

DRUG COURTS IN NEW JERSEY: PAST, PRESENT AND FUTURE

A REPORT PREPARED BY THE
1998 CLASS OF LEADERSHIP NEW JERSEY
IN FURTHERANCE OF ITS
CLASS PROJECT ON DRUG COURTS IN NEW JERSEY
September, 2000



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The 1998 Class of Leadership New Jersey

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INTRODUCTION

Drug Courts are entities which fuse ongoing therapeutic measures with extended case processing in a justice system. They are not merely courts assigned to hear exclusively drug cases in a traditional criminal case processing model. Instead, they implement and supervise long-term probationary sentences (or other extended bouts of compliance with the dictates of courts in non-criminal matters) for specially selected offenders whose non-violent criminality or other anti-social behavior is drug-driven and which is conditioned upon continued compliance with rigorous treatment plans. They both monitor and mentor progress. Characterized by their relationships with participants rather than by the identities of the charges which brought those participants to them, Drug Courts try to firmly but fairly help drug-driven offenders stay the course of recovery.

Unlike traditional probationary or parole supervision, Drug Courts deliberately and directly take on the challenge of brokering actual change in offenders. By reducing a primary incentive to criminality — drug dependency — Drug Courts specifically target the predicate condition to a large proportion of today's criminality.

Drug Courts present an alternative to the high financial and societal costs of addressing addiction with punishment and incarceration. Actual reduction in drug-driven criminality has the potential to significantly improve the quality of community life and markedly enhance public safety. For these reasons, the 1998 Class of Leadership New Jersey has set out to explore here the past, present and future of Drug Courts in New Jersey.

I) WHY NEW JERSEY NEEDS TO CONSIDER THE DRUG COURT APPROACH

Time and again, and as acknowledged on October 23rd, 1999 in remarks made by New Jersey Department of Corrections Commissioner Jack Terhune during a "Leadership New Jersey" Seminar on Criminal Justice in New Jersey¹, it has been noted that somewhere between 60% to 80% of the inmates in New Jersey state prisons suffer from drug and/or alcohol dependency². The vast bulk of these offenders are non-violent³. In

¹ "Leadership New Jersey" (LNJ) is a non-profit program sponsored by the Partnership for New Jersey. Its goal is to expand and improve the pool of state leaders, and its network now numbers over 600 members. Each year LNJ brings together a new group of 50 of the state's most promising emerging leaders to develop their knowledge of state issues and hone their skills to build coalitions that can solve statewide problems. In eleven monthly seminars, they explore the issues and choices shaping the state's future; upon graduation each class conducts a class project. Advocacy for Drug Courts in New Jersey is the class project of the 1998 LNJ class.

²A September, 1995 New Jersey Division of Criminal Justice "Draft for Discussion Purposes Only" analysis of treatment needs of addicted state prison inmates indicated that at that time, it was estimated that 64% (15,940) of the 24,906 inmates then under the jurisdiction of the Department of Corrections were in need of drug and/or alcohol

the past generation both nationally and in New Jersey, the number of young citizens dependent on drugs and alcohol has multiplied⁴, the rate of drug-driven criminality has exploded⁵, and the expansion of prison beds⁶ and their cost has skyrocketed⁷. The criminal recidivism of law-breaking alcohol and drug abusers is also chronic and primarily non-violent and has proven to be largely unaffected by routine probation or

treatment. This corresponds to similar national statistics for the same time period: see U.S. Department of Justice, Bureau of Justice Assistance Statistics (BJA), *Drug Use and Crime*, 1997, December 1997, Washington, DC.

³According to statistics gathered by the Public Affairs Research Institute of New Jersey, 88% of 1998 crime in New Jersey was non-violent

<www.nj.com/pari/pubaffairs.html#crime>.

⁴"[The overall rate of] drug use has not budged for 10 years... [while] drug use has gone up among the young, and for drugs like heroin and methamphetamines." Timothy Egan, "Less Crime, More Criminals", *Week In Review*, The New York Times (March 7, 1999).

⁵"[T]he United States, virtually alone among Western democracies, has chosen a path of incarceration for drug offenders. More than 400,000 people are behind bars for drug crimes - and nearly a third of them are locked up for simply possessing an illicit drug.... Arrests of people who use drugs just hit an all-time high, the F.B.I. reported." *Id.* For an understanding of the worsening national rates of drug dependency in prisoners, see the extensive, dramatic statistics reported by the BJA <<http://www.ojp.usdoj.gov/bjs/dcf/duc.htm>> (visited March 7, 2000). At a Technical Assistance Workshop for Drug Court Initiative Specialized Drug Court Programs on July 15, 1998, Bruce Stout (then Deputy Director of Policy and Planning for the Governor's Office) related that drug offenders - many of them non-violent - have accounted for the biggest segment of growth in incarcerations over the past generation.

⁶While the crime rate has decreased in the last 20 years from a rate of 64.1 crimes per thousand residents to a rate of 37.1 crimes per thousand residents, the number of state prisoners in New Jersey has more than quintupled in same interval from 5882 to 31,131, and is projected to grow by another 20 % by 2005: Laura Mansnerus, "As Crime Drops, The Prison Rate Rises And The Debate Rages", *New Jersey Section*, The New York Times (Sunday, December 26, 1999). While much of the increase is attributable to longer terms for violent offenders, a very large proportion is also attributable to the incarceration of drug offenders, who are "pouring in". "We've got crime going in one direction, and social policy going in the other," said Dr. Allen J. Beck, the Justice Department's lead statistician on criminal justice trends", commenting on the parallel national trend. Timothy Egan, "Less Crime, More Criminals", cited at footnote 4, *supra*.

⁷"The states are spending nearly \$30 billion to keep people in jail - about double the rate of 10 years ago." Timothy Egan, "Less Crime, More Criminals", cited at footnote 4, *supra*. Leadership New Jersey Criminal Justice Seminar Materials report that in the last 20 years, spending on corrections has increased faster than any other item in the New Jersey state budget.

even one or more bouts of imprisonment⁸, even when some form of treatment for addiction has been incorporated into the sentence.

It is thus apparent that the New Jersey Criminal Justice System's traditional methods of punishment and purported rehabilitation as a response to criminality do not achieve significant or sufficient reduction in the lawlessness in this state which is driven by substance abuse. Resorting to incarceration and generic probation as the remedies to non-violent addiction-driven crime appears to be a failure of public policy: these measures fail to protect the public from this kind of pathology; their cost is enormous; and they fail to transform these offenders into productive members of society. Being simply "tough" on this kind of crime has actually been self-defeating rather than effective.

As a potential antidote to this conundrum, "Drug Courts" have begun to be introduced in New Jersey. Deliberately aimed at the goal of actually inducing constructive permanent change in participants, these programs fuse criminal justice with treatment, and both direct and monitor the course of defendants' sentences. Interweaving long-term, specifically calibrated intensive addiction therapy with arduous probation requirements, they rely upon legal remedies developed to ensure programmatic compliance when necessary. In ongoing relationships, judge-led teams supervise and mentor carefully screened participants, making multiple demands and enforcing them through a wide range of sanctions and incentives.

In this paper, we will consider the landscape within which Drug Courts in New Jersey exist, explicate the concept of Drug Courts, review their history to date in the country and in New Jersey in particular, consider the implications of their present status in New Jersey, and make observations and recommendations about their future here.

II) UNDERSTANDING THE NEW JERSEY JUSTICE SYSTEM AND THE TRADITIONAL APPROACH TO ADDICTION-DRIVEN CRIMINALITY AND ANTI-SOCIAL BEHAVIOR IN ORDER TO ASSESS NEW JERSEY'S RIPENESS FOR A DRUG COURT APPROACH

To understand what a "Drug Court" is, it is helpful to first briefly review those structural, philosophical and operational aspects of "traditional" New Jersey criminal, family and municipal courts which could be impacted by the drug court model. In addition, the relationship between "traditional" probation or parole and substance abuse should be understood so that it can be compared and contrasted to what is offered in the

⁸A national survey conducted by the Physician Leadership on National Drug Policy concluded that 75-84% of those not enrolled in treatment programs after leaving prison returned to custody; in contrast, only 27% of those enrolled in aftercare programs returned to prison. "Drug courts help reduce arrest rates", *The Jersey Journal*, Jersey City Edition (March 8, 1999).

drug court model⁹. It is also important to understand that the settings for many of these components are in flux due to recent and ongoing changes in the administration of the judiciary branch, and that their parameters are also shifting due to considerable legislative activism.

A) *Funding of the Judiciary Branch*

The New Jersey court system is essentially funded by state money through its Judiciary budget, which supports, among many items, the budgets for trial court services, probationary services and the administration of the courts. Supplementing these expenditures to some degree are various federal monies that can be accessed through the grant process and applied to specially and discretely targeted areas of interest. Services which are financed by sources outside of the court budget - such as health care or school based programs, for example - may be accessed by the court for the benefit of those subject to its jurisdiction primarily via coordination with other entities. As in all governmental departments, there is significant competition for allocation of insufficiently available Judiciary dollars for the administration of the courts and court-related programs. Not every innovation that may deserve implementation can be or is funded. Thus, advocating for budget enhancement, prioritization of needs and allocation of resources are three of the consistently key stressors in the New Jersey justice system.

B) *Judicial Shortage*

The shortage of sufficient sitting judges occasioned by a chronic backlog in the New Jersey judicial appointment process adds an extra burden to the ability of the court system to administer justice fairly, completely and promptly. Furthermore, an ever-pressurized docket every year in the criminal branch of the court system¹⁰ places critical pressure on the justice system to "produce" results in a manner acceptable to the public.

C) *Changes in the Management of the Judiciary*

The consolidation of the New Jersey court system pursuant to constitutional amendment in 1992 has resulted in major ongoing shifts in the leadership and

⁹It is not too early to consider, but it is too early to accurately gauge the impact that will arise from a brand new kind of "special probation" in New Jersey which has been created by statutory amendment to Title 2C:35-14, has only been effective since January 14, 2000, and appears calibrated to coerce treatment without benefit of the support systems inherent in a Drug Court. See discussion of this development *infra*.

¹⁰While the state is experiencing "a declining crime rate, the courts are busy as ever. The court's total criminal caseload declined [slightly] last year, to 43,241 from 47,542 the previous year. But the number of criminal trials barely budged, going from 639 from 655" and even more new stiff laws will drive the number of trials up significantly now. Laura Mansnerus, "As Crime Rate Drops, The Prison Rate Rises And the Debate Rages", footnote 6, *supra*.

management of the judiciary, as well as transformation in the manner of policy development within this branch of government. An overall governing body has recently been established known as the Judicial Council, which is made up of the Chief Justice, the Director and Deputy Administrative Director of the Administrative Office of the Courts (AOC), the 15 Vicinage Assignment Judges (head judges of New Jersey's 15 previously autonomous court regions), and Chairs of the Conferences of Civil, Criminal and Family Division Presiding Judges.

The manner in which the Judiciary seeks to make innovations in established practice areas of the law as well as to study whether and how to implement new endeavors of sufficient magnitude has been via either standing Supreme Court Committees or *ad hoc* Supreme Court Committees and Task Forces. Among these have been two Supreme Court Committees on Efficiency.

As a result of recommendations in the 1996 report of the Supreme Court's Committee on Efficiency II, an initiative was undertaken by the Judiciary Strategic Planning Committee not only to identify the mission, vision and core values of the court system, but also to establish long-term goals, define performance objectives and determine resource needs. In a March, 1998 report specifying 44 particular recommended strategic initiatives, the Committee called for further strategic planning aimed at achieving 11 key goals. Based upon these recommendations, the Chief Justice has directed the Conferences of Presiding Judges of the various divisions and others within the judiciary to develop recommended sets of standard operating procedures based upon a "best practices" analysis of existing systems, routines and models.

D) *Challenges Inherent in New Relationships Among Judiciary Employees, Court-Community Partnerships and Litigants Engaged in New Methods of Dispute Resolution*

One of the 44 recommended strategic initiatives in the 1998 report of the Judiciary Strategic Planning Committee urged integration of the principles of Total Quality Management (TQM) into the structure of the trial courts, in recognition of the advisability of empowering all participants in a management structure to share in its mission by collectively contributing to the efficient and effective flow of a shared system. Some of the functions of the court system involve participation by those outside of the judiciary, however, and in these circumstances, it is unclear whether and to what extent those individuals can be included in the TQM loop.

