to exchange of information, it might help to qualify exactly what information is expected from each team participant. However, the system can function

without this, using written reports based on standard forms with minimum information required for the purpose (e.g. how many urine analyses, results, any tampering, how many counselling sessions attended, individual or group, residential, etc.) and ensuring coordination through conference calls, of example.

55. An appropriate system of security of information should be ensured, and the data protection needs of the programme should be identified and met at the planning stage.

56. In respect of compliance monitoring and response, it should be determined whether limited alcohol or drug use (e.g. cannabis) will be tolerated in the programme, or whether abstinence is required.

57. A range of graduated penalties, sanctions and incentives (both intermediate and final), should be determined for each offender. Flexibility is important to ensure that the court can match as closely as possible the incentives and sanctions to each offender, to arrive at the best possible inducements for that person’s recovery.

58. Community views should be considered as to what outcome or outcomes are acceptable if the offender successfully completes the programme.¹¹

59. Potential conflicts over treatment orders between the judicial branch, which makes the order, and the executive branch, which provides enabling resources for treatment, should be resolved at the planning stage. The objective is to ensure that treatment resources will be reliably available to give any treatment order full and proper effect. Since a court order must be capable of being implemented when made, and will typically not be made if it is likely to be futile, any waste of court time to enquire whether resources are available should be avoided.

60. Accountability mechanisms should be put in place. There should be accountability of the offender to the court, of programme team members to the judge on their functional performance, of programme team members to their managers on personal professional performance, and of the programme as a whole to the legislative and executive arms of government.

¹¹ Decisions as to outcomes can impact directly on the community, for example, if it is agreed that offenders who have successfully completed the programme should be eligible for housing in a particular area.

However, nothing should detract from the independence of the judge to decide on the merits of each case and to act as team leader.

61. An effective evaluation strategy should be developed and implemented. Evaluation will be crucial in obtaining sustained funding and also for assessing and defending the viability and effectiveness of the programme.

62. There are cost implications in implementing the drug court treatment and rehabilitation approach outlined in the present report. For example, there may be short-term costs, such as training of staff or the opportunity cost of staff needing extra time to deal with offenders under the programme and thus being unable to handle the same volume of cases. These costs need to be weighed against the potential savings to be made in law enforcement, criminal justice and health-care systems. Focus needs to be kept on incremental costs of implementing this approach, since many of the fixed and variable costs, such as salaries and court premises, will be incurred anyway.

63. Financial resources and support services required (e.g. guaranteed detoxification beds in prison and residential treatment facilities) should be determined and secured. The availability and accessibility of community resources should also be explored prior to the establishment of a drug court programme.

64. Implementation research based on comparative criminal law methodology could be conducted to identify relevant differences between jurisdictions, where appropriate. On changes to the law, a substantive and procedural legislative framework is required in jurisdictions with civil law tradition. In the jurisdictions with common law tradition, legislation is not essential, although it is desirable. Flexibility and development should be permitted. Some examples of useful laws include immunity for court confessions and authority to communicate otherwise privileged information. Change can be effected without amendments to the law on an undertakings “contract” basis between the offender and all of the treatment team, although this approach needs to be treated with caution in some jurisdictions where it is not possible for offenders to contract out of certain constitutional rights.

C. Court-directed treatment and rehabilitation programmes in operation

1. Eligibility assessment and programme admission/termination

65. Assessment of the initial motivation and commitment of potential offenders is necessary, bearing in mind, however, that in the experience of some jurisdictions, initial motivation is not necessarily determinative of outcome. Discretion to determine ultimately whether to include or exclude an offender in the programme must rest with the court, although input from the treatment provider and the prosecution is necessary to make an informed decision.

2. Court in session

66. A good relationship between the judge and the offender is vital. The judge has an important pedagogical role throughout the programme, being the person with whom the offender has regular contact, and who orders sanctions or rewards as immediate reactions to his or her conduct. Although the judge is in a unique position to motivate the offender to successfully comply with the programme, such motivation will ultimately involve a combined effort of treatment personnel and other professional resources.

67. Thought should be given to the physical arrangement of the court room. For example, the judge’s position could be somewhat elevated, the team members placed in a group and the offender placed in the dock if he or she is about to be sanctioned, or close to the judge if he or she has been compliant. In some courts, it has been known for the judge and the offender to sit together at the same table; this can be particularly appropriate in the case of young offenders.

68. All team members, and in particular the judge, should approach their tasks with commitment tempered by dispassion. They should be capable of employing effective psychological leverage to induce, encourage and reinforce attitudinal and behavioural changes in offenders.

3. Monitoring of compliance

69. Judicial oversight is essential, and the timely availability of relevant information is key. There should be direct and timely communication with the

judge by all team members. A strong interdisciplinary approach will be essential. Some jurisdictions have daily pre-court team meetings to discuss each case before it goes to court, and in most cases the team decides in advance by consensus what is to happen to each offender. This does not derogate from the principle that ultimately the judge alone has authority to make and enforce judicial orders. Although the offender is not present at these meetings, a defence lawyer is. If there is a dispute in the team meeting, it is best to move as quickly as possible to open court, so that discussion can occur there. For example, if the treatment team recommends that the offender be sanctioned by loss of his or her liberty, the judge should defer the decision-making process to open court, where appropriate arguments by defence and prosecution lawyers can be heard. No measures should be taken based on circumstances that have not been presented to the offender. Speed in bringing the offender to court is important, as it ensures that sanctions or rewards are timely. It should be stressed that behavioural indicators of progress or problems are important and should not be overlooked.

70. There must be very direct communication with the judge so that he or she has timely access to all the relevant information before reaching any decisions. If daily meetings are not practicable, pre-court meetings should be held on the same day that the court is in session. It is important with such an alternative that it be possible for the offender to be brought before the court immediately (the same day where possible) so that sanctions can be imposed if necessary. Teleconferences can facilitate the process, especially in rural areas. Written reports combined with oral summaries at the pre-court meetings would be the best practice.

4. Drug testing

71. Drug testing is 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 honesty. It is the most consistently reliable objective test. On the other hand, drug testing must not be viewed as some sort of panacea that will compensate for deficiencies in the programme. Drug testing alone does not give a true and accurate measure of what the court has to offer. Drug testing should be viewed as only one part of a comprehensive strategy to tackle the problem of drug

dependency. Other reliable sources may include reports from the police or treatment providers.

72. There must be some type of regular (if necessary, random) and reliable drug testing of each offender. How and when drug testing is done will vary between jurisdictions, and cost factors will be relevant. It is crucial that the test results be obtained immediately, so that the offender's progress can be assessed and sanctions applied quickly, if warranted. On-site testing has the advantage that offenders who provide a "dirty" sample may be challenged immediately and referred to the court for sanction. On-site testing cups need to have a high level of accuracy, and the sample taker needs to be thoroughly trained in sample taking and results 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.

73. Drug addicts can be manipulative and dishonest about their dependency behaviour. To deal effectively with manipulation, the procedure for taking samples should be developed in written and clear form. Those who take samples should be required to report suspicions promptly to the court.

74. It is important to have accurate and reliable tests, but they need not necessarily be the most accurate tests initially. For pedagogical effect, the offender should know in advance that he or she will be tested for drugs and that he or she will be asked in advance of the test about the likely results.

75. With regard to test costs, the price decreases with volume, so pilots are expensive. If the potential market is big, new entrants will appear, and competition will drive prices down. One option for the United Nations could be to coordinate with the World Health Organization (WHO) or the United Nations Children's Fund (UNICEF), for example, to build volume and drive prices down. Countries that do not, on their own, present an attractive market could either join together with other countries or be supplied by a larger buyer country, which would be able to negotiate the price. Offenders may be required to pay for laboratory verification of challenged on-site urine results for which the laboratory confirms a dirty sample.

76. In countries that have a high degree of honesty in the population for reasons of culture, religion or other

factors, drug testing may be less important as a means of ensuring and building participant integrity.

5. Responses to compliance/non-compliance: intermediate sanctions and rewards

77. The availability of intermediate sanctions and rewards maintains the connection between the judge and the offender, and underlines the fact that the offender has to be honest with the court and that his or her honesty can be promptly verified. It also contributes to the development of the court as a therapeutic environment.

78. Failure to attend court or treatment, or to provide a urine sample, will and should result in a sanction, which could range from a court admonishment or more frequent attendance at court, to revocation of liberty and placement in a correctional institution. There are potential constitutional issues with the latter, given that imprisonment may not be an option without a trial having been held, a plea entered or a sentence given. Problems can be avoided if the condition later violated has been made a condition of conditional release from pre-trial or post-plea detention.¹²

79. A legislative framework as to the court's powers to sanction and reward offenders is necessary in civil law countries. Enacting such legislation in common law systems is not essential, but is the best practice.

6. Evaluation

80. Evaluation procedures should be an integral part of the programme, from the planning stage, and should be ongoing as the programme runs. Both process and impact evaluations are necessary.

81. An evaluator should be a member of the planning and review team, so that he or she is able to follow the programme closely. To ensure independence, he or she should not be a member of the day-to-day operating team. A professional independent evaluator is the best, if one is available, but there are alternatives, such as cooperation with a university.

¹² Australia is proposing an amendment to enable an offender to be held in custody for up to seven days with his or her consent if the person has violated orders in a way that indicates that a major reassessment or programme change is necessary.

82. Once the programme has been running for a while, evaluations need not be as frequent. If there is initial rigorous evaluation, ensuring good operation of the programme, a less involved form of evaluation at a later stage may suffice.

83. A comparison group should be carefully designed to facilitate evaluation. Although it is ideal if the comparison group of offenders consists of offenders comparable to the ones included in the programme in every relevant respect, including willingness to undertake the programme, this may not always be appropriate in all jurisdictions, and in fact may create legal issues with regard to denying access to similarly situated offenders to the benefits of the drug treatment and rehabilitation court.

84. It is important to keep statistics about those who enter into the programme. Data should include gender, offence type, socio-demographic characteristics and type and degree of substance abuse. If possible, a test to measure well-being should be applied pre- and post-court involvement in order to measure any quality of life changes. This overview will be valuable if it is later found desirable to reform the strategy of the programme, in which case it will be possible to make an informed decision on the basis of the data collected.

(a) Impact evaluation

85. The crucial test is whether the goal of reducing criminal activity is being met through court-directed treatment, compared to other heavier tools, such as traditional prosecution, sentencing and imprisonment. The comparison should be within a single jurisdiction, to avoid the dangers of comparing drug courts in one jurisdiction with traditional courts in another jurisdiction.

86. What matters is not the process evaluation of whether the offenders complete their treatment programme, but rather the impact evaluation, which assesses whether the programmes are effective in breaking their drug dependence and other criminal activity.

87. Societal impact of the programme can be evaluated by monitoring a number of key factors. The first is reduction of cost, both for the individual offender and for the programme as a whole, compared to the traditional imprisonment scheme. In addition, if the programme is successful, recidivism rates will be

reduced. The participant offenders will increasingly test negative for drugs and can be expected to benefit personally and socially from this.

88. As the programme gets established, and a sufficient amount of time has elapsed to make this possible, it will be vital to measure recidivism rates. Impact studies that express recidivism rates not as the simple percentage of defendants re-arrested in the follow-up period, but rather as the average number of re-arrests per defendant within the follow-up period, are preferable. In the long run, it would be ideal to measure recidivism by subsequent convictions rather than subsequent arrests.

89. Studies on the social cost of drugs have been carried out and can be used to find suitable indicators. Which indicators are relevant will depend on the local situation.

90. Although such matters are difficult to measure and verify, it is extremely useful to conduct a study on improvement in the quality of life for offenders and their families (for example, the benefits for offenders and their families of the offender being in a position to undertake paid employment).

91. Evaluation must be objective and take into account the special interests of all the key players involved.

(b) Evaluation of team effectiveness

92. Case-flow management and the effective use of court resources, in human, financial and material terms, are matters which are proper subjects for evaluation. Evaluation of these areas does not need to impinge on the principle of judicial independence.

(c) Individual professional team member effectiveness

93. The performance of team members should be reviewed for effectiveness individually within their own professional groups, and they should be held accountable according to fundamental principles and the normal accountability hierarchies within their professions.

94. The judge's ability to interact with the other team members and to listen are critical success factors. Evaluation and review of *id est* core judicial work on the bench will be a different matter from the evaluation

of the work of the team as a whole. Evaluation of aspects of the judge's performance which are relevant to the programme may be sensitive because of the principle of independence of the judiciary. A judge must always remain free from influences external, as well as internal, to the court to determine cases without fear or favour according to law, subject only to the normal corrective appellate processes. Nevertheless, judges paid at public expense to perform public functions may be properly subject to performance evaluation, for example, concerning efficient case-flow management or effective use of human, financial and material court resources.

(d) Indicators

95. Performance indicators for the individual offender's programme will help determine if the programme is working and, if so, for which types of offenders. Clear indicators are: reduced drug abuse on the part of the offender and improvement in his or her general health and quality of life, or if the offender is employed and is now paying taxes, has permanent accommodation or is in school or studies. In some societies, the possession of a driver's licence may function as an indicator of an improved and steady lifestyle.

96. Recidivism rates are an important indicator. Re-conviction is hard evidence of recidivism, but only a rough measure. Since it is not possible to know exactly how many offences the offender committed before and after the programme, it may be difficult to estimate to what extent the situation has improved.

7. Cost-effectiveness

97. A programme should be considered cost-effective if, for the same cost as would have been incurred through traditional criminal justice processing, recidivism, health and social outcomes are more favourable.

98. In order to make a full cost analysis, a large number of costs must be taken into account, from the initial report that an offence has been committed all the way through the criminal justice system to prison and probation supervision. A comparative cost/benefit analysis can be produced on this subject, taking into account projected and resulting success rates of the programme and lower recidivism costs.

99. Although there will be cost implications in implementing the drug court treatment and rehabilitation approach, the key costs to be considered here are incremental ones, since many of the fixed and variable costs will have been incurred anyway. The scheme should not be expected to produce results in terms of cost-effectiveness immediately or even in the short term. An initial investment should be expected. However, if there are no longer-term resources, this should not prevent the programme from getting started. The important thing is to get everyone together physically—prosecutor, treatment provider, defence attorney and others involved—and to be of one mind.

100. The treatment component of any court-directed programme is essential and has a significant cost. However, the treatment used does not necessarily have to be the most expensive form of treatment available. Jurisdictions that cannot afford to finance relatively expensive treatment options should explore less expensive options which are nevertheless reasonably effective. It may be possible to find resources elsewhere than in the government budget, for example, by turning to communities, non-governmental organizations, volunteers or others for alternative creative modes of funding.

101. One unavoidable and heavy cost is urine analysis. Another heavy cost is short-term imprisonment (sanctions). Some benefits will result from not committing the offender to prison. However, a certain proportion of the people in the programme will continue to commit offences if they are free. While they are in prison, they will not commit offences, and thus prison constitutes a savings measure for the criminal justice system (if not for the prison administration).

102. It is important to keep in mind that cost-effectiveness will only be known (as opposed to projected) after several years, and therefore should not be counted on at the planning stage. Initial readiness to make investments is necessary. In order to obtain government commitment, it will be necessary to be able to show that the programme will not require additional funds.

103. There are United States studies showing that the average cost of an offender who spends one year in drug court is \$3,000 per year, whereas an offender in prison costs \$28,000 per year. This experience has been shared by other countries. In Austria, for

example, it has been found that the cost of imprisoning an offender is considerably higher than institutionalized treatment. In the United Kingdom, the average cost of a pilot Substance Misuse Treatment Enforcement (STEP) programme was £7,300 per person per year (\$11,900), a figure that is expected to fall, whereas imprisonment costs would have been somewhere between £17,000 and £25,000 per person per year depending on the type of prison (\$27,700 to \$40,750). In Sweden, the average cost per day for contract treatment while the sentenced person is in a treatment facility is about 1,300 SKr (\$153). The average cost per day, including time when the sentenced person lives outside the facility, is 260 SKr per day (\$30). These figures can be compared with the average cost for one day in prison of 1,870 SKr (\$220).