Another recommended strategic initiative urged "statewide guidance, support, and direction for the court/community partnership efforts that have already been established at the local or vicinage level, particularly the court/community initiative."¹¹ Programs which are located within the judicial system but cannot operate without collaboration

¹¹Chapter IV, Goal 10, Strategic Initiative 10A, Statement of the Supreme Court on the Report of the Judiciary Strategic Planning Committee
<<http://www.judiciary.state.nj.us/strategic/straplan.htm>>.

with representatives of other institutions and which rely heavily on linkages with community resources suffer from lack of clarification of the extent to which non-judiciary personnel can influence outcomes as well as support from the community in some form of court/community partnership.

The guidelines and parameters of what is permissible in a New Jersey court/community partnership have never been explicitly defined, however¹², and are complicated by the existence of a strict and rigorously policed judiciary ethical code in New Jersey. Membership in the Committees on Minority Concerns which have been established in each vicinage, for example, comprises both employees of the judiciary branch and community representatives, and significant confusion abounds among such committees as to what constitute acceptable operations and programs for those court/community partnerships. Excitement generated in the community for court programs and initiatives tends to deflate over time due to the ambiguity of the boundaries of court/community collaboration, and the development of creative potential problem solving measures is often chilled as court/community coalitions remain unsure of their power and limits.

The continuing development and implementation of methods for Alternate Dispute Resolution (ADR) is also recommended in the 1998 Report of the Judiciary Strategic Planning Committee, which pledged in its "Vision Statement of the Court System" that that system would offer complementary methods of dispute resolution. Given the consistently crowded dockets of all branches of the legal system, methods of resolving conflict such as arbitration and mediation which rely upon a problem solving approach and consensus building in lieu of adjudication are rapidly gaining support by both purveyors and consumers of the justice system.

Considerably less expensive while also reportedly resulting in a higher degree of participant satisfaction than adversarial modes, ADR is now frequently resorted to in disagreements related to issues as diverse as custody and visitation, neighborhood disputes, business "divorces" or environmental contamination. Those who actively engage in conflict resolution proceedings enjoy the advantage of helping to solve their own problems and may well honor the solutions and accept the changes arrived through such a process more than if those same solutions were ordered by an outside authority. This orientation is highly consistent with the Drug Court approach, detailed *infra*.

E) *Prevalence of Vicinage Local Cultures*

Despite the existence of a state-wide AOC, a major current strategic planning process occurring within the judiciary with a goal of statewide consistency in practice from

¹²See: Rottman, David and Casey, Pamela, "Achieving Court and Community Collaboration", National Institute of Justice *Journal*, July, 1999, 13 for a fascinating discussion of how it is possible to successfully realize court/community collaboration by using a problem-solving orientation informed by the concept of therapeutic jurisprudence, discussed *infra*, coupled with a revised judiciary code of ethics.

county to county, there remain leftover local “cultures” within each of the regional vicinages to the degree that each vicinage still operates with a distinct character that may vary considerably from that of its neighbors.¹³ Within each of the state’s 15 court vicinages¹⁴ is a trial level Superior Court which is divided into various divisions¹⁵, among them, a Criminal Division and a Family Division. The entire vicinage is presided over by an Assignment Judge, and each division within by a Presiding Judge. The designation of who will sit as an Assignment Judge of a vicinage is made by the Chief Justice of the New Jersey Supreme Court and tends to be a long-term position sometimes approaching “tenure”. Much of the local character and culture of a vicinage is derived from the leadership style and substantive priorities of its Assignment Judge, who is a powerful figure. Notably, decisions as to whether a particular court pilot program or initiative will be supported in a particular vicinage or in what manner court/community partnerships can operate there rest ultimately with the Assignment Judge of that vicinage.

F) *Judicial Assignments in Superior Court*

The designation of those who will sit as presiding judges of the divisions of a particular Superior Court is made by its vicinage Assignment Judge, and carries much less expectation of permanence. The Assignment Judge also determines in which division and for how long each individual Superior Court judge in that vicinage will sit. Typically, both the Assignment Judge and Presiding Judge of a given division determine together the specific assignment of a given judge within that division. Thus, for example, Judge A could be assigned for a two-year term to the Family Division, during that period spend the first year hearing divorces and the second year hearing juvenile delinquency matters, and thereafter be assigned to a two-year term in, say, the Criminal Division hearing indicted criminal matters. Rotation among the various divisions and cross-training of Superior Court judges is routinely favored, although a judge with a particular demonstrated expertise or an enthusiasm for a traditionally unpopular assignment may be consistently retained in a particular assignment.

G) *Judicial Training*

Training of New Jersey Superior Court judges is conducted primarily through seminars and retreats sponsored by the AOC, supplemented by attendance at various

¹³Goal 1 of the first chapter of the Judiciary Strategic Planning Committee recognizes this issue in calling for the establishment of a unified culture for the judiciary. See citation in footnote 11, *supra*.

¹⁴While each is part of the consolidated New Jersey Court System and subject to the supervision and support of the AOC, there is no doubt that the Assignment Judge presiding over each retains a significant degree of local independence. See further discussion of this phenomenon, *infra*.

¹⁵The Chancery and Civil Divisions of the trial level of Superior Court are not relevant to this discussion, nor is the Appellate Division of the Superior Court.

regional or national conferences and judicial education "schools". Not every judge is trained about the same topics or in the same programs, nor does he or she necessarily learn or understand the same material.

H) *Structure of Criminal Courts*

The Criminal Division of a New Jersey Superior Court hears and disposes of felonies¹⁶ which have been charged against defendants in that vicinage. Activities of judges in these courts typically include duties and responsibilities such as: setting bail, considering requests for reductions or increases in bail, hearing numerous motions such as those seeking the suppression of evidence, presiding over trials and/or guilty pleas, sentencing convicted defendants, hearing petitions alleging violations of probation which has previously been imposed on certain defendants, and considering requests of various kinds for post-conviction relief. The division's caseload is generally divided into separate lists of cases which are assigned to each judge to handle to completion, and judges must "manage" their lists with the aid of trained managers within the court system. Judges determine issues such as whether requests by attorneys for postponements will be granted and, together with their court managers, they determine issues such as the assignment of trial dates. Unless it is diverted into a program limited to first-time alleged offenders charge with less serious matters, a felony matter on a judge's list will be resolved by one of the following methods: dismissal for lack of prosecution, withdrawal from prosecution by the Prosecutor's Office with the permission of the court, trial resulting in an acquittal, trial resulting in a conviction which will then be followed by a sentencing, or a guilty plea which will then be followed by a sentencing.

I) *Traditional Relationships between Superior Court Judges and Defendants*

Contact between a defendant and a judge in a Superior Court criminal matter is typically fairly limited. The defendant will hear conversations between the judge and that defendant's defense counsel and might be addressed by the judge during those conversations. If a trial occurs, the defendant will hear the judge preside over it and may be addressed by the judge occasionally during the course of the trial. If a plea offer is made by the Prosecutor's Office to a defendant and the defendant declines to accept it, eventually the judge will have a brief dialogue with the defendant to make sure that s/he understands that the opportunity to plead guilty in exchange for the offer is cut off at a certain point, and the judge may express an opinion to the defendant about that decision. If a defendant enters a guilty plea, the judge will have a specific dialogue with the defendant to ascertain whether s/he understands the nature and consequences of the guilty plea and whether s/he is, in fact, guilty of the charge(s) to which s/he is pleading guilty. Finally, the judge will address the defendant at sentencing if sentencing occurs.

If a defendant is sentenced to a prison term, the sentencing experience will

¹⁶Felonies in New Jersey are charges which are indictable (i.e., subject to grand jury proceedings) in nature, and expose convicted defendants to potential prison sentences of at least a year if they are not eligible for probationary treatment.

ordinarily¹⁷ constitute the last meaningful contact between the defendant and the judge. Usually, the defendant will go off to prison, will eventually be paroled and assigned to the supervision of a parole officer and will either successfully complete parole or fail on parole and be returned to prison. The sentencing judge plays virtually¹⁸ no role in the parole process. If a defendant is sentenced to a term of probation instead of a term of imprisonment, a probation officer will be assigned to supervise him or her and if probation is completed successfully, no further contact will occur between the judge and the defendant. If a probationer is not faring well on probation, the probation department will draw up a petition alleging that the probation has been violated, and the probationer will be returned to court for a hearing before the original sentencing judge to determine whether further probation is still appropriate, or whether the probation has failed to such a degree that imprisonment must follow as a consequence. Following this determination by the judge, again no further contact will typically occur between the probationer and the judge.

Contact between a Superior Court judge in the Family Division and one accused of an act of delinquency as a juvenile is generally no more extensive than that between an adult defendant and a judge. Typically one or more judges (depending upon the size of the vicinage) sitting in the Family Division of that Superior Court will have the responsibility of presiding over delinquency matters. The usual points of contact between a judge and a juvenile could consist of an initial hearing or two to consider whether the juvenile will be or remain detained pending the outcome of the case, a "pre-trial" hearing at which the juvenile will either admit or deny the charges, a trial if one is called for, and one or more dispositional (sentencing) hearings. Generally, a larger range of diversionary options and social service supports are available to offenders subject to the delinquency process, and although the juvenile may not see a judge much more than just outlined, s/he may come into contact with a variety of other quasi-authoritative individuals such as Home Detention monitors, Division of Youth and Family Services (DYFS) workers, court-based intake workers and/or therapists, probation officers, etc.

In both adult criminal matters and juvenile delinquency matters, then, judicial interaction with defendants is limited; any ongoing work with defendants typically occurs outside of the courtroom; and, generally, only reports about lack of progress will be brought to the attention of the court with likely negative consequences to follow thereafter to those being brought back before the court.

J) Relevant Aspects of Municipal Courts

Within every vicinage, every municipal entity also has a municipal court and a

¹⁷Post-conviction motions of various kinds may bring the judge and defendant back together again but do not occur in the majority of cases.

¹⁸A judge has the option to make a recommendation concerning parole, but this is not apparently done very frequently, nor is there any guarantee that such a recommendation will carry any particular weight with the parole authorities.

municipal judge¹⁹, as well as a municipal police department. Municipal courts and judges have jurisdiction over all traffic offenses and Disorderly Persons offenses²⁰ alleged to have occurred in that municipality, and also participate in the early stages of the processing of most kinds of felonies which are alleged to have occurred within that municipality. Unlike Superior Court judges, who are appointed by the governor, municipal judges are appointed by the presiding executive entity of the municipality and sit at its pleasure. Municipal Courts, which are courts of limited jurisdiction, are also the only courts which are funded in large measure from local, rather than centralized, government coffers.

Contact between a municipal judge and a defendant is also generally minimal. Typically, a judge will only interact with a defendant in a municipal matter at an initial arraignment, a trial or guilty plea, and a sentencing. Disorderly Persons offenses and certain traffic offenses may also be subject to possible probationary terms and/or jail terms of up to one year. While statistics are not as easy to come by with regard to the role that substance abuse plays in municipal violations, anecdotal evidence suggests that the quasi-criminality of municipal offenders is at least as likely driven by alcohol and drug dependency as the criminality of felons, if not more so.

K) *Traditional Probation*

Both Municipal Court judges and Superior Court judges routinely sentence individuals (both adult and juvenile) to terms of probation. A probation officer then becomes the surrogate for the judge in the sense that s/he exercises ongoing authority over the defendant for the duration of the probation. Unlike a traditional sentencing judge, a probation officer actually maintains an ongoing relationship with a defendant. The ability of New Jersey probation officers to fully or adequately supervise probationers is severely limited, however, by excessive current caseloads²¹.

Frequently, a judge may order as a condition of probation that a probationer undergo a substance abuse evaluation and/or treatment, when such measures seem called for. When this is done, probation officers are responsible for monitoring compliance with such conditions. There is enormous variation in the degree to which probation officers assist probationers in fulfilling such requirements. There is also no clear protocol that all

¹⁹In some cases, one or more small municipalities may share in a consolidated police, court and judiciary.

²⁰Disorderly Persons offenses in New Jersey are those offenses which are usually characterized in other jurisdictions as "misdemeanors". They are less serious than felonies, do not result in criminal records, and can ordinarily be punished by no more than a year in the county jail and/or a fine of \$1000.00

²¹ The current average number of active adult probationary cases per officer in New Jersey is reported to be 146.

probation officers must follow with regard to how far they must go to assist a probationer in obtaining treatment. Like most addicts, many probationers who are drug dependent do not acknowledge that they are so and resist treatment, as well.

L) *Treatment Assessment Services for the Courts*

The Court may also need to determine the degree of substance dependency, if any, of an individual whose case has not yet been resolved in the criminal justice system. For example, a judge might want to order drug treatment as a condition of release on bail, or a judge contemplating a probationary sentence might want to know the degree of addiction and treatment needs of a defendant before making the final sentence determination. For situations where the court needs information about the substance abuse needs of defendants, the services of T.A.S.C. (Treatment Assessment Services for the Courts)²² officers are helpful. Employed by the courts and funded by the court budgets, T.A.S.C. officers work within the Superior Court system to clinically evaluate needs, recommend and sometimes help to obtain substance abuse treatment for criminal defendants.

M) *Lack of Availability of Treatment*

Lack of wherewithal to obtain drug treatment even without involvement in the criminal justice system is endemic to our society; indeed there is evidence that the best access to treatment for indigent addicts is actually via the criminal justice system²³. Lack of ability to pay for post-disposition evaluation and treatment represents a chronic individual and systemic challenge, even if such services are available, and frequently they are not. New Jersey does not have treatment on demand for substance abuse. It has been estimated that the number of addiction treatment beds (in-patient and out-patient combined) presently available in New Jersey can service no more than approximately 10% of the population in need of such services²⁴. Only a small fraction of those beds are

²²Confusion may result by the use of the acronym TASC for this program, as the same acronym is used for a movement toward providing treatment services to courts originating in the late 70's and early 80's known as "Treatment Alternatives to Street Crime."

²³ "For most women [in a recent study of women on welfare with drug convictions in Pennsylvania], their first treatment program came through the criminal justice system...", Amy Hirsch, *"Some Days Are Harder Than Hard": Welfare Reform and Women With Drug Convictions in Pennsylvania*, 1999, Center For Law and Social Policy, Inc. <http://www.clasp.org/pubs/TANFSTATE/SomeDays/WomenDrug5.htm#N_199_> (visited March 10, 2000).

²⁴At a meeting with the LNJ '98 Drug Court Project Committee on March 30, 1999, Terry O'Connor of the Division of Addiction Services estimated that approximately 700,000 citizens in New Jersey were in need of addiction treatment, and that only about 10% of that number could be serviced with existing programs, even assuming that treatment could be paid for.

available without cost to the consumer²⁵, whether or not that person has become embroiled in the criminal justice system. In this arena as in all others, the advent of managed care has tremendously limited the extent of treatment even when it is theoretically available. Limited numbers of adequate treatment facilities and programs are scattered throughout the state, and many of them have long waiting lists. Simply put, it is often virtually impossible even for motivated probationers to comply with substance abuse treatment.

N) *Random Urinalysis*

On the other hand, funding for random urine screens of probationers is a standard item in the budgets of most Probation Departments, so that probationers who use illegal drugs (or alcohol when forbidden to do so) are routinely caught. Variation exists with regard to which consequence will flow to a probationer who has given a "hot" urine, but each such violation certainly constitutes a violation of probation for which a probationer can be returned to court for a hearing on whether s/he has "flunked" probation.

Many felons who have been incarcerated, served time and been released on parole are also required to obtain substance abuse treatment as a condition of their freedom. They face the same challenges, as do probationers in acknowledging addiction and seeking, paying for and complying with treatment. A "hot" urine taken from a parolee (parole office budgets also routinely fund urinalysis kits) constitutes a violation of parole, and can easily lead to its revocation.

O) *Harsh Trends in Sentencing Legislation*

A harsh trend in the sentencing parameters set by the New Jersey State Legislature in the past generation has led to the increasing imposition of incarceration as a consequence to criminal and delinquent acts.²⁶ Judicial sentencing discretion has been increasingly limited while prosecutorial control of sentencing protocols has been expanded²⁷. The advent of mandatory minimum terms without parole eligibility, the increase in juvenile offenses mandatorily "waived up" to the adult criminal system, the upgrading of offense degrees, and the development of legislation which embodies concepts such as "three

²⁵ *Id.*

²⁶ The New Jersey sentencing system is an increasingly punishing one: Laura Mansnerus, "As The Crime Rate Drops, The Prison Rate Rises And The Debate Rages", *supra* at footnote 6.

²⁷ For example, Section 2C:35-12 of the New Jersey Criminal Code authorizes only the prosecutor with the power to undercut statutorily prescribed mandatory incarceration parameters for drug offenses, and a vast set of Attorney General-generated guidelines has been promulgated establishing uniform criteria by which local county prosecutors may do so.

strikes and you're out" and no early release on parole for serious offenses have all contributed to this landscape. Thus, proportionately more violators are being imprisoned for proportionately longer terms, and the prisons are bursting at the seams, far over capacity²⁸. Although crime is actually "down"²⁹, and the proportion of crime that is non-violent is very high³⁰ the gross number of cases in the New Jersey criminal justice system and the gross number of incarcerated New Jersey citizens is ever-increasing³¹. A disturbingly increasing proportion of those being imprisoned are women³², a shamefully disproportionate number of those being punished are people of color³³, and a discouragingly disproportionate number are dependent on illegal drugs and alcohol.

P) *Traditional Punishment-Oriented Jurisprudence*

The traditional punishment-oriented jurisprudence that has been in place in criminal and quasi-criminal courts in New Jersey is based upon a theoretical framework in which an offender must "pay" for having harmed society (and presumably thereby be deterred from recidivating) and in which the rest of society presumably will be deterred from engaging in undesirable acts by knowledge of the undesirable ramifications that will

²⁸In fiscal year July 1995-1996, there were an average of 14,671 bed spaces in State Correctional Facilities but 19,995 inmates were being housed in them and another 5952 inmates were awaiting transfer to state spaces from county jails. NJO: PARI: Fast Facts - Crime and Corrections <<http://www.nj.com/pari/crimeandcorrectsfacts.html>>

²⁹Crime dropped in New Jersey in all major categories in 1998, marking the largest overall drop since the State Police starting compiling statistics 33 years ago, according to Governor Whitman's 1998 New Jersey Uniform Crime Report.

³⁰See footnote 3, *supra*.

³¹Laura Mansnerus, "As Crime Rate Drops, The Prison Rate Rises And the Debate Rages", *supra* at footnote 6.

³²The national growth in incarceration for women with drug-related offenses has exceeded that of men: between 1986 and 1991, for example, the number of women in state prisons for drug-related offenses increased by 433%, while the number of similarly situated men increased by 283%. LeBlanc, A.N. "A Woman Behind Bars", *The New York Times Magazine* (June 6, 1996), at 35-38. More than half of women test positive for illicit drugs at the time of their arrests and in some cities this number is more than three-quarters of women arrestees. NIJ Research Brief, *Drug-Abusing Women Offenders: Results of a National Survey*, Washington, D.C., National Institute of Justice, October 1994, cited in Galbraith, Susan, "And So I Began To Listen To Their Stories... Working With Women In The Criminal Justice System", The GAINS Center, New York, 1998, at 17.

³³Leadership New Jersey 1999 materials prepared for its Seminar on Criminal Justice and Corrections report that "a conservative estimate is that 84 percent of New Jersey's state prison and county jail population is African American."

certainly flow from them. Implicit in this model are assumptions that this cognitive connection can and will be made, that it can and will suffice to adequately influence behavior so that citizens subject to this system will make wise choices, and that simple punishment will induce change in human behavior.

Based upon this syllogism, great effort and energy is placed into maintaining "law and order" and into putting increasingly firm teeth into the systems that perpetuate and sustain it. Judges decree that miscreants who appear before them will be punished in prescribed ways and remain remote and all-powerful authority figures. Criminal defendants and juvenile delinquents are expected to "clean up their acts", reform themselves via serving their sentences, and avoid recidivism. Those who are placed on probation in lieu of incarceration are viewed as having gotten a "break" and are expected to be appreciative and exemplary in their behavior. The remainder of society is expected to conform to acceptable standards of conduct else face the consequences.

Q) Deterrence of Drug Dependent Offenders

A criminal justice model of this kind does not take into account the variations in motivation and commitment that occur in drug dependent persons. An addict who is preoccupied with marshaling enough resources to pay for the next "hit" or whose judgment is clouded by intoxication is far less likely to be deterred from illegal conduct than an offender who can make a rational informed choice to avoid a certain behavior because of its potential penal consequences. Not surprisingly, then, those whose existence is drug-driven become among those least likely to exercise law-abiding self-control and, consequently, they also become those most represented in the criminal population. As long as the traditional deterrence philosophy drives New Jersey's criminal justice system, it seems likely to remain ineffective at extinguishing most drug-driven crime. And as long as the system inadequately comes to terms with this fact, the numbers of expensively incarcerated individuals will continue to rise.

R) Drug-Driven Antisocial Behavior Subject to Non-Criminal Jurisdiction

Conflicts which reach the courthouse doors and which derive from addiction-driven antisocial behavior are not limited to matters within the jurisdiction of the criminal, juvenile delinquency and quasi-criminal municipal side of the justice system. Substance abuse also constitutes a significant factor in the incidence of problems such as child neglect and abuse, domestic violence, divorce, non-support, homelessness, runaways and, of course, driving while intoxicated (DWI). Moreover, a significant percentage of those who are civilly committed by the courts to involuntary psychiatric hospitalization fall into the category of dually diagnosed, or "Mentally Ill/Chemically Addicted" (MICA)³⁴,

³⁴A number of jurisdictions are developing special dockets modeled after the Drug Court approach to handle classes of chronic criminal offenders whose criminality is aggravated by coexisting substance abuse and related problems, for whom conventional sanctions available to the criminal justice system are inadequate. Discussion about trying to target a MICA population in a Drug Court spinoff program has occurred in both Camden and Hudson Counties. For a sense of the research and recommendations that are being made

persons who tend to self-medicate with illegal or unhealthy substances to compensate for their psychological pain. Many of these same people are chronic offenders within the ambit of criminal, delinquency and municipal courts as well, particularly when they do not stay on prescribed medication.

S) *Special Challenges Raised by the Enactment of the Adoption and Safe Families Act (AFSA)*

Recent amendments to New Jersey statutes made pursuant to the federal *Adoption and Safe Families Act of 1997 (AFSA)* require that the safety of a child be the paramount concern when DYFS considers whether to remove the child from a home in light of suspected abuse or neglect. A significant factor in removal is parental drug and alcohol use. Unfortunately, the degree of parental drug and alcohol abuse has also skyrocketed during the past decade, and has had a devastating impact on children in the child welfare system.³⁵ Programs in other states have estimated that drug or alcohol dependency affects at least 80% of the families involved in abuse and neglect cases, with alcohol or drug use by one or both parents being a contributing factor.³⁶ A similar or worse picture exists in the placement cases in New Jersey.³⁷

AFSA also significantly reduces the time frames for finding permanent placements for children removed from their homes and placed into foster care because of parental abuse and neglect. Since family reunification is the most common initial case goal in abuse and neglect cases, *AFSA* has meant that New Jersey Family Courts must find better coordinated ways of providing services to parents to help remedy the problems that led to

by experts in this field, see, for example, any of a number of publications put out by the National GAINS Center for People with Co-Occurring Disorders in the Justice system, a federal partnership among the Center for Substance Abuse Treatment, the Center for Mental Health Services, and the National Institute of Corrections established in 1995 and located at 262 Delaware Ave., Delmar, N.Y. 12054. See also the website of the "Dual Diagnosis Web Ring" <www.toad.net/arcturus/dd/ddhome.htm>. There are even some experimental Treatment Courts for "singly" diagnosed mentally ill and mentally retarded offenders such as the Mental Health Court in Broward County, Florida which targets non-violent misdemeanor level offenders. Baker, Debra, "Special Treatment", *ABA Journal*, June, 1998 at 20-21.