104. In Austria, foster care for one child costs \$50 per day per child. There is thus also a monetary benefit to be derived from the return of a child to its drug-free mother.

105. Once an offender has been rehabilitated, he or she will become a productive citizen who is working and paying taxes, rather than costing tax money to the criminal justice system and prisons, and this, in turn, will have a beneficial impact on his or her family, who may often have been welfare-dependent.

8. Funding strategies

106. Cost-sharing schemes between the various ministries involved can be explored, where each ministry or municipality pays for a particular target group of offenders.

107. It is most desirable that the court that is directing treatment and rehabilitation be allocated dedicated funding for such purposes, and that the court maintain overall control of funding expenditure. If the court lacks overall control of expenditure of allocated funds, there is no guarantee that funding will be expended in the manner that best meets the programme's needs. Governments may therefore wish to consider allocating a specific budget to the courts for this purpose.

108. If a court-directed treatment and rehabilitation programme is in place but there is no funding mechanism to support it or the funding is governed by another body with other priorities, the results are adverse. One possibility in such a case is to conclude a

memorandum of understanding between the agencies involved, setting the goals and priorities out in writing.

109. It may be possible to divest criminals of the proceeds of crime for the use of the programme. Fines may also be used if they can be channelled into the programme.

9. Overcoming misperceptions about court-directed treatment and rehabilitation programmes

110. It is important that the community be provided with clear and timely information about court-directed treatment and rehabilitation programmes, so that it is well informed about their real benefits compared with punishment by imprisonment or other means. This is particularly important if the community has any misperception about these programmes being too soft on participating offenders. It is also important to provide comprehensive information to government leaders, officials and bodies to overcome any initial reluctance to support a novel idea with funding, flexibility or other support.

111. Misperceptions that the programme is inappropriate or too soft on the participating offenders must be dealt with objectively and directly. A rigorous programme with high standards of accountability for

the offenders will ensure that the programme is not perceived as too soft. The programme should clearly show that it is “doing it to the offenders for the community”. More precisely, the programme should be tough but just, and the community should benefit from the measures. It has proven to be a highly effective communications strategy to have law enforcement personnel who are convinced of the effectiveness of the programme advocate the rehabilitative sides of the programme, and to have treatment providers emphasize the demanding aspects of high participant accountability backed up by sanctions (rather than the reverse, as might be expected).

112. As soon as the programme shows positive results, the media may be employed to attract attention, support and resources. One strategy is to select a target group, such as women or children, for which it may be expected that funding can be more easily obtained. Proven successful rehabilitation of offenders will be the best “selling” strategy.

113. That said, measurable, verifiable results and rigorous ongoing independent evaluation of the programme from the planning stage are key components to winning over the community and leading players both within the Government and outside it.

Annex I

List of experts

Invited experts

Justice P. Bentley
Ontario Court of Justice
Toronto, Canada

Danilo Ballotta
European Monitoring Centre for Drugs and
Drug Addiction
Lisbon, Portugal

Jack T. M. Derks
Maastricht and Tilburg Universities
The Netherlands

Judge Per Eriksson
Hovrätten över Skåne och Blekinge
Malmö, Sweden

P. Hayes
Chief Probation Officer
South-East London Probation Service
Bromley, United Kingdom of Great Britain and
Northern Ireland

Justice D. Hogan
District Court
Dublin, Ireland

Judge Molly Merrigan
Sixteenth Judicial Circuit of Missouri
Kansas City, United States of America

Bertram A. Morrison
Resident Magistrate
Manchester, Jamaica

Judge H. G. Murrell, SC
Senior Judge
Drug Court of New South Wales
Sydney, Australia

Observer

Todd McGuffin
Associate to the Senior Drug Court Judge
Drug Court of New South Wales
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United Nations International Drug Control Programme (UNDCP)

Johanna Hjalmarsson
Associate Expert
UNDCP, Vienna

Charlotte Ingestedt
Associate Expert
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Elizabeth Jenkinson
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Bernard Leroy
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Christina Gynna Oguz
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Antonella Titchener-Deledda
Senior Programme Adviser
ODCCP Regional Office, Uzbekistan

Catherine Volz
Chief, Treaty, Legal Affairs and Commission
Secretariat Branch
UNDCP, Vienna

Andrew Wells
Senior Legal Adviser,
UNDCP, Vienna (Moderator of the Expert Working
Group)

Anthony White
Chief, Supply Reduction and Law Enforcement Section
UNDCP, Vienna

United Nations Centre for International Crime Prevention (CICP)

Renate Winter
Consultant, Crime Reduction and Analysis Branch
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Other experts who commented on the report

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Associate Professor
University of Brabant
Tilburg, The Netherlands

Annex II

Treatment diversion programmes for drug offenders in Australia, Austria, Canada, France, Ireland, the Netherlands, Sweden, the United Kingdom of Great Britain and Northern Ireland and the United States of America

I. The diversion process

Australia

1. Australia has a federal system of government. Generally, criminal justice is administered at the state level. Various schemes operate at the state level, either to divert offenders from the traditional criminal justice system or to deal with them differently within the criminal justice system. Currently, most of the schemes are operating on a trial basis and most deal with adult offenders. In July 2000, a trial youth drug court is to begin operating in New South Wales.

2. At the investigation stage of the criminal justice process, a cautioning/warning system operates in Victoria and New South Wales. Police may caution a person in possession of a small amount of cannabis or other drug. In the case of a drug other than cannabis, the person must agree to undergo counselling if he or she is to avoid prosecution.

3. In Victoria, New South Wales and Western Australia, schemes operate at the pre-trial stage of the criminal justice process. A consenting adult charged with a non-violent offence who has a demonstrable drug problem may receive bail from a magistrate on condition that he or she enters a treatment programme. Usually, the programme lasts for 8 to 14 weeks. At the conclusion of the programme, the person appears before the court, pleads guilty and is sentenced. In sentencing the person, the court takes into account a treatment report received from the treatment provider. If the report is favourable, the person may expect to receive a good behaviour bond (probation). A person in respect of whom a favourable report is not forthcoming will often receive a short prison sentence. Initial evaluation of the Victoria scheme indicates that the re-offending rate for those who participate in the scheme is not significantly better than the re-offending rate for those who do not participate in the scheme. Further evaluation is to be undertaken.

4. A post-plea, post-sentence drug court is being trialled in New South Wales and is to be trialled in Queensland and Western Australia. The New South Wales court targets more serious offenders, typically persons charged with serious offences of dishonesty (e.g. burglary) who have substantial criminal records and are heavily dependent upon heroin. Consenting substance-dependent 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, then suspends the sentence while the offender undergoes a drug court programme, which includes extensive treatment and social support over a period of approximately 12 months. An offender who graduates from the programme can expect to receive a non-custodial sentence, usually a good behaviour bond (probation). Failure in the programme will result in termination of the programme and will probably result in the offender serving the sentence of imprisonment imposed initially. The New South Wales Drug Court is being independently evaluated on three bases. An outcome evaluation will compare the recidivism rate of participants to that of a control group. In addition, there is to be a health and social evaluation of participants and a cost-effectiveness evaluation. Early indications are that over 50 per cent of participants will graduate from a programme, a success rate comparable to that achieved by United States drug courts, many of which target less serious offenders.

Austria

1. **Investigation.** Instead of pre-trial detention, the investigating judge can issue an order to undergo therapeutic treatment with the consent of the defendant. With possession of a small amount of drugs for personal use, the public prosecutor and courts are obliged to discontinue proceedings for a probation period of two years. If treatment is needed, suspension depends on the consent of the defendant to undergo treatment. Possession of cannabis for use, if the

quantity is small and the offender is a minor, may lead to alternative solutions according to the Youth Criminal Act, for example, a warning. No record is kept of such a warning. If the Health Service considers that there is an addiction, which they normally do not with cannabis, treatment will be recommended.

2. **Proceedings.** At the pre-trial stage, suspension of criminal action or waiving or discontinuing of prosecution is possible, with treatment as the alternative. The investigating judge has the same possibilities as the prosecutor at this stage. The sitting judge has the above-mentioned possibilities at the trial stage. After the pre-trial stage, only the judge can decide on alternative measures.