³⁵"Juvenile and Family Drug Courts: An Overview," Drug Courts Program Office, U.S. Department of Justice Office of Justice Programs, Washington, D.C. (June, 1998)

³⁶For example, in Reno, Nevada in 1991, substance abuse was a factor in 66% of child maltreatment cases; by 1994, it was considered a factor in 97% of the cases. "Promising Innovations: Family Drug Courts," The National Center on Addiction and Substance Abuse (CASA),

³⁷Cecilia Zalkind, *Stolen Futures*, The Association for Children of New Jersey, New Jersey (1994)

the removal of the child from the home, if possible. Otherwise, pursuant to *AFSA*, New Jersey law now requires that DYFS seek termination of parental rights in cases wherein the child has been in foster care for 15 of the last 22 months, unless an exception is met.

More than ever, then, expedient and comprehensive parental drug treatment is a frequent, critical and urgent part of a DYFS case plan for family reunification. Prompt and definitive interventions are needed to maximize parents' ability to successfully meet DYFS requirements of recovery from substance abuse, and better developed court mechanisms are needed to ensure judicial supervision, coordination and accountability of services provided to children and families in crisis. Improved means are necessary in order to provide effective alcohol and drug recovery services, integrated with other therapeutic services needed by the family, in order to maximize the opportunity for long term parental recovery and improve long term outcomes for children.

Thus, in the child welfare court arena as well, the Drug Court approach may be one answer.

III) WHAT ARE "DRUG COURTS", AND HOW DID THEY COME ABOUT?

A) *Definition of Drug Courts*

Drug Courts are entities which fuse ongoing therapeutic measures with extended case processing in a justice system. They are not merely courts assigned to hear exclusively drug cases in a traditional criminal case processing model such as that described above. Instead, they implement and supervise long term probationary sentences (or other extended bouts of compliance with the dictates of courts in non-criminal matters) for specially selected offenders whose non-violent criminality or other anti-social behavior is drug-driven and which is conditioned upon continued compliance with rigorous treatment plans. They both monitor and mentor progress. Characterized by their relationships with participants rather than by the identities of the charges which brought those participants to them, Drug Courts try to firmly but fairly help drug-driven offenders stay the course of recovery. Unlike traditional probationary or parole supervision, they deliberately and directly take on the challenge of brokering actual change in offenders.

To date, the most prevalent manifestations of Drug Courts by far are in criminal courts³⁸. The discussion of Drug Courts that follows will therefore assume a criminal

³⁸As will be discussed further, *infra*, according to the most recent statistics compiled by the Office of Justice Programs Drug Court Clearinghouse and Technical Assistance Project (DCCTAP) at American University, probably more than 400 adult criminal drug courts are already functioning in the United States with many more planned, over 100 juvenile delinquency drug courts exist at some stage of development, a handful of family drug courts are in operation with more in the pipeline, and an indeterminate number of Driving While Intoxicated (DWI) or other municipal courts or hybrid treatment courts also are in operation.

justice setting unless otherwise noted.

The interaction between a Drug Court and a participant can begin where the interaction between a traditional criminal court and a defendant ends: as soon as a disposition has been made of a defendant's case. Alternatively, a drug court can function as both the pre-dispositional case processing and the post-dispositional case managing entity. In either version, the essence of the Drug Court experience is a focus on treatment within the context of an ongoing relationship with a participant, rather than merely the one or two shared milestone events characteristic of a traditional criminal justice experience. Notably, however, participants in Drug Court treatment are nevertheless held to strict standards of compliance with other stringent probation conditions such as frequent reporting, paying fines and restitution as soon as possible, clearing up old financial and court obligations, maintaining employment and/or education as soon as possible, and exercising family responsibility as soon as possible. Participants are also held to high standards of honesty, commitment and responsibility. Drug Courts require hard work and an extended commitment to a sober, law-abiding lifestyle.

B) *Beginnings of a Paradigm Shift to a Drug Court Model*

Drug Courts can only function within a context that enables them to exist both jurisdictionally and operationally. Thus, the laws under which Drug Courts operate must allow them to function, and the agencies and structures with whom defendants interact through Drug Court participation must be adaptable to the Drug Court mode of operation. In order to understand the present status of Drug Courts in New Jersey, it is useful to first review the national history of both the development of laws that incorporate treatment into criminal case disposition and the development of systems which operate in a new treatment-infused criminal justice paradigm.

Despite an evolving understanding of addiction as illness and the passage in 1970 of the federal Treatment and Rehabilitation Act, early efforts to manage the increasing numbers of drug cases coming into the criminal justice system in the 70's and 80's in jurisdictions such as New York and Chicago tended simply to allocate all drug cases entering a given jurisdiction to a particular venue, so that the expanding volume of cases could be handled more efficiently. Organizing the processing of drug cases in this expedited case management manner in so-called "Narcotics Courts" may have been a useful measure for criminal justice systems, but it soon became clear that it had little effect on reducing drug-driven crime itself.

Recognizing not only that a large percentage of criminality is drug-driven³⁹, but

³⁹Citing the U.S. Dept. Of Justice's National Institute of Justice *Drug Use Forecasting 1994 Annual Report on Adult Arrestees: Drugs and Crime in America's Cities*, 1995, the DCCTAP's 1997 "Summary Assessment of the Drug Court Experience" reported that "[d]rug Use Forecasting (DUF) Data collected on defendants in 23 cities indicates that 51% to 83% of arrested males and 41% to 84% of arrested females were under the influence of at least one illicit drug at the time of arrest".

also that the conventional criminal justice deterrence model has been ineffective in decreasing drug-driven criminality⁴⁰, many criminal justice policy makers increasingly turned in the past decade to measures and models which acknowledge that drug dependency is an illness, and which therefore incorporate treatment into dispositional models. Some of the change has arisen out of efforts focused on drafting laws which build treatment into case disposition, while other change has arisen out of efforts by coalitions of criminal justice system institutional members - such as the judiciary, prosecutors and public defender offices, probation systems, et. al. - to build new models for actual relationships between defendants and those institutions.

C) Model State Drug Legislation

Concern for comprehensive planning to address the many problems posed by drugs in our society led the United States Congress in 1988 to mandate creation of a bipartisan, presidentially appointed commission to develop model state drug legislation. The model laws which were developed range from those concerned with economic remedies, community mobilization and drug-free families/schools/workplaces to those concerning crimes codes and treatment. Among the 44 model drug laws drafted by the President's Commission on Model State Drug Laws in 1993 was a model sentencing law known as the Model Early and Periodic Screening, Diagnosis and Treatment Services Act (Model Criminal Justice Treatment Act), which eponymously incorporates diagnosis, periodic screening and treatment as mandatory dispositional components in criminal sentencing. Upon completion of its mission, members of the President's Commission established a body known as the National Alliance for Model State Drug Laws, which is supported by the Bureau of Justice Assistance (BJA) in the federal Office of Justice Programs (OJP) and which currently promotes the model drug legislation drafted by the President's Commission to different state law-makers and policy planners.⁴¹

Notably, the Model Criminal Justice Treatment Act actually *mandates* treatment where diagnostic assessment indicates it is needed. It is informed by an understanding of the relationship between substance abuse and crime, but it is also driven by an assumption which is apparently born out in various studies that even coerced treatment is of some value⁴².

⁴⁰"Most criminal justice system professionals estimate that at least 45% of defendants convicted of drug possession will recidivate with a similar offense within two to three years. The more frequently a defendant has been arrested for a drug offense, the more likely he or she is to recidivate. A high percentage of defendants convicted of drug possession are also arrested for [other] offenses..." *Id.*, footnote omitted.

⁴¹This particular model law also served as the model for one of New Jersey's current and key sentencing laws, 2C:35-14, which will be discussed at length *infra*.

⁴²Forcing drug abusers who commit nonviolent crimes into rehabilitation helps them come clean, according to studies released [in March, 1999] by... the Physician Leadership on National Drug Policy [a bipartisan group of health experts]..." "Drug courts help reduce arrest rates," *The Jersey Journal*, *supra* at footnote 8; but note also that coerced

The Model Criminal Justice Treatment Act calls for treatment as a consistent component of criminal sentences for drug dependant persons, but it does not, in itself, create mechanisms for maintaining and supporting continuing recovery efforts by those who have been allowed/ordered into treatment as part of their sentences. While commanding treatment, it relies solely on pressure or coercion to obtain compliance, while incorporating the inevitable frequent urinalysis requirement.

Addiction is a chronic and, if untreated, progressive disease, marked by periods of relapse. Fear of incarceration may lead many to treatment, however it has not proven to be a successful enough motivator to keep individuals in recovery in numerous cases. Research has shown that the longer an individual remains in treatment, and the more cumulative treatment an individual receives, the greater the success in recovery is likely to be⁴³. It has also been demonstrated that achieving significant lasting success in drug treatment is a long term transformational process⁴⁴. Thus, if a jurisdiction solely adopts the model act as an intended exclusive means of successfully treating drug dependant offenders but does not provide related services to help them successfully stay in treatment, it may well be repeating the mistakes of the past, and it may be unlikely to achieve the desired outcomes. The model act acknowledges the advisability of diagnosis and treatment but, like other predecessor sentencing models, it perpetuates the means to catch violations without building in concomitant measures likely to actually enhance success in recovery and maximize the benefits to be gained by enabling successful recovery in formerly drug-driven offenders.

Considerable confusion exists about whether a "true" Drug Court is one based solely upon the Model Criminal Justice Treatment Act design or one based upon some other blueprint. Conceptually, therefore, it is important to understand that a sentencing scheme based upon the Model Criminal Justice Treatment Act is simply that. It is not the

treatment has limitations and is not optimal, see *Fact Sheet # 11: Drug Courts and Coerced Treatment*, Friends of the Addicted for Comprehensive Treatment [FACT] (visited March 1, 2000) <<http://www.factadvocates.org/factsheets/facts11.html>>.

⁴³A study by the federal General Accounting Office of multisite longitudinal studies of drug abuse treatment concludes that clients who stay in treatment for longer periods report better outcomes, while retaining clients in treatment programs is problematic. *Drug Abuse: Research Shows Treatment Is Effective, But Benefits May Be Overstated*, U.S. General Accounting Office, Washington, D.C., GAO/HEHS-98-72 (Mar. 27, 1998).

⁴⁴[T]reatment ...works, although not always, and often not the first time... [T]he single most important key to success is length of time in treatment. National studies which have followed tens of thousands of addicts through different kinds of programs report that one-third of those who stay in treatment longer than three months are still off drugs a year later. The success rate jumps to two-thirds when treatment lasts a year or longer." Falco, Mathea, *The Making of a Drug-Free America: Programs That Work*. New York: Random House, 1992, at 110 (footnotes ommitted).

equivalent of an actual Drug Court or Drug Court system, which are tied to the concept of therapeutic jurisprudence⁴⁵, an orientation which relies upon social science to blend law and the promotion of the psychological and physical well-being of the people it affects⁴⁶. Drug Court is an approach to dealing with sentenced offenders whose non-violent criminality is drug-driven which follows a so-called “transformed process” oriented toward problem-solving rather than a “traditional process” typically marked by pronouncements meted out by a “dispassionate, disinterested magistrate”.⁴⁷

⁴⁵Therapeutic jurisprudence has both proponents [see, for example, Hon. Peggy Fulton Hora, Hon. William G. Schma & John 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*, 74 Notre Dame L. Rev. 439 (1999)] and detractors [see, for example, Eric Cohen, *The Drug Court Revolution*, The Weekly Standard Magazine, 5/15/99, (visited Dec. 29, 1999) <http://www.weeklystandard.com/magazine/mag_5_15_99/cohen_feat_5/15/99.html>].