3. **Diversion type.** The types of diversion used include treatment or probation time with or without an order.

4. **Programme content.** There is more scope for diversion with young offenders; they are given three or four chances to continue after relapses, whereas older offenders usually get only one or two chances. The programme includes medical control, psycho-sociological treatment, psychotherapy, vocational training, housing programmes and social training, and treatment can be with or without substitution.

5. **Eligibility criteria.** Addicts (possession only) and addicts having committed minor and medium offences related to drug addiction are eligible for the treatment programme. In addition, the offender must be willing to comply with health measures on the advice of health officers. Medical treatment, psychological treatment and contact are between the offender and the service provider (with information sometimes copied to the judge).

6. **Compliance outcomes.** A final report will be submitted by the health services to the judge. The judge can close the case.

7. **Evaluation outcomes.** Judicial outcome: the individual does not reoffend. Health outcome: the person can cope better.

8. **Sentence, sentence completion.** The concept entails therapy rather than execution of an imposed prison sentence. Diversion to treatment is possible at three stages: at the pre-trial/investigation stage instead of a "classic" procedure (conditional waiver, conditional suspension, conditional release from pre-trial detention); at the trial stage, instead of sentencing

or conditional sentencing; or at the post-trial stage, instead of executing the sentence.

Canada

Drug treatment court (Toronto)

1. **Eligibility.** Non-violent offenders, drug-dependent offenders charged with an offence concerning only small quantities of crack, cocaine or heroin, and drug-dependent offenders charged with prostitution-related offences are eligible for the treatment programme. Possession offenders without criminal records will be eligible for track I. Trafficking offenders or possession offenders with criminal records will be required to plead guilty prior to entering track II.

2. **Programme content.** The programme involves group and individual counselling and case management on issues such as health care, housing and education, which are addressed and pursued with the appropriate authorities. Methadone maintenance is also available for heroin-dependent offenders, if appropriate. Court community liaison workers who are part of both the drug treatment court and the treatment teams, provide assurance of prompt and clear communication among all parties involved with the offender. Sanctions are imposed for contravention of treatment programme rules. Sanctions include increased court attendance or revocation of bail for periods up to five days.

3. **Compliance outcome.** If a first-time possession offender successfully completes the programme, the charge will be withdrawn or stayed. The trafficking or recidivist offender who, having pleaded guilty to the offence has entered the programme, will upon completion (which includes being drug-free of charged drug, having stable housing, a job and life skills) will receive a non-custodial sentence, which will usually include a probationary term of 6 to 12 months. Initial evaluation of the programme is encouraging.

France

1. **Investigation.** There is the possibility for the drug user to report to a treatment centre to undergo treatment. Police cannot investigate drug abuse prior to voluntary treatment.

2. **Proceedings.** The prosecutor has a very important role. For use offences, he or she can make the choices outlined below. For other offences he or

she has no choice but to prosecute. In the case of possession offences and offences of illicit use of cannabis herb or resin, users may receive a warning instead of a therapeutic treatment order (*injonction thérapeutique*). This has been extended to all drug users with a good professional and social situation. Before the warning, there is now also the discharge with counselling (*classement avec orientation*) and the conditional discharge (*classement sous condition*).

Drug users

3. **Diversion type.** Therapeutic treatment order.
4. **Programme content.** The prosecutor can send the drug addict to the administration of the region (*département*) with an obligation to submit a report on treatment undergone three months later.
5. **Eligibility criteria.** To be eligible, the offender must be a drug user.
6. **Conditions, if eligible.** The therapeutic treatment order is given in written form. It is not compulsory, but rather a contract. The offender is obliged to report.
7. **Compliance outcomes.** The prosecutor can interrupt and organize a trial for sentencing. Otherwise the trial will be suspended for three years. Within three years, a new offence will lead to the sentencing of both offences.

Drug addicts

8. **Diversion type.** A drug addict will go not to the prosecutor, but to the investigating judge (*juge d'instruction*). There is the possibility of court supervision (*contrôle judiciaire*).
9. **Programme content.** The drug addict must come and sign a contract at the station. There are few possibilities to utilize drug testing. Where they exist, there is a traditional reluctance to use them. They are, however, used during court supervision. There is another form, not very commonly used, the constraining order (*astreint*). The offender is sent to a closed centre for compulsory treatment. Trial sentencing can be postponed. Conviction (*déclaration de culpabilité*) takes place six months before penalty. Treatment can be undergone
10. **Eligibility criteria.** To be eligible, the offender must be a drug addict.

11. **Trial.** No information provided.
12. **Sentence.** There is also the possibility of probation and treatment outside of prison.
13. **Sentence completion.** Information not available.

Ireland*

1. **Eligibility.** The person must be over 17 and have pleaded guilty to a drug or drug-related offence that would have warranted imprisonment, but involved no violence.
2. **Condition.** The offender must consent to enter the drug court programme.
3. **Time point.** A person, having been charged and having pleaded guilty, or having been convicted, and subsequent to recommendation either by the police, probation service drug treatment professional or defence solicitor, could be suitable to enter the programme. If the person is deemed suitable after initial assessment, he or she will be required to enter into a drug court bail bond, under specified conditions (e.g. to attend regular treatment sessions, sign on at the police station, etc.) and will be required to give formal undertaking to the court that he or she will comply with bail bond and the treatment programme. Proceedings could be struck out on successful completion.

Netherlands

1. Treatment of drug addicts and drug abusers in the Netherlands is not possible without the consent of the addict—compulsory (forced) treatment is not possible under Dutch law. As is also the case with other “social diseases” (such as alcoholism), a number of coercive forces can be brought to bear on the addict so that he or she can receive treatment. These coercive forces are strongest when addicts become involved in the criminal law system and/or in psychiatric care. In such cases, a choice can be presented to the addict, in which compliance to treatment and/or care is the most favourable option. Diversion into treatment is possible at all three stages of criminal procedure: the pre-trial phase, the trial phase and the post-trial phase.

* The information provided by Ireland relates to a pilot scheme, which has not yet been put in place.

2. In the pre-trial phase, two compulsory options are commonly used: the conditional waiver and the conditional suspension or conditional release from pre-trial detention. As regards the former, the right to prosecute is the prerogative of the Public Prosecution Service, in accordance with the expediency principle, which means that the public prosecutor has the choice not to prosecute. Such a decision can be coupled with conditions, and non-compliance with these conditions enables the public prosecutor to continue the prosecution. One possible condition is that the drug-addicted offender must enter treatment (residential and/or outpatient) for a certain period of time.

3. A similar procedure can be applied by the investigating judge in the pre-trial phase. Where the offence is a serious one, the suspect can be put in pre-trial detention in a remand centre. In certain cases, the suspect can be transferred to a psychiatric hospital or other medical facility where treatment can be initiated. In most cases, however, this procedure is not chosen, but suspended pre-trial detention or conditional pre-trial detention is used instead. As with a conditional waiver, the condition can be treatment, residential and/or outpatient. If the suspect refuses or does not comply with the conditions, he or she will be transferred to the penitentiary facility (a remand centre).

4. In the trial phase, the judge may coerce drug addicts into treatment by applying conditional sentences. Liberty punishments of up to one year can be entirely conditional. Liberty punishments up to three years can be partly conditional. In these cases, the punishment will not be executed if the convicted drug addict complies with the conditions imposed on him or her. The effect of these conditions is that during a probation period of three years no new offences should be committed. The suspect must also comply with any other conditions imposed (for example, residential and/or outpatient drug treatment). The sentence can be deferred, although this happens rarely, so that the final verdict is postponed by the judge, for example, to give the suspect the time to rehabilitate or to achieve a change in conduct. This can involve the commitment to treatment.