⁴⁶ Much has been written about therapeutic jurisprudence, which first arose in the context of mental health law; this definition, coined by Christopher Slobogin in *Therapeutic Jurisprudence: Five Dilemmas to Ponder*, 1 Psychol., Pub. Pol’y & L. 193, 196 (1995), reprinted in *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* 811, 815 (David B. Wexler & Bruce J. Winick, eds., 1996) has “come to be accepted by most scholars writing on the topic.” *Therapeutic Jurisprudence and the Drug Treatment Court Movement*, *supra* at footnote 45, at 443.

⁴⁷ Rottman, David and Casey, Pamela, “Achieving Court and Community Collaboration,” *supra* at footnote 12, quoting Zimmerman, Michael D., “A New Approach to Court Reform”, *Judicature* 82 (3) (November-December 1998). Rottman and Casey reproduce in this article a chart prepared by Roger K. Warren for a presentation to a Great Lakes Court Summit on September 24-25, 1998 which cogently explicates the following contrast between traditional and transformed court processes:

<i>Traditional Process</i>		<i>Transformed Process</i>
* Dispute resolution	vs.	* Problem-solving dispute avoidance
* Legal outcome	vs.	* Therapeutic outcome
* Adversarial process	vs.	* Collaborative process
* Claim- or case oriented	vs.	* People-oriented
* Rights-based	vs.	* Interest- or needs-based
* Emphasis on adjudication	vs.	* Emphasis on postadjudication and alternative dispute resolution
* Interpretation and application of law	vs.	* Interpretation and application of social science

D) *Development of the Drug Court Model*

Although there are some variations on the Drug Court model, the prototypical Drug Court nationally has come to be based upon a qualitatively different approach to criminal justice first developed in 1989 in Dade County, Florida⁴⁸, which does embrace therapeutic jurisprudence principles. Mindful of the failures of traditional criminal justice models to stop drug dependent criminality, the developers of the Dade County model and its champions have focused upon ways in which court systems can actually nurture successful compliance and recovery.

A national Drug Court movement has evolved dramatically in the past decade⁴⁹.

* Judge as arbiter	vs.	* Judge as coach
* Backward looking	vs.	* Forward looking
* Few participants and stakeholders	vs.	* Wide range of participants and stakeholders
* Individualistic	vs.	* Interdependent
* Legalistic	vs.	* Common-sensical
* Formal	vs.	* Informal
* Efficient	vs.	* Effective

⁴⁸ It is, of course, no accident that federal executive policy makers in the past two administrations have looked favorably upon the Dade County model, as it originated at the partial behest of then Dade County Prosecutor Janet Reno, now the Attorney General of the United States. On the other hand, bi-partisan support has taken the form of significant federal appropriations for the development of local Drug courts totaling over \$100 million since Fiscal Year 1994. The first appropriation from the federal drug court grant program authorized as part of the 1994 Violent Crime Control and Law Enforcement Act of 1994 totaled \$11.5 million in 1994; by Fiscal Year 1999, the grant amount totaled \$ 44 million. New legislation jointly introduced to the Committee on the Judiciary by Senators Arlen Specter (R-PA) and Joseph Biden (D-DE) is pending; according to Volume VII, No. 1 of the NADCP News, if granted, S.1808, the Drug Court Reauthorization and Improvement Act of 1999 would provide significant enhanced federal assistance to state and local governments to meet the growing demand for drug court programs.

⁴⁹ A full understanding of the intensely active and rapidly expanding national network of Drug Court professionals, institutions and efforts to effectuate Drug Courts can be gleaned by perusing the websites of the National Association of Drug Court Professionals (NADCP) <www.NADCP.org>, the Office of Justice Programs Drug Courts Program Office <www.ojp.usdoj.gov/dcpo/>, and the Office of Justice Programs Drug Court Clearinghouse and Technical Assistance Project (DCCTAP) at American University

The momentum generated by widespread enthusiasm for this model has led to the establishment of a federal OJP Drug Courts Program Office. That office in conjunction with the National Association of Drug Court Professionals (NADCP) has deemed a "true" Drug Court to be premised on the following key components:

- Integration of alcohol/drug treatment with justice system case processing;
- A non-adversarial team approach which promotes public safety while protecting participants' due process rights;
- Identification and placement of eligible participants early in justice system case processing;
- Access to a continuum of related treatment and rehabilitation services;
- Frequent testing to monitor abstinence;
- Coordinated strategic responses to participants' compliance;
- Ongoing judicial interaction with each participant;
- Process and outcome monitoring and evaluation;
- Continuing interdisciplinary education among team to enhance planning, implementation and operations; and
- Forging partnerships and support among courts, public agencies and the community⁵⁰.

Drug Courts based upon the Dade County model typically have been seeded by federal grants from the OJP over the past decade and by now have expanded to all 50 states. They are frequently referred to as OJP courts, although there are international courts developing based upon this model as well. Close to 600 OJP Drug Courts (hereafter Drug Courts) currently exist at some stage in the United States; there is also a burgeoning number of Juvenile Drug Courts and even a smattering of Family Drug Courts. Many more Drug Courts are in planning stages, and the federal mechanism for initiating planning has been eased this year in order to promote the establishment of even more new Drug Courts⁵¹.

<www.american.edu/academic.depts/spa/justice/dcclear.htm>.

⁵⁰ *Defining Drug Courts: The Key Components*, pp. iii-iv, Washington, DC, The National Association of Drug Court Professionals/Drug Courts Standards Committee, January 1997.

⁵¹ Unlike in past years where traditional grant application process requirements applied,

Drug Courts are championed by federal policy makers as highly placed as Attorney General Janet Reno and Drug "Czar" Barry McCaffrey, and an extremely well established federal bureaucracy is in place which promotes their development through education, training, networking and support services and a federal grant awards program which is generous but of limited life span. Planning, implementation and follow-up grants are available to jurisdictions that create OJP model Drug Courts, but federal funds cannot be counted on for long term sustainability of such courts. The clear design of the federal planners is to successfully launch Drug Courts as extensively as possible throughout the country and then eventually leave it to each local jurisdiction to determine how to maintain the Drug Court systems over the long haul. As of June, 1999, it was reported that at least 14 states had enacted some form of legislation to authorize local funds for Drug Courts⁵².

Every aspect of the OJP financed Drug Court movement is being tracked statistically through entities such as the OJP Drug Court Clearinghouse and Technical Assistance Project (DCCTAP) at American University, sponsored by the Drug Courts Program of the OJP. The NADCP has grown by leaps and bounds, and has led to the establishment of a National Drug Court Institute which is developing training models for institutional participants of Drug Courts such as judges, public defenders, prosecutors, program coordinators, probation officers, and so forth.

E) Understanding the Drug Court Model

Pragmatically based upon a therapeutic jurisprudence theoretical model rather than a punitive/retribution jurisprudence, Drug Courts incorporate a knowledge of the addiction process and an understanding of the complexities inherent in real change. Treatment-driven interactions and interventions by judge-led interdisciplinary teams require that participants engage in a high degree of recovery-related activity for an extended period of time. The intent is that participants will come to internalize what are initially external controls, come to take ownership of their own recovery and, consequently, have a better chance of successful long term response to treatment. Because better self-control among participants will reduce their need to commit drug-driven crimes in the future, the positive impact on public safety engendered by the Drug Court approach should be significant.

Operating with a combination of carrot-and-stick conditioning, Drug Courts sanction and reward behaviors that are within the control of the participants, such as accountability and honesty, rather than punishing manifestations of illness such as illegal

the Drug Courts Program Office this year launched a Drug Court Planning Initiative which made available to all communities both a simplified and streamline FY 2000 Grant Application Kit and supporting planning workshops.

⁵² See United States Attorney General Janet Reno's Press Release on Drug Courts dated June 3, 1999 <www.ojp.usdoj.gov/dcpo/dcpopr63.htm>.

ingestion of drugs, which are not initially within the control of participants. While not condoned, relapses are expected and do not signal termination unless they are accompanied by a lack of genuine effort on the part of the faltering participant. When fully staffed and linked to adequate resources, Drug Courts provide a holistic and flexible continuum of services and care to participants whose treatment and recovery needs shift over time. They tend to treat participants with patience, optimism and dignity rather than with condescension, pessimism and disdain. Much of the handling of participants in Drug Courts resembles the best aspects of effective parenting.

Admission into Drug Court programs depends upon careful screening according to specific eligibility criteria. Successful candidates must be drug or alcohol dependent, have no history of violence, and agree to be subject to potential sanctions - even including brief periods of incarceration, if necessary - to ensure compliance with the program. Defendants must admit their wrongdoing, and the collective judgment by the admitting gatekeepers on the Drug Court team must be that their drug dependence was germane to their wrongdoing. Offenders who are deemed to have offended solely out of a profit motive are deemed ineligible for admission.

The degree of prior involvement by its participants in the Criminal Justice System determines whether a Drug Court will be diversionary in nature or post-adjudicatory. Drug Courts that are diversionary reward successful completion of their programs with a dismissal of charges. These tend to be for first offenders and are frequently the format followed in Juvenile Courts. Early in the evolution of Drug Courts, diversionary versions were more frequent than they now are.

The trend in more recent times has been to target the more serious offender, who is rewarded by being afforded an alternative to incarceration rather than by a dismissal of charges. Jurisdictions choosing this format do so because they have come to understand that "[i]t is the older more 'experienced' offender for whom successful treatment intervention can have the greatest impact on prison populations and generate the most substantial savings in reduced crime and criminal justice costs."⁵³ Moreover, the subset of individuals who have either bottomed out or are in imminent danger of significant loss of liberty are particularly motivated, as they have come to understand that failure will undoubtedly entail fairly dire consequences.

F) *General Programmatic Parameters of Drug Courts*

Drug Courts typically impose numerous conditions upon participants who are closely monitored and whose progress is regularly reviewed both outside of their

⁵³ Belenko, Steven, Ph.D. 1998. *Research on Drug Courts: A Critical Review*, National Drug Court Institute Review, Vol. 1, Issue 1, citing: CASA (The National Center on Addiction and Substance Abuse). 1997. *Behind Bars: Substance Abuse and America's Prison Population*. NY: The National Center on Addiction and Substance Abuse at Columbia University.

presence and in their presence. A contract or at least notice of expected behaviors is given to participants at the beginning of their involvement, and they are strictly held to those rules. The term of Drug Court probation is usually well over a year but is often considerably longer⁵⁴, as graduation or successful termination is conditioned not upon a certain time goal, but upon success in behavioral terms that the program has established. Probationers must complete all prescribed phases of a program that has been carefully mapped out for them until they stabilize, remain abstinent for significant periods of time, demonstrate that they have made significant therapeutic progress, establish healthy long term habits, and become invested in both recovery and a responsible and productive lifestyle.

While eligibility for participation in a Drug Court varies with the group of offenders which that program has chosen to target⁵⁵, universally ineligible are those individuals who are deemed to be violent, have violent histories, are seriously mentally ill, or are sexually predatory. In addition to screening applicants for "legal" eligibility, Drug Courts carefully evaluate their "clinical" eligibility and treatment needs so that if acceptable, they can be placed in appropriate initial therapy modalities.

G) Drug Court Teams and the Roles of their Members

One of the most striking features of a Drug Court is the redefinition of the roles of its institutional participants. Essential members of a Drug Court team are a judge, a prosecutor, a defense bar representative (invariably a public defender), one or more treatment providers, and one or more probation officers. Some Drug Court teams have coordinators and/or representatives from any of a number of other entities such as police departments, educational or vocational programs, health or family counseling agencies, and so forth. While the judge remains the ultimate authority figure in a Drug Court, s/he is fully conversant with and dependent upon the clinical judgment of the treatment representative(s) and is open to input from the rest of the team as well⁵⁶. Decisions by

⁵⁴ One of the reasons Municipal Drug Courts have been slow to develop is that the average amount of time needed to sufficiently supervise individuals in Drug Court programs often exceeds the jurisdictional limits of these quasi-criminal tribunals.

⁵⁵ Some programs target first offenders exclusively, some long-time offenders, and some a blend or spectrum of presenting criminal backgrounds.

⁵⁶ The role of judge as social scientist is not universally welcomed. See, for example, the comments of retired Burlington County Assignment Judge Martin L. Haines, "Judges Are Not Social Scientists", 158 N.J.L.J. 691 (November 22, 1999). Although Judge Haines expresses discomfort with problem-solving and behavior modification efforts by courts, he nonetheless opines that "[p]rison sentences resulting from criminal proceedings are costly in terms of money and life, rarely rehabilitate and do little to solve the problem of crime..." He argues that "[m]ost drug cases should not [even] be in the courts..." , but the fact of the matter is that they are in courts, and the challenge thus becomes how to best deal with that phenomenon.

Drug Court teams are characteristically made by consensus. Although traditionally adversarial, in Drug Court the prosecutor and public defender become to a great extent team players. While the prosecutor does not ignore issues of public safety and the public defender does not ignore civil liberties concerns, they do step out of their customary roles when acting as members of the group. The input of every member of the team is valued in periodic reviews of the progress of participants, and decisions about which next steps the judge will order for each participant are made by the group as a whole.

Participation in a Drug Court team seems to enable members to more clearly understand and accept each others' concerns and agendas. Collectively, the group becomes much more schooled in addiction issues such as stabilization and relapse and more educated about effective addiction reduction techniques. Therapists discover how useful a judge's order can be in keeping reluctant patients in attendance at treatment sessions long enough for self-knowledge to start to sink in. Public defenders actually find themselves sometimes agreeing that participants need sanctioning, while prosecutors and judges come to understand that more severe sanctions need to be visited sparingly, else lose their effectiveness.

As members of Drug Court teams work together, they become more attuned to common ground, more savvy about constructive treatment designs and interventions for participants and more trusting of the programs and each other. While external observers may be skeptical of this new pattern of relationships among institutional members of the criminal justice system, Drug Court team members consistently express considerable enthusiasm for what they find to be surprising transformational professional experiences in these new roles. Rather than being pitted against each other, lawyers, probation officers, judges and counselors report great success and satisfaction in working together toward the shared goal of helping previously faltering individuals reclaim their own lives.

H) Etiology of Drug Courts and Their Teams

Successful Drug Courts staffed by effective Drug Court teams of this kind do not spring into being fully formed. Rather, they have proven to arise out of an extended planning process which brings all necessary stakeholders to the table to consider and design a system that both squares with the generally accepted model and reflects local individuality. Over time, interested potential institutional participants study increasingly available comprehensive documentation about Drug Courts, observe one or more existing operational Drug Courts, and engage in comprehensive discussion in order to determine the idiosyncratic parameters of a Drug Court that each of those stakeholders is willing to live with. Collaboration in a process of formulation in which participants both express and come to understand each other's agendas, concerns, and limits enables them to become a team with a shared vision, program and methodology. As the planning team evolves into a functioning team, it never ceases to tinker with the design of its Drug Court, incorporating what works and what doesn't into its ongoing development. In large measure because the continuum from designing to realizing to maintaining a Drug Court is a dynamic odyssey, the institutional team members remain engaged in the endeavor.

1) *The Drug Court Routine*

The typical operational structure of a Drug Court involves three components:

- frequent periodic team meetings (usually weekly) which consider the progress of participants during the intervals between reviews but are not conducted in their presence;
- frequent regular (usually weekly) in-court face to face reviews between the participants and the judge in the presence of other members of the treatment team and other participants in the program; and
- comprehensive ongoing participation in treatment and probation and any other programmatic requirements that have been placed upon participants.

During team reviews, which tend to take place immediately prior to in-court reviews, members of the treatment team share with each other what they know of each participant's progress during the interval since the last review. Team members such as therapists usually make general comments broadly outlining information so as to avoid violating confidences, but for the most part, the information shared is thorough and specific. The group collectively considers the need, if any, for the imposition of sanctions or incentives for each participant, and the judge clarifies what ground and/or message s/he needs to cover with each participant during his or her next face-to-face reviews with them.

In-person reviews carry with them the ambience and authority of the court, as they are conducted in court rooms on the record and may at any time include the issuance of a judicial order that will have to be complied with. On the other hand, the interaction between program participants and the judge tends to be in the form of a dialogue which other members of the team feel free to chime in on. Invariably, graduates of Drug Court Programs proclaim that of the many important relationships they experienced during participation in the program, the relationship with the judge meant the most to them. They stress the powerful impact on their recovery of having a judge care about them, root for them, hold them to high standards, forgive them and guide them. Much of the emerging pride and self-esteem of Drug Court graduates appears tied to their sense of having attained sufficient worthiness in the eyes of the judge.

Intense work outside of the courtroom each week complements the periodic progress reviews. At a minimum, each participant in a drug court each week must:

- attend one or more therapy and/or counseling sessions;
- attend one to three 12-Step type meetings;
- report to probation; and

- submit to one or more random urine tests.

Because Drug Court programs usually have phases, most participants are required to participate in counseling, 12-Step meetings and random urine testing much more frequently in the beginning of their Drug Court experience in order to stabilize. Even later, if relapse occurs or some other reason necessitates it, conditions may be stepped up. In addition, specific conditions geared to the individual needs and obligations of each participant are imposed and must be complied with. For example, some participants owe fines or restitution; if so, they are required to start periodic payments as soon as possible. Others may be in need of vocational training or job placement; if available they are required to attend such additional programs. All participants must eventually steadily maintain employment, matriculate in school, and/or responsibly care for dependants. If out-patient or even intensive out-patient treatment is insufficient to help participants remain abstinent, then residential treatment is ordered. Unlike in traditional probation, expectations are continually made clear and assistance is usually focused, readily available and specifically tailored to individual need.

Compliance with Drug Court requirements is necessary in order for participants to succeed in these programs. Because the nature of change is that it is a slow and fragile process and because recovery and abstinence are nearly impossible to achieve in the short term and even difficult to maintain in the long run, Drug Courts have found that it is important to employ various methods to encourage participants to stay in treatment long enough for real progress to be made. This is done through a system of graduated sanctions and incentives that each individual Drug Court devises.

Negative reinforcement for insufficient compliance is typically given through sanctions such as earlier curfews, increased reporting requirements, more frequent urinalysis testing, extra community service hours, and essay and speech assignments. Even short terms in jail are imposed, after which participants are released to continue in the program, although most Drug Courts use incarceration sparingly, having learned that it loses its power as a motivator if it is imposed too easily or frequently. Significantly, the behaviors which are most punished are lack of accountability and lack of candor, rather than mere failure to stay drug-free. The programs understand that old habits die hard, and gear their requirements toward developing life skills in the participants which will support their long-term recovery and abstinence.

Positive reinforcement for successful compliance is typically given through incentives such as later curfews, fewer reporting requirements, or less frequent random urinalysis. The messages from Drug Court to participants via its sanctions and incentives are: a) if you keep working with us, we will continue to care about you, fight for you and help you; and b), do it our way because we know what we're doing, not your way which has led you to where you are.

J) Consequences of Failure

Drug Courts are both supportive and demanding of their participants. In

exchange for an alternative to incarceration and a path to a drug-free life, participants are required to consistently follow exacting rules. Relapse is tolerated and handled therapeutically, but lack of effort or honesty is punished. Drug Courts range in their willingness to abide initial difficulties that various participants may have in toeing the line, and typically rely upon their individual experience and expertise to determine how much to slack to allow for initial adjustment. Participants are routinely surprised and moved by the fact that an initial failure, though never without consequence, does not automatically result in termination from the program. Most "come around". Eventually, however, if participants consistently fail to comply with Drug Court demands, after appropriate due process of law usually in the form of Violation of Probation hearings, they are terminated from the programs. In many cases this leads to imprisonment; in others, a return to less interactive routine probationary status.

K) How Are Drug Courts Paid For?

Footing the bill for Drug Courts is one of the biggest challenges in their implementation. Jurisdictions have run the gamut in creativity when seeking, developing and implementing long-term funding for them. Both court operations and treatment need to be paid for. While participants are usually asked to pay what they can afford for treatment, it is unusual for most treatment costs to be covered in this manner. Some jurisdictions are able to obtain occasional private grants⁵⁷ or reallocate existing criminal justice resources which may temporarily go a long way toward paying for Drug Courts⁵⁸. This does not seem to offer sufficient means to adequately support full Drug Court operations or assure their sustainability, however.

⁵⁷ In its early days, Camden County's Adult Drug Court was the recipient of a one time grant from the Robert Wood Johnson Foundation, for example. The Robert Wood Johnson Foundation is currently funding an outcome evaluation of Camden County's Juvenile Drug Court in conjunction with researchers from the University of Pennsylvania.

⁵⁸ The first Drug Court in New Jersey, which began in April of 1996 in Camden County Superior Court, started operations without any initial funding in place by targeting 50 probationers who were "flunking" probation due to substance abuse and offering them an intensified Drug Court probationary experience rather than incarceration. It was not possible to sustain this operation very long without the allocation of additional funds, however. On the other hand, if a sufficient number of cases were to be redirected from traditional criminal case management to Drug Court management, it might well be that in the long run resources available to be reallocated from the one to the other would be sufficient to support the needs of an expanded Drug Court system without the necessity of large additional appropriations. This kind of possibility lends support to a recommendation in the 1998 Judiciary Strategic Planning Committee Report that the Judiciary be able to control its own budget once appropriations to the Judiciary Branch are approved, although continual coordination with the budgets of various executive agencies would be necessary to ensure that all services necessary to maintain Drug Courts are provided.

Most jurisdictions with Drug Courts in place have received at least some amount of federal seed money from the OJP Drug Court Office but many have also been able to establish dedicated long-term funding either as a portion of judiciary budgets, as separate appropriations, or from a percentage of certain sales taxes such as those on tobacco or alcohol⁵⁹.

Linkages with other related community resources can pay for important ancillary services for Drug Courts such as the child care and other support services from North Carolina's primary preschool initiative, Smart Start⁶⁰, or the pre-funded job training and placement services of a local government agency such as Camden County's Improvement Authority, which regularly assists Drug Court participants in Camden County Adult and Juvenile Drug Courts. Drug Court funding sources in California reportedly include "state and local general fund resources, law enforcement grants, trial court funding, asset forfeiture money, private donations, redirected federal health funds, health insurance indemnification, client fees and donated goods and services"⁶¹.

L) Do Drug Courts "Work?"

Because Drug Courts have been in existence as a national model for approximately 10 years, but for much shorter durations in the majority of individual jurisdictions, it has only been possible so far to ascertain averaged nationwide statistics to give any indication of their efficacy as a whole. The collective numbers relating to measures of success are very encouraging. According to the DCCTAP's most recent Drug Court Survey Report, "drug court programs have reported [drug usage] recidivism rates between 2% and 20%" and "[s]ignificantly reduced drug use was found even among participants that did NOT graduate from the program, with as much as 93% of participants testing negative for drugs."⁶² This compares favorably with an average untreated rate of recidivism of 45% or more.⁶³ Most remarkably, recidivism among graduates thus far is only 4%⁶⁴.

DCCTAP also reports that: the average retention rate of the approximately

⁵⁹ "In Kansas City, Missouri, the electorate has twice approved a quarter-cent sales tax to fund the drug court and other programs to reduce the demand for drugs. In addition, five cents from every package of cigarettes sold in the county goes to support the family drug court." *Drug Courts: A Revolution in Criminal Justice*, Drug Strategies, Washington D.C., 1999, at 24.

⁶⁰ *Id.*, at 24.

⁶¹ NADCP NEWS, Vol. VII, No. 1, 7.

⁶² NADCP NEWS, Vol. VII, No. 1, 3.

⁶³ "Promising Innovations: Family Drug Courts", citation at footnote 36, *supra*.

⁶⁴ *Drug Courts: A Revolution in Criminal Justice*, footnote 59, *supra*, at 27.

100,000 participants to date is reported as over 70%; 75% of those successfully in or graduated from the programs had been previously incarcerated; over 750 drug-free babies have been born to participating mothers; over 3500 participating parents have regained custody of their children; over 4500 participating parents have re-engaged in making child support payments; and 73% have obtained and/or retained employment. Moreover, notable cost savings are reported which are attributable to reductions in the price of incarceration, health care, police overtime, victim compensation and public assistance, among other items. The contrast between estimated average annual cost of a jail bed (from \$20,000 to \$50,000) and estimated average annual cost of Drug Court treatment (varying, but certainly not even near \$10,000) is palpable.