5. The judge cannot force placement in a treatment facility. That possibility is reserved for mentally ill or disturbed delinquents. Most drug addicts are not included in those categories. A bill is currently (December 1999) under discussion in Parliament to allow the forced admittance of persistent drug addicts

to a special centre. This new measure concerns compulsory detention of drug addicts who frequently commit minor offences and, while doing this, are considered a serious source of public nuisance. Because of the pettiness of the committed offences, they are usually punished with minor sentences, and it is therefore not possible to start an extended treatment in a penitentiary setting effectively. The new measure will make it possible to confine these addicts in a special penitentiary treatment centre for a maximum of two years. During this period, detention is used as an instrument to coerce the addict to cooperate in a treatment programme aimed at detoxification, normalization and reintegration. A part of this measure can be executed outside the penitentiary facility in an outpatient setting. Although it is very controversial, it seems likely that this measure will be introduced in the year 2000. In total it will involve 350 places (258 intramural and 92 extramural in that year).

6. Up until now, in the post-trial phase only a few possibilities exist for treatment. In the Netherlands, conditional releases from prison are not possible. Instead, an unconditional release exists in all cases after two-thirds of the imposed prison term has been served. The quite limited possibilities to start treatment during detention are the following:

(a) The offender may be transferred from prison to a specialized detoxification hospital or drug treatment residential unit to be treated there voluntarily. If this treatment is successful there are two possibilities for him or her to stay out of prison: the first is a pardon (and therefore remission of the punishment) and the second is to enter a penitentiary programme outside prison where he or she could serve the rest of the time;

(b) The offender can ask for admission to a penitentiary programme outside prison. The new Penitentiary Principles Act and Penitentiary Measure, which came into force on 1 January 1999, has introduced this "back-door" variant in the arsenal of community sanctions. This is a new form of conditional release, which is only open to a limited category of detainees. Penitentiary programmes at present still have the character of a favour that can be granted only to very motivated detainees provided that they have served at least half of the imprisonment of at least one year. A penitentiary programme involves at least six weeks and at most a whole year, and it precedes a common general unconditional release (granted after two-thirds of the sentenced time). Just

like the “front-door” variant, the convicted person is under the supervision of a probation service, and he or she is also obliged to undertake activities aimed at reintegration and rehabilitation outside the prison for at least 26 hours per week. The remaining hours will not be served in prison, but at home (12-16 weeks of this in the form of house arrest);

(c) A third possibility, an addicts treatment ward, often precedes the constructions mentioned above. The addict is transferred to a special ward inside prison. The aim of transferral is to start detoxification and rehabilitation during the detention period. Only addicts with considerable motivation to stop addiction behaviour voluntarily are admitted to these wards.

7. The three options described above all have the characteristic that neither judge nor court have any authority whatsoever in execution. The judge imposes the sanctions, the administrative authorities execute the penalties or—in case of penitentiary programmes—have the power to change the imposed sentences in their manner of execution. The probation services in the Netherlands—and in this case the specialized addiction treatment system—is in charge of the actual implementation of the sentence, treatment and care of the addict, as well as the after care of the ex-delinquent. Currently, the prospect is that approximately 10 per cent of the prison population with an imprisonment of more than one year will be eligible for these modes of reduction/modification of their sentences.

Sweden

1. **Investigation and proceedings, both pre-trial and trial.** For drug offences, there is, in principle, no diversion at the pre-trial stage. The prosecutor is under a duty to prosecute. Minor offences may be punished by a fine or a conditional sentence by decision of the prosecutor. In such cases, the question of treatment is never raised.

2. **Sentence (diversion type).** All offences are dealt with by a court, which decides on any diversion measures. The normal punishment for drug offences is imprisonment. For minor offences, the punishment will be a fine.

3. **Programme content.** There is an alternative sanction: supervision for one year and a trial period of three years. Conditions can be attached to the

supervision. These conditions may be some form of treatment, combined with drug testing. This sanction is, as a rule, only applicable if the normal punishment would have been less than imprisonment for one year. A second and tougher alternative sanction is probation with contract treatment. This can be imposed if the normal punishment for the offence would have been less than two years imprisonment. In rare cases, this limit can be exceeded. These sanctions are applied by all courts of criminal jurisdiction. Special courts, such as youth courts and drug courts, do not exist.

4. **Eligibility criteria.** In order to be eligible for contract treatment offenders must meet the following criteria: (a) they must be misusers of drugs or alcohol; (b) their misuse must have contributed to the offence; (c) the offence must not be too severe; (d) they must be in need of treatment; (e) they must be willing to undergo treatment (a contract is signed); and (f) they must be found to be motivated. In addition, a plan must be drawn up, the financial question must be solved and the plan for treatment must be of decisive importance to the court when choosing the alternative to imprisonment. In its judgement, the court states the length of the imprisonment sentence that would have been imposed had it chosen to impose a prison sentence. A guilty plea is not necessary.

5. **Conditions if eligible.** Detoxification is completed in jail while awaiting sentencing. Upon sentencing, the offender is immediately transported to the treatment institution. Contract treatment is a substitute for imprisonment sentences, often severe ones, and so the offender should be placed in an institution for a reasonably long time.

6. **Compliance outcomes.** Only non-compliance outcomes are relevant. A breach of conditions will lead to report by the treatment facility to the prosecutor, as well as to the local prison and probation administration, which will notify the chairman of the local supervisory board (who is a judge), who can issue a decision of detainment. Sanctions include warnings or changes of contract, and normally the case is handed over to the prosecutor, who will proceed to re-sentencing by the court. Probation is revoked and the offender is sentenced to imprisonment.

7. **Evaluation outcomes (sentence completion).** No information available.

United Kingdom of Great Britain and Northern Ireland

1. **Investigation.** Police will often ignore possession of small amounts of cannabis for personal use. A final warning system is available for possession of all drugs for personal use. This does not apply where the person has a sufficient quantity for the police to believe that he or she was intending to supply.

2. **Time point.** The treatment options relevant at every stage, from the point of arrest, on a voluntary basis, to the prosecution and sentencing stages. Individuals can be made subject to a probation order, which functions like a suspended sentence, so that if the probation order is breached, the offender can be re-sentenced for the original offence. Under a probation order, probation officers encourage offenders to access treatment services on a voluntary basis, using the probation order constraints to promote compliance. Drug treatment and testing orders made by the court and administered by local probation services are a recent development.

3. **Eligibility.** Individuals who are assessed by the probation service and the drug service provider as being dependent on drugs, and whose offending can be linked to that dependency, will be eligible for a drug treatment and testing order. The order will require them for a period of between six months and three years to cooperate with treatment and undergo frequent random urine testing.

4. **Programme content.** Treatment includes a full range of options, such as residential rehabilitation, detoxification, a day centre programme, substitute prescription, etc. Individuals' progress is monitored by the sentencing court.

5. **Evaluation.** Early evaluation shows very significant reductions in drug use and offending generally.

United States of America

1. The goal of drug courts is to stop drug abuse and related criminal activity. They offer a compelling alternative to individuals whose criminal behaviour stems from drug use: court supervised treatment. In exchange for successfully completing treatment, the court may dismiss the original charge, reduce or set the sentence, offer a lesser penalty or any combination of these options.

2. Compliance with the programme boundaries is within the participant's control and is based on measurable performance goals. Participants either appear in court or not; they attend treatment sessions or do not. Drug tests reveal drug use or abstinence. The drug court provides clear choices, sanctions and incentives to help individuals take control of their own recovery.

3. Some drug courts target first-time offenders, while others concentrate on habitual criminals. If participants fail to complete treatment, then prosecution and sentencing proceed immediately. But many offenders stop using drugs, start working, support their families and end their criminal activity—at a far lower cost to the taxpayer than incarceration. Drug courts are also encouraging new interdisciplinary strategies throughout the criminal justice system.

4. As of December 1999, drug courts had been established in almost 500 jurisdictions, with another 200 in the planning stages. The drug court model differs in important ways from previous efforts to provide drug treatment to offenders with underlying drug problems. In the drug court model, the various components of the criminal justice and substance abuse treatment systems work together to try to use the coercive power of the court to promote abstinence and socially acceptable behaviour. By comparison, for the types of non-violent drug offenders generally targeted by drug courts, the typical adjudication process would result in probation or short jail sentence, with little treatment or close community supervision.

5. The structure and procedures of drug courts, which vary in each jurisdiction, also result in closer and more frequent supervision of offenders than typically is the case under the standard probation or pre-trial supervision that most non-violent drug offenders experience, especially earlier in their criminal careers. Court appearances, drug tests, supervision and treatment contacts are much more frequent under the drug court model than under other forms of community supervision.

6. The key goals of most drug courts are to reduce drug use and associated criminal behaviour by engaging and retaining drug-involved offenders in programmatic and treatment services; to concentrate expertise about drug cases into a single courtroom; to address other defendant needs through clinical assessment and effective case management; and to free judicial, prosecutorial and public defence resources for adjudicating non-drug cases.

7. The drug court model usually entails:
 - (a) Judicial supervision of structured community-based treatment;
 - (b) Timely identification of defendants in need of treatment and referral to treatment as soon as possible after arrest;
 - (c) Regular status hearings before the judicial officer to monitor treatment progress and programme compliance;
 - (d) Increasing defendant accountability through a series of graduated sanctions and rewards;
 - (e) Mandatory periodic drug testing.

8. 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 reinforcer of positive client behaviour. Although the judge is the 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 overcome their drug problems and solve other issues relating to work, finances and family.

9. When drug courts first began, only a handful of court and treatment professionals were involved. They wondered whether this new approach would have widespread acceptance. Ten years later, this grassroots idea has grown into a widespread national movement. Drug courts are changing the way criminal justice and treatment professionals view their roles, and are influencing the development of other innovations throughout the court system.

II. What happens to the offender?

Australia

1. The trial New South Wales drug court (as well as that to be trialled in Queensland) is a post-plea, post-sentence drug court. Legislation gives the court clear powers to suspend a sentence of imprisonment, place an offender on a drug court programme, sanction or reward a participant, terminate a participant's programme and re-sentence the participant.

2. In New South Wales, cases are referred to a dedicated drug court from magistrates' courts and the District Court. Referral can occur any time prior to

sentencing, but should occur as early as possible, preferably within 24 hours of arrest. In New South Wales, the referring court usually refuses bail and the offender is held overnight in a drug court wing within a prison. A preliminary assessment of substance dependency and general eligibility takes place. The drug court is notified of the results on the offender's first appearance before the court on the following day. One of the eligibility criteria is that the offender is facing imprisonment, which could be imprisonment of any length. It is suggested that a substantial period of imprisonment may be required to provide an incentive to remain on a drug court programme, perhaps a minimum of six months of imprisonment.

3. On the offender's first appearance in the drug court, the court determines the offender's eligibility. As an excess of offenders is referred to the New South Wales drug court, some fail to obtain a place. Participants are randomly selected from those referred. Those who fail to gain a place are referred back to the referring court and monitored by an evaluator. This group constitutes the control group against which the performance of drug court participants will be compared.

4. An offender who is found to be eligible, and for whom there is a place, is refused bail by the drug court and transferred to the drug court prison wing, which is therapeutic and drug-free. In this custodial setting, the offender spends 7 to 14 days in detoxification and assessment. During this period, a drug court programme is developed, tailored to the needs of the particular offender. The programme is developed by the prison health service in association with the proposed treatment provider, which comes to the prison to review the prospective participant. The most suitable treatment plan is devised.

5. At the end of the 7 to 14 day period, the offender returns to the drug court for initial sentencing. The offender is represented by defence counsel, which is provided at no expense to the offender. The court ensures that the offender understands the implications of a drug court programme, and the offender enters a written undertaking to comply with programme conditions. The offender is then sentenced. The initial sentence is suspended while the participant undergoes a drug court programme. The average effective initial sentence is about 12 months of imprisonment.

6. Each drug court programme involves treatment, other rehabilitation services (e.g. assistance with literacy, employment and housing), regular urine

analysis (initially at least twice a week) and regular reporting to the court (initially once a week).

7. As 85 per cent of New South Wales participants are heroin-dependent, treatment may include the prescription of methadone or naltrexone. The treatment may be provided in the community or in a residential setting, and may be through a public health provider or a non-government organization. The New South Wales drug court endeavours to meet the special needs of women, Aboriginal offenders and those of Indo-Chinese ethnic origin.

8. The drug court judge is assisted by a team representing prosecution, defence, police, health and the probation and parole service (which provides case management services to the court). A team meeting precedes each court report-back session. At each team meeting, progress reports on participants are considered. There is discussion regarding sanctions to be imposed for programme breaches, such as a dirty urine or a failure to attend an appointment. Possible sanctions include up to 14 days of imprisonment, a fine, or a direction that the participant make a presentation to the court on a relevant subject such as honesty. The court has developed guidelines to ensure consistency in sanctions imposed. Where a programme breach is freely admitted, the sanction will be significantly more lenient than it would have been for a non-admitted breach. The most common reward is applause in court. An offender may be consulted as to other desired rewards, such as a family pass to the zoo.

9. A participant may voluntarily terminate his or her drug court programme, knowing that the sentence initially imposed sets the parameters for any re-sentencing. Where a participant is making inadequate progress and the court is of the view that continuation on a drug court programme serves no useful purpose, the court itself will terminate the participant's programme. The participant's case manager and the participant's treatment provider are given seven days notice that there will be a decision on termination and input is sought from each.

10. When a participant's programme is terminated (either voluntarily because the court considers that no useful purpose is being served, or because the participant has successfully completed his or her programme), the court reconsiders the initial sentence of imprisonment and imposes a final sentence. The final sentence takes into account the offender's participation in his or her programme and the sanctions which have been imposed. Successful completion will

usually result in a final sentence that is non-custodial. It may be a good behaviour bond (probation order) enabling some supervision of the offender to occur beyond completion of his or her drug court programme.

11. The rules of evidence do not apply in the New South Wales drug court, which is free to inform itself in such manner as it considers appropriate.

12. While an offender will not be placed in a drug court programme unless he or she is willing to undertake a programme, the New South Wales court does not endeavour to assess motivation prior to placing an offender in a programme. It is the experience of the court that an offender's initial motivation is not determinative of outcome.

13. The court deals with many matters on very short notice. For example, a participant who admits illicit drug use to a case manager will be directed into court on the same day for the purpose of making the admission to the court and receiving a sanction. An offender who has absconded may walk into court to surrender himself or herself without prior notice.

14. Material concerning the New South Wales drug court is available at www.lawlink.nsw.gov.au/drugcrt.

Austria

1. Within 24 hours of detention of the offender by the police, the case will be sent to the appropriate prosecutor. If the person is a minor, the case must be given to a prosecutor for minors.

2. The prosecutor makes the initial decision as to whether or not treatment is appropriate, often consulting with the health services. If the offence is possession of a small quantity of cannabis for personal use, the prosecutor must waive the case; he has no discretion to do otherwise. With a young offender, the prosecutor may consider it appropriate to set conditions with a waiver. If treatment is found to be necessary, a waiver and treatment will be appropriate.

3. If custody and treatment are deemed appropriate, the person will be detained in custody and treatment will be begun (detoxification, medical surveillance). Resources to enable the person to be accompanied through the treatment by a psychologist are very scarce. In cases of serious criminality, the investigating judge takes over.

4. Although justice personnel may not necessarily be the same during the whole procedure, the file will be completed and will be at the disposal of the person in charge. There are some problems with the bail system in Austria. It is seen as breaching the principle of equality, as it depends on resources, so it is avoided in this context if possible, especially if minors are involved. The file will be continued by the investigating judge for serious offences, and by the prosecutor for more minor offences, and will remain open until the end of the case, when the final disposition is made.

5. As the prosecutor and the investigating judge enjoy the same powers as regards the treatment option, both can request it. They must ask the opinion of the health authorities to assess whether treatment is necessary and useful, and must ask the drug control authorities if there is already an announcement (police and judiciary have to announce drug addiction to the health authorities). If the health authorities deem treatment suitable, the judge can order the person to undergo treatment, provided that the person consents to do so.