M) *Extension of the Drug Court Model to Juvenile, Family and "DWI" Courts*

The "treatment court"⁶⁵ approach of Drug Courts has lent itself to applications in certain quasi-criminal and even non-criminal arenas. Since drug dependency appears to underlie a large proportion of anti-social behavior⁶⁶ which ends up in Family and Municipal Courts as well as Criminal Courts, the model is being adapted to these other forums, as well. The impetus for trying to do so comes from parallel urgencies arising out of community demands for remedies to juvenile delinquency, drunk driving, domestic abuse, and child abuse and neglect. Each forum and target population presents its own set of challenges in implementing the Drug Court approach.

For example, the psychosocial complications of adolescent development, the lack of opportunity to be motivated by having "hit bottom", and the necessity of involving whole families in treatment make it more difficult to fashion a successfully calibrated Juvenile Drug Court⁶⁷. The hallmark of Juvenile Drug Courts operating to date has been

⁶⁵ Some jurisdictions have begun to use the "treatment court" approach which has arisen out of the concept of therapeutic jurisprudence in non-Drug Court modalities where a similar mode of operation makes sense. Thus, for example, there has been recent experimentation with the notion of "mental health court" in one or two jurisdictions in Florida, and a number of existing Drug Courts have begun to devise adjunct programs or tracks for MICA clients. The "treatment court" concept is related in interesting ways to developing notions of restorative justice and "community courts". For insight into this connection see discussion of it in Rottman, David and Casey, Pamela, "Achieving Court and Community Collaboration", *supra* at footnote 12.

⁶⁶ Domestic disputes, for example, "were ... one of the most commonly reported experiences associated with drug use: 25% of jail inmates said they's had arguments with [family members] while under [the] influence..." 1994 Bureau of Justice Statistics Report, *supra*, at footnote 5.

⁶⁷ Judge John Parnham of Pensacola, Florida, a well-respected innovator of Juvenile and Family Drug Courts, warns "[f]or those jurisdictions that take the adult court model and overlay it in the juvenile justice system, I respectfully suggest they're going to encounter some problems. There are a lot of unique dynamics and issues that require more attention and different approaches than the adult model provides." *Drug Courts: A Revolution in*

flexibility, but certain characteristics are common to their approaches. These include: much earlier and more comprehensive intake assessments; much greater focus on the functioning of the family throughout the juvenile's participation in the program; much closer integration of the information obtained during the intake and assessment process with subsequent decisions made in the case; much more active and continuous judicial supervision of the juvenile's progress in treatment and compliance with other program, treatment and rehabilitation services being provided; immediate use of age-appropriate judicial sanctions for non-compliance and age-appropriate incentives to recognize progress; and much greater coordination among the court, treatment community, school system and other community agencies needed to help the juvenile.⁶⁸

Given the youth and uniqueness of juveniles, special strategies are needed in Juvenile Drug Court to motivate these offenders to change. Juveniles often "present a sense of invulnerability and a lack of maturity, ... are at different developmental stages" than adults involved with Drug Courts, and are more influenced by peers and family members⁶⁹. Moreover, while the adult Drug Court can require participants to obtain "stable living" situations, most juveniles have little control over their living environments and have great difficulty in altering peer relationships. Dealing with juveniles also requires special consideration regarding the applicability of additional confidentiality requirements due to their juvenile status.

The populations and caseloads of juvenile and family court dockets have changed dramatically during the past decade. The matters that come before them are more complex and involve escalating degrees of substance abuse⁷⁰. The implementation of the *ASFA* has turned the wisdom of the Drug Court approach in child welfare matters into a virtual mandate, as discussed above. A Family Drug Court which can deal effectively with cases involving some loss of restriction of parental rights due to parental substance use has the potential to safeguard children more effectively while increasing the likelihood of family reunification⁷¹. A Drug Court approach seems tailor made for cases of child abuse and neglect due to substance dependency due to both their gravity and the shorter deadlines now surrounding permanency resolution for children pursuant to *AFSA*. Parents' motivation to participate in treatment in family court is usually tied to their goal of retaining custody of their children. In recognition of these factors, a number of jurisdictions have begun to pilot Child Welfare Family Drug Courts.

Criminal Justice, footnote 59, *supra*, at 31.

⁶⁸ "Juvenile and Family Drug Courts: An Overview," *supra* at footnote 35

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ For a detailed and thoughtful exploration of how Family Drug Courts could effectively help in child welfare cases, see Sharon Elstein, "Family Drug Courts May Hold The Key for Abused and Neglected Children of Substance Abusers", *ABA Child Law Practice*, Vol. 18, No.1, Washington, D.C. (March, 1999)

In 1997, there were nearly 1.5 million arrests for driving while intoxicated (DWI) in the United States - one arrest for every 122 licensed drivers. In an attempt to reduce recidivism among DWI offenders, some jurisdictions have started DWI treatment courts. Special challenges inherent in applying the Drug Court approach to DWI include the difficulty of a non-adversarial approach given the extreme distress of victims, and the limitations on the incentives that can be offered given the mandatory incarcerative imperative of many sentencing laws.⁷²

Some piloting of the Drug Court model has also occurred in the Domestic Violence arena due to a recognition of the need to maintain offenders in treatment in order to break the chronic cycle of this form of anti-social behavior. Community and political support for a treatment approach to this population is much harder to achieve, however, as this offender group is considered much less sympathetic than those unwittingly addicted to drugs and alcohol. The shift in perception that has at least to some degree come to view drug dependent persons as ill rather than bad has not extended as generously to perpetrators of domestic abuse.

IV) THE HISTORY OF DRUG COURTS IN NEW JERSEY

In the past three years⁷³, a number of Drug Courts have been planned and commenced operation in New Jersey. To appreciate their present status, it is important to trace their evolution here. It is also essential to understand that two separate streams of effort arising out of two separate but related modes of thinking about treatment within the New Jersey Criminal Justice System have led to the concurrent development of two adult criminal Drug Court tracks in New Jersey. Some very recent amendments to existing legislation which will have an unclear future impact on Drug Court dispositions, need to be considered as well.

A) *The State Drug Court Initiative (DCI)*

One of the New Jersey Drug Court tracks, known as the state "Drug Court Initiative" (DCI) grew out of the efforts of a unique Steering Committee/Working Group of high ranking representatives of various state agencies who came together around the goal of establishing a treatment alternative to incarceration.

Beginning sometime in 1994 and carried on into 1995, a number of AOC

⁷² *Drug Courts: A Revolution in Criminal Justice*, footnote 60, supra at 32.

⁷³ A so-called "Drug Court" in Middlesex from 1992-1998, now defunct, which constituted an early processing court of exclusively drug cases was not a Drug Court within the meaning of the Drug Court concept as it has been defined in this paper, and should not be considered part of the history or landscape of Drug Courts being considered here.

personnel, state legislators and representatives of New Jersey criminal justice agencies became interested in exploring whether New Jersey might benefit from the kind of treatment alternative to incarceration that had been incorporated in the 1993 Model Criminal Justice Treatment Act discussed above. They educated themselves about drug rehabilitation treatment for addict offenders⁷⁴, attended at least one seminal conference on the topic, and started to think about how it might be integrated into the New Jersey landscape.

At the same time, statewide policy planners in the executive branch, in particular, were becoming increasingly alarmed at the seemingly unstoppable expansion of incarceration in the state. As the numbers were analyzed, it became clear that much of the growth in incarceration in New Jersey was attributable to non-violent drug-driven criminality, and that incarceration was not effective in preventing recidivism in this population. These leaders realized that the state needed a smarter way to apportion its resources within the existing institutions and statutory scheme in order to alter this self-defeating trend.

A conceptually simple but rather bold⁷⁵ idea⁷⁶ surfaced among the thinkers and planners: why not reallocate a portion of the budget of the Department of Corrections to create a fund that could pay for the cost of treatment as an alternative to incarceration? To consider the design and feasibility of this proposition, then Deputy Director of Policy and Planning for the Governor's Office Bruce Stout⁷⁷ convened a Steering Committee in late 1995 or early 1996⁷⁸ which included representatives of those who had already been thinking about treatment alternatives to incarceration. This Working Group started

⁷⁴ As evidenced even by the citations in this paper, there is voluminous literature available which analyzes the relationships among substance abuse, the corrections system and the criminal justice system. New Jersey's early Drug Court policy planners reportedly were particularly influenced by studies coming out of the nationally recognized National Center on Addiction and Substance Abuse (CASA) at Columbia University, founded in 1992 for the purpose of conducting research and policy and program demonstration initiatives in the substance abuse field.

⁷⁵ A search of the current sources of information about the funding of drug treatment within the Criminal Justice System reveals no other jurisdiction to date that has been able to successfully divert corrections money to treatment as New Jersey has.

⁷⁶ Most sources attribute the original idea to then Deputy Director of Policy and Planning for the Governor's Office Bruce Stout.

⁷⁷ Dr. Stout is now the Executive Director of the New Jersey Juvenile Justice Commission.

⁷⁸ Credit for this suggestion has been attributed variously to Dr. Stout, to Ronald Susswein, Deputy Director of the Policy Bureau of the Attorney General's Department of Law and Public Safety, and to Passaic County Prosecutor Ronald Fava.

meeting regularly to wrestle with the concept. It heard, expressed and reviewed the interests and concerns of many including the Department of Corrections (DOC), the Department of Health, the Division of Addiction Services (DAS), the Office of the Attorney General, the Office of the Public Defender, the Administrative Office of the Courts (AOC), the Treasury Department and the Office of Management and Budget (OMB). It also specifically directed its attention to an up until then little used provision in the New Jersey Penal Code known as N.J.S.A. 2C:35-14 (hereafter, 2C:35-14)⁷⁹.

2C:35-14 is a subsection of New Jersey's Comprehensive Drug Reform Act of 1986, which was signed into law on April 23, 1987 and is now known as the New Jersey Controlled Dangerous Substances (CDS) Act. That Act re-codified all of the offenses involving the use, possession or distribution of drugs (CDS) and contains all provisions governing sentencing of offenders for violations of the law involving CDS, including new enhanced penalties with mandatory incarceration for behaviors such as drug distribution within 1000 feet of a school. It also incorporated a provision allowing for rehabilitation in lieu of incarceration for a certain category of drug dependent persons under specifically prescribed circumstances. This treatment section of the Act, 2C:35-14, was in large measure crafted by Assistant Attorney General and Policy Bureau Deputy Director Ronald Susswein of the Attorney General's Department of Law and Public Safety, and bore a direct relationship to the Model Criminal Justice Treatment Act discussed above, which Susswein also helped draft.⁸⁰

The version of 2C:35-14 then (and until very recently) in place to which the Steering Committee directed its attention provided, in pertinent part, that:

- upon motion of a defendant, a court could sentence a drug dependent person not convicted of a first degree crime (the most serious kind; usually one of great violence) and not found to be a danger to the community to a term of five years probation conditioned upon drug treatment and periodic urine testing even if there was a presumption of imprisonment for the crime for which that person was convicted;
- the above option was not available to a person being sentenced for drug distribution in a school zone (within 1000 feet of a school) or for employing a juvenile in a drug distribution scheme or who had previously been convicted for drug distribution unless the motion for treatment in lieu of incarceration

⁷⁹ The full text of 2C:35-14 prior to its recent amendments is attached as an appendix, as is the full text of the statute as amended.

⁸⁰ Deputy Director Susswein remains active in the National Alliance for Model State Drug Laws as a member of its Board of Directors, and continues to draft and help mold proposed legislation on behalf of the Department of Law and Public Safety for presentation to the New Jersey State Legislature. He also played a key role in drafting New Jersey's Comprehensive Drug Reform Act, and he also sits as a member of the DCI Steering Committee/Working Group.

was joined in by the prosecutor;

- if a drug dependent person convicted of a second degree crime (quite serious) or of school zone distribution was placed on five years probation conditioned on drug treatment pursuant to joint motion of defense and prosecution, then that person would have to be committed to a residential (i.e., in-patient) treatment facility for at least six months duration; and
- if a person sentenced under this provision to five years probation conditioned on treatment (whether in-patient or out-patient) violated that probation more than once (whether by failing to complete the rehabilitation program or failing to comply with a term of probation), then the court must terminate his or her probation and send him or her to prison.