6. The first opportunity for treatment is at the pre-trial stage; the second, during the trial; and the third, after sentencing. The sentence can be suspended for two years, if the sentence would not be for more than three years and the offender is ready to undergo treatment. The court must suspend the sentence if it would not be for more than two years and the offender is ready for treatment. If a drug-related offence has been committed, the court can suspend the sentence, even if it would not be for more than five years. The court can order, after consulting with the health services and having received their positive recommendation, the offender to undergo treatment in an acknowledged institution and to report regularly on the ongoing treatment. In the case of non-compliance or recidivism, the court must revoke the suspension. It is possible for the offender to appeal, if he was eligible for treatment and did not get it.

7. Treatment can begin in prison. If time is spent in pre-trial custody, and treatment is commenced, it can continue in an open setting. Conversely, treatment commenced in open setting can continue in custody. If a final sentence needs to be executed, time in treatment will be included in the sentence. Social workers are at the disposal of the judge of youth court on a 24-hour basis.

Canada

1. A typical example of a person charged with a trafficking offence would be a person stopped by police and found to be in possession of heroin or cocaine. Further investigation takes place, and it is discovered that the person has been trafficking in drugs. The person is arrested and charged with trafficking. If the police believe the person is a drug addict, they will recommend to the accused that he or she apply to a drug treatment court, which sits two days a week in Toronto. Alternatively, defence or duty counsel may also do this. If the person is sent to the drug treatment court by the police or by defence or duty counsel, he or she will fill out a one-page application form, which will be forwarded to the Crown attorney. The Crown attorney will determine eligibility in a drug treatment court.

2. Before appearing before the drug court, the person will usually be detained in custody. In the interim, the prosecution will begin an initial check into the person's eligibility for the drug treatment programme. As part of these checks, the prosecution will ask the police about the person's reputation if known to the police, his or her record (e.g. whether or not he or she has a record for violent crime) and his or her probation record, if any, and will discuss with family and friends, if they are interested and involved. These checks will be conducted within 24 hours of arrest.

3. The Crown attorney will inform the person if he or she is screened as eligible. If the person is not deemed to be eligible, he or she will be sent to a bail court, and the normal criminal justice process will take over. If the prosecution deems the person to be eligible, an initial assessment of the person by court liaison staff will take place. The staff are trained by treatment providers to do an initial screening to assess whether the person is a drug-dependent offender. If the person is found not to be drug dependent, the normal criminal justice process will take over. If the person is found to be drug-dependent and is accepted for a programme, he or she will appear before the drug treatment court.

4. Between acceptance for drug treatment and appearance before court, there will be a pre-court meeting, composed of treatment staff, the Crown attorney, the defence, probation services and the judge. This meeting will discuss every new applicant who wishes to enter a drug treatment court, and the team will decide if he or she can do so.

5. Prior to entering the drug treatment court, the judge questions the person as to why he or she wants to enter the drug treatment programme, and makes it clear that it will not be an easy option. The person signs a five-page contract, confirming his or her wish to waive certain rights and intention to abide by relevant rules and regulations governing the programme. This is done in the presence of counsel. If the person is a track I offender, he or she will enter a drug treatment court. If the person is a track II offender, he or she will be required to plead guilty before entering a programme. Post-plea, the sentencing will be put off until the conclusion of the programme. The person will be released in court, it having been made clear that he or she is responsible to the drug treatment court for abiding by the rules and regulations of the treatment programme. The person is reminded that he or she will need to attend court sessions and to hear other cases coming before the court (educative function).

6. After initial release, the person will be sent within 24 hours to the treatment provider for an in-depth assessment. The person is then returned to court at the next sitting and is again asked if he or she wishes to remain in the drug treatment court.

7. The drug court team will know very quickly what has happened in each case, as the team meets regularly before every drug treatment court session to discuss each case and agree on an approach. Continuity between the judge, defence and prosecution is ensured, so that the person has contact with the same people throughout.

8. If the person has not entered a plea and successfully completes the programme, the charges are withdrawn. If the person is expelled from the programme, he or she goes back into the normal criminal justice system in respect of the charge. If the person has entered a plea and successfully completes the programme, a non-custodial sentence is imposed, which will usually be a term of probation. The person will usually have a criminal record. If expelled from the programme, the person will be sentenced by the judge who took the plea.

9. With regard to intermediate sanctions if the programme rules are breached, if it is post-plea and the person has been put on bail after pleading guilty subject to abiding by the programme rules, bail can be revoked and the person placed in custody for specified periods of time. This is possible as the person has not been sentenced. There is no possibility of appeal against an order of the treatment programme, or against

interim decision regarding treatment. Further, if the treatment rules and regulations are broken, the imposition of sanctions is not reviewable.

Ireland*

1. The intention as to how the defendant should arrive in drug court is set out below. It is envisaged that the court will sit for two mornings a week. It will be explained to the defendant, when he or she is in drug court, that he or she is there at his or her own request or because someone believes that the programme will be of benefit to him or her. The offender's consent to placement is requested. It is explained that the drug court is not a simple matter of avoiding jail and that it is not a right and therefore he or she must be assessed as to suitability. If the offender is not suitable, he or she is referred back to the ordinary court for sentencing.

2. Assessment for suitability for drug court is made initially by the court probation officer (who, more than likely, will have previous knowledge of the offender) in consultation with the court coordinator. If successful, the offender is then sent to a treatment provider, where a full assessment is then completed. Before the person goes there, he or she will be asked to sign a bond whereby he or she consents 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, the offender will be requested to abide by the dictates of the drug court until finished or consent to random drug testing. There could be further and other conditions, such as: (a) curfew; (b) place of residence—the offender would have to inform the court where he or she intends to live and remain there until treatment is finished or until the court consents to him or her living elsewhere; (c) sign on at a police station at specified times; or (d) miscellaneous conditions, depending on the individual's circumstances.

3. The offender is advised that drug court is not the easy option and failure to comply with the directions of the court will lead to appropriate sanctions being imposed. Until the drug court decides that the offender

* The information provided by Ireland relates to a pilot scheme, which has not yet been put in place.

is suitable for release (which could be nine months to two years), he or she is at all times under the direction and authority of the court. Whenever the judge is dealing with the case, he or she will deal with the case in continuation. Once the initial assessment is done, he or she goes to the treatment provider. They will advise him or her concerning the time necessary to produce a programme. The offender is released on bail until the court can settle the programme. The offender would thus be brought in, for example, on a Tuesday, assessed on Tuesday and would have his or her programme by Thursday. To eliminate the risk of re-offending, a condition of bail will be that the participant does not re-offend. Cases will be conducted in public unless there are strong reasons against doing so, such reasons would include cases involving children and family law matters.

Sweden

1. The legal procedure starts with the police arresting an offender who is a drug misuser. Within 12 hours, the prosecutor makes a decision as to the detention of the person. On the same day, a request is made to the court to commit the person to custody, and a defence lawyer is appointed. This is usually done by telefax. On the same day or the next, a decision to commit the person to custody is made by the court. The question of treatment is raised at that hearing. Back in chambers after the hearing, the judge orders a social inquiry to be made. The inquiry is requested to go into the need for treatment. The prosecutor then has 14 days to prosecute. During that time, the local prison and probation administration conducts a social inquiry, together with the treatment provider and the social welfare authority. The hearing session is set up within one week. The sentence is made on the same day as the hearing, and the offender is immediately transported to the treatment facility.

2. This adds up to a total of 3 or 4 weeks from offence to treatment. This is the normal case, but variations occur. Time is somewhat tight to get the treatment plan in order. If the time is not sufficient, the local prison probation administration can ask the court to postpone the hearing, which it may sometimes do. The need for rapidity is greatly emphasized in the proceedings.

3. In the Swedish system, the court is not involved in the offender's progress after sentencing. If there is a breach of conditions, the matter will go to the

supervisory board and to the prosecutor, not to the judge. The only way in which there is feedback, is when there is recidivism and the offender comes back in another case, but there is no guarantee that the judge on the bench will be the same the second time. The judge sentencing the offender to treatment thus has no feedback when progress is made in the case.

4. If the offender does not comply with conditions, he or she is re-sentenced to prison by the court. When so doing, the court must take into account the punishment already served by the offender under the treatment sentence. If treatment has been going on for some time, and if the offence was not particularly serious, it may be that only very little imprisonment can be imposed the second time. This means that the possibility of imprisonment does not act as a deterrent to the offender. It is often said that it is desirable to have the possibility of a minimum of at least six months of imprisonment available as a sanction. Today, however, there is no legal obstacle if the court wishes to pass a sentence of contract treatment in place of a sentence of imprisonment for two weeks or more.

United Kingdom of Great Britain and Northern Ireland

1. All proceedings on indictment must be brought before the Crown Court (the Crown Court also deals with appeals from magistrates and cases committed to the Crown Court for sentencing).

Crown Court

2. An example of a typical offender who will be brought before the Crown Court is a domestic burglar. When the person is arrested and charged, typically, he or she will be remanded in custody and committed by the Magistrates Court to the Crown Court. Usually, a plea will not be taken at that stage. The person may be assessed as suitable for drug treatment (he or she must be assessed as being dependent on drugs and the offence must be linked to that dependency). The gap between committal and appearance before the Crown Court can be as much as six months. On being sent to custody before appearance in court, the person might also have access to a drug treatment regime in prison.

3. If the offender is committed to the Crown Court, probation services will be asked to prepare a pre-sentence report, and if the person pleads guilty, a full pre-sentence report will be made. If probation

considers that the person is a likely candidate for a drug treatment and testing order, taking into account factors such as previous knowledge of the person, information from arrest and referral, treatment in prison and police intelligence, the drug treatment and testing order probation team will prepare a sentence report (in conjunction with a health provider where appropriate). If the person is not considered suitable for drug treatment and testing order, a pre-sentence report will be prepared by an ordinary team of probation officers.

Magistrates Court (court of summary jurisdiction)

4. If the person appears before Magistrates Court (the typical offender would be a serial shop lifter), there are tighter time constraints, as sentencing will typically take place much more quickly than if the person were to appear before the Crown Court, and thus it is essential that the drug treatment and testing order team are involved in time. If the person is released on bail, he or she will be offered access to treatment, but will not start a programme until a drug treatment and testing order is made.

Both procedures

5. The pre-sentence report will make a proposal as to sentence that will outline the entire treatment plan (e.g. detoxification, rehabilitation, etc.). The implications of the plan will be made clear to the sentencing magistrates or to the Crown Court judge. The offender will also know what is expected of him or her. If made, the drug treatment and testing order will comprise the person's sentence.

6. The drug treatment and testing order will be administered by local probation services. The drug treatment and testing order will require the person, for a period of between six months and three years, to cooperate with treatment and undergo frequent random urine testing, and requires consent from the individual. Once the drug treatment and testing order is made, the person's progress under treatment will be reviewed regularly by the court that makes it (usually every month), taking into account such things as the results of urine tests, any information from police intelligence, etc. The court can decide at the reviews whether the person should remain in the programme. The United Kingdom courts typically take a pragmatic approach.

7. In respect of a person breaching the rules of the programme, the range of intermediate sanctions is narrower than in other jurisdictions where similar programmes operate. The person can be fined for non-compliance or ordered to repeat parts of the programme. However, the person cannot be ordered to be imprisoned for certain periods (although the person can be re-sentenced for the offence if he or she fails the programme completely), as he or she has already formally been sentenced (to a drug treatment and testing order). This lack of flexibility makes it very important that drug treatment and testing orders target the right people.

8. Reviews of cases take place in private (no educative element of the person hearing other persons' experience with the drug court programme is permitted).

United States of America

1. Traditional criminal courts rely on the adversarial relationship between prosecutors and defence attorneys; each argues competing sides of the case, while trying to refute the arguments of his opponent. The system is designed to let credible evidence speak for itself so that justice will prevail.

2. Drug courts depart from this model. People working in a drug court come to see themselves as part of a team effort to improve court proceedings and reduce criminal behaviour. If a defendant has agreed to participate in drug court, this typically means that he has been diverted from the traditional criminal justice system or has agreed to plead guilty to the charges. This eliminates the need for attorneys to argue the facts of the case, instead allowing them to coalesce around a shared mission: preventing future crimes by ending the defendant's drug use.

3. The drug court team decides on offender eligibility, treatment methods, sanctions and rewards and formal policies and procedures. The roles and responsibilities of each participating agency are clearly defined and agreed upon. Cooperation early in the planning process saves time later, allowing for the pooling of resources and increasing the drug court's efficiency. When more agencies participate in the planning process, it is more likely that all concerned will work together toward common goals.

4. Drug courts rely on the relationship between the judge and the participant to create accountability for

day-to-day behaviour. For example, if a participant has a positive drug test or fails to comply with other court-ordered treatment requirements, the judge can impose immediate, graduated sanctions, including jail time. For participants with a history of treatment failure, this accountability promotes compliance with treatment goals more effectively than treatment providers can on their own.

III. Appeals

In the jurisdictions discussed, interim decisions to impose sanctions if the participant is found to have breached programme rules and requirements cannot be appealed. Nor can a decision to expel the participant from the programme be appealed.

IV. Final disposal of successful programme completion cases

Australia

The New South Wales drug court is a post-sentence court, so each offender has a sentence. On successful completion of the programme, the sentence will be reviewed, and it is highly likely in such cases that a probation order will be imposed, with or without conviction, most likely with conviction, as most people have a criminal record. The length of the probation order will depend on the seriousness of the offence and the length of dependency. Consideration would be given to the giving of non-custodial penalties, which might include community service orders.

Austria

At the pre-trial stage, the case will be dismissed, and there will be no record for minors, though health services and drug authorities must be informed. At the trial stage, there can be no conviction, sentencing (especially for minors) or probation time, with or without the supervision of a probation officer. At the post-trial stage, after the sentence is handed down, there is no execution of the sentence, but rather probation time is imposed, with or without supervision of a probation officer. The record will be withdrawn after a specified number of years. If the crime violated the property rights of another person, there will be a referral to a civil court for damages.

Canada

For a person who has successfully completed the programme with the result that he or she is free of the dependency drug (but not necessarily free of marijuana or alcohol), and, in addition, has made positive lifestyle changes, has stable housing, and is working or going into training, etc., a non-custodial sentence is given in all situations. Depending on the offender's prior history, there may be a withdrawal of the case, particularly if the case involved possession only. A trafficking charge may, on a case-by-case basis, be reduced to a simple possession charge. In cases where, upon completion of the programme, the conviction remains, there will be a suspension of the sentence and a probationary period of 6 to 12 months, and continuation of treatment with the treatment provider.

Ireland

One of the options open to the court at the end of a successful treatment programme would be to strike out proceedings, or, alternatively, the court could proceed to find the facts proved without recording a conviction (sect. 1 (1), Probation of Offenders Act (1907)). In addition, for minor crimes the court could require the accused to enter into a probation bond (depending on the advice of the probation officer).

Sweden

After treatment has ended successfully, there will be continued supervision time of at least six months, and after three years from the original sentence the person will leave the system completely. A record remains.

United Kingdom of Great Britain and Northern Ireland

A sentence has already been passed, and that remains on record.

United States of America

Defendants who complete the drug court programme either have their charges dismissed (in a diversion or pre-sentence model) or their probation sentences reduced (in a post-sentence model).

Annex III

Selected sample documents from court-directed treatment programmes

(Australia, Canada, United States of America)

Australia

Drug Court of New South Wales, Sydney

Undertaking to drug court form

Drug court policies on:

- Team policy formulation
- Treatment plans and placement
- Private residential accommodation for participants
- Acceptance of rewards offered by the community for conferral by the court
- Termination of programme

Canada

Drug Treatment Court, Toronto

Application form

Case-processing flow chart

Drug treatment court conditions form

The rules—your duties and obligations before plea

Programme:

- Before plea
- Before plea—young persons

The rules—your duties and obligations after plea Programme

- After plea
- After plea—young persons

Centre for Addiction and Mental Health, Addiction Research Foundation

Registration data form

Assessment form

Consent for release of confidential information to the court form

Notice of assessment recommendations form

Cocaine drug court programme

Consent to treatment form

Consent to the disclosure, transmittal or examination of a clinical record form

Progress report form

Consent to participate in programme evaluation form

Available comprehensive outpatient therapy

United States of America

[Sample documents pending]