Despite expectations by the original drafters of this provision that it would engender numerous rehabilitative sentences in lieu of incarceration and that it would spawn a whole cottage industry of new drug treatment facilities, neither consequence occurred. Although the market for quality drug rehabilitation continued, the means to pay for such services was never established, so that only those who were both ready for treatment and able to pay for it were able to access it. Since the vast majority of drug driven offenders are indigent and cannot afford to pay for treatment, very few defendants ended up sentenced to treatment pursuant to 2C:35-14.

Mindful of the underutilization of 2C:35-14 rehabilitative sentencing and of the savings projected to ensue⁸¹ if prison-bound defendants were instead placed on probation conditioned on treatment, the Steering Committee's win-win strategy married the reallocation of Corrections dollars to several carefully structured pilot "2C:35-14 Programs". The Steering Committee considered that, while some drug dealers are motivated by nothing other than profit, there are others who are "user/dealers" in that out of desperation, they sell only the small amounts of drugs necessary in order to be able to pay to support their habits. While the motives, characteristics and degree of depravity of "drug dealers" thus can vary widely, all who sell drugs in school zones including user/dealers are faced with the same mandatory incarceration under the sentencing

⁸¹ It is extremely difficult to pinpoint the specific amount of savings which will occur over the long term if treatment in lieu of incarceration is imposed, as there are numerous variables to be factored into any such determination. Statistics compiled by the DCCTAP in reviewing the first decade of Drug Courts suggest an average overall minimum savings per person per year of \$5000.00 in the cost of jail bed days alone, with numerous other savings as well. *Looking at a Decade of Drug Courts*, Office of Justice Programs Drug Court Clearinghouse and Technical Assistance Project at American University, Washington, D.C. (June, 1998). The statistical analysis of the fiscal impact of treatment on re-entry to New Jersey prisons discussed in the "Draft for Discussion Purposes Only" document prepared for the New Jersey Division of Criminal Justice, *supra* at footnote 2, concludes that despite the difficulty in precise projection, it is indisputable that treatment in lieu of incarceration would engender significant cost savings in New Jersey.

provisions of the Controlled Dangerous Substances Act unless the county prosecutor in the county in which the offense occurred agrees to recommend an alternate case disposition⁸².

Reasoning that those first-time school zone drug distributors who were only dealing because they were unable to stop using would likely stop breaking the law if they could receive adequate intensive drug rehabilitation, the Steering Committee decided to initially target that group of offenders in several carefully crafted and fully funded pilot programs. This target group was also chosen because it was possible to demonstrate that, but for the fact that these offenders would be participating in the DCI pilots, they would clearly be serving more expensive sentences in New Jersey state prisons. A further reason for choosing this population for piloting funded 2C:35-14 programs was that, due to the nature of the charge in question, the statute required that defendants with this charge could not be sentenced pursuant 2C:35-14 unless they were separated from society for at least six months in a residential treatment program. This "containment" factor made the experiment more palatable from a public safety point of view.

Although all counties and county prosecutors were offered the opportunity to apply for a 2C:35-14 DCI pilot program, there were only a small number of takers⁸³. While only a handful agreed to sign on, among them were several with considerable urban centers and criminal offense statistics. Ultimately, DCI pilot programs were undertaken and are currently in operation in Camden County (the oldest program, begun in early 1997), Essex County, Passaic County, Union County and Mercer County (the newest program, begun in 1999). The Steering Committee has determined to fully fund these five programs, and not to add more locations until it has gathered and been able to study enough long term statistical information in order to determine their efficacy.

Enormous cross-agency effort has been successfully expended by the Steering Committee to effectuate the transfer of funds and to create the coordinated infrastructure necessary to support the DCI pilots, which became known as "School Zone Drug Courts". Consistently in each pilot county, first time non-violent user/dealers have been able to apply for consideration for a slot in its DCI/2C:35-14 program. If they are determined legally eligible for inclusion by the local County Prosecutor's Office, they are then diagnostically screened by TASC officers to determine whether they are clinically appropriate candidates for long term inpatient drug treatment of at least six months' duration. If so, they are accepted into the 2C:35-14 Drug Court programs. Recently, the Steering Committee has permitted candidates presenting with certain other offenses to apply who are also demonstrably prison bound and in all ways fit the eligibility criteria. Thus, the DCI program should no longer be considered or labeled an exclusively a

⁸² Pursuant to the New Jersey Controlled Dangerous Substances Act (particularly 2C:35-12) and the case law which interprets it, with very little exception it is the prosecutor, and not the judge, who determines whether a drug dealer may receive a lesser sentence than the mandatory one called for in the Drug Code.

⁸³ For example, Atlantic County almost signed on, but backed out at the last moment.

"School Zone Program".

Nine residential treatment programs across the state⁸⁴ of New Jersey have been approved as sites for 2C:35-14 DCI placements to date. Each has not only been licensed and approved by DAS for this purpose but has also specifically designed a treatment program in coordination with the DCI parameters, and has also agreed to cooperate with Law Enforcement if participants leave or otherwise violate program parameters.⁸⁵ DCI funds are available to pay for longer inpatient treatment of a DCI participant if a DCI Drug Court team feels that this is warranted, although the preference is that the residential phase of DCI treatment not exceed the six month period, if therapeutically possible. Upon release from the inpatient phase of treatment, DCI clients return to their counties of origin to continue in intensive outpatient treatment through County Drug Court monitoring for the remainder of their five year probationary sentences.

The Steering Committee continues to meet on a periodic basis to oversee the DCI Drug Program process. Comprehensive and stringent process and outcome evaluation⁸⁶ of the initiative is being conducted over a long term by Dr. Christine Boyle, Chief of the Research and Evaluation Section of the New Jersey Attorney General's Division of Criminal Justice. The sample size, whose cumulative numbers began to be tracked in early 1997 when the first DCI participants began the program, is small but growing.

As of December 22, 1999, the following DCI statistics are known⁸⁷:

- Of 1013 applicants, 356 (35.1%) were ineligible.
- Of 657 applicants found eligible, 188 (18.6%) were pending final acceptance and 469 (46.3%) had been accepted.
- Of the 469 who had been accepted, 332 (70.8%) were actually admitted to inpatient placement, 66 (14.1%) were pending inpatient placement and 71 (15.1%) were not admitted (46% of these chose not to enter).

⁸⁴ As is typical with New Jersey resources, only one of the nine programs is located in the Southern part of the state, which has meant that interactions with participants during their residential phases has presented special challenges to the Camden DCI program.

⁸⁵ Absconding from a DCI residential placement is treated by law enforcement and prosecuted as a criminal escape.

⁸⁶ Preliminary statistics are not yet available from Dr. Boyle's study, as there is not yet enough long range data from which to be able to draw any accurate conclusions. These may become available in the next year.

⁸⁷ See "Monthly Drug Court Report - New Jersey 2C:35-14" dated December 22, 1999, attached as an appendix.

- Of the 332 who were admitted inpatient, 133 (40.1%) completed the residential phase and moved on to the aftercare phase. Another 142 (42.8%) are currently in inpatient placement.
- Of the 133 who reached the aftercare phase, 107 remain successful (80.5%). 9 (6.8%) of these have graduated⁸⁸ and 98 (73.7%) are in ongoing aftercare. Only 26 (19.5%) of those 133 in aftercare have been unsuccessful, 25 (18.8%) having failed aftercare, and one (0.8%) having an outstanding Bench Warrant.

It is very important to remember that the successful trend suggested by these DCI statistics must be tracked further in order for them to be considered reliable long term indicators. On the other hand, these very early statistics are encouraging and are consistent with or even a little better than national averages over a ten year period reported by the DCCTAP at American University.

Because the Steering Committee members recognized that successful recovery is necessarily a multi-phased process, they soon realized that to make the DCI vision a successful reality, it was also essential to tie the initial residential phase of the initiative to - and fund - appropriately structured aftercare (i.e., after residential treatment) services. To do so, they didn't have far to look for an existing model with which they could link the initiative. As it turned out, a concurrent but separately developed Drug Court track was already in place in New Jersey which had arisen based upon the OJP model. Adoption of the OJP model had been planned for locally in several New Jersey counties, and had already actually commenced activity in Camden County in April of 1996, by the time the DCI became interested in it.

Thus, two until then uncoordinated New Jersey Drug Court initiatives, each based upon one of the two national models discussed above for the development of Drug Court programs had simultaneously but independently evolved in New Jersey.

B) *Evolution of OJP-Model New Jersey Courts*

While high level state agency leaders were brainstorming the DCI initiative, interest in finding better solutions to drug-driven criminality in New Jersey had also developed in a number of local jurisdictions, particularly as word of the OJP approach and potential startup grants trickled down to grassroots arenas. The tradition of local innovation specific to individual vicinages coupled with the organizing and funding *modus operandi* of the OJP and NADCP appear to account for the piecemeal beginnings of a Drug Court groundswell in local New Jersey regions.

Local vicinage planning for Drug Court activity was no secret, of course. In order to apply for any grants for local innovation, not only the approval of the local Assignment

⁸⁸ While these 9 people have graduated from the in-court reporting phase of Drug Court, none has completed probation: all DCI participants will serve a full five year probationary term and continue to be tracked by Dr. Boyle.

Judges, but also the authorization, assistance and cooperation of the AOC and others with statewide jurisdiction was necessary. Thus, for example, five applications in November of 1996 to the OJP for various planning and implementation grants were endorsed by then Administrative Director of the Courts James Ciancia on behalf of Chief Justice Poritz, by then Public Defender Susan Reisner and by Terrence O'Connor, Director of New Jersey's Division of Addiction Services.

A great deal of the planning and realization of OJP Drug Courts, however, resulted from direct outreach of individual planning teams to national leaders and institutions of the Drug Court movement. Members of the Essex County Drug Court team, for example, which was one of several jurisdictions that received a Drug Court Planning Grant from the OJP, traveled to the 1997 national convention of the NADCP. Two of them returned as newly elected New Jersey representatives to the National Congress of Drug Courts, positions which they retain at this date. In early 1998, they, along with other representatives of New Jersey Drug Court teams, various treatment providers and assorted other Drug Court professionals, formed the New Jersey Network of Drug Court Professionals, which continues to meet bi-monthly with support from the AOC.

Camden County's Drug Court team didn't even wait for an eventual federal planning grant before commencing efforts to bring about a Drug Court. After considerable preliminary talk among all necessary parties, participation in an OJP-sponsored planning workshop and a visit to a "mentor" Drug Court in Buffalo, New York, the Camden County team decided to forge ahead with its own initial pilot⁸⁹ of 50 offenders who were "flunking" probation due to their struggles with substance abuse, and who, but for the program, would have been sent to prison. With the help of a start-up grant from the Robert Wood Johnson Foundation and a full consortium of treatment providers who agreed to come on board in order to provide a full range of therapeutic services to the program with only a future promise of payment, Camden County began the first Drug Court in New Jersey in April of 1996. This endeavor evolved into the first OJP Drug Court in New Jersey, although Camden County did not actually receive its first federal implementation grant until April of 1997.

On several occasions, non-judiciary members of the Camden County Drug Court team have also been successful in persuading the Camden County Board of Freeholders to tap some supplementary county dollars to help fund certain wraparound services on an interim basis. The Drug Courts in both Camden County and Essex County have also been able to link their programs with existing community endeavors such as Newark Fighting Back and the Camden County Improvement Authority in order to assist

⁸⁹ There is no absolute requirement that a Drug Court be tied to a particular pot of money in order to function as a Drug Court. It is certainly possible to create a Drug Court by reallocating existing resources as long as the full and necessary resources are given to it. To try to create a Drug Court without dedicating sufficient resources is shortsighted, however, and likely to doom it to failure. Drug Court is the kind of program that cannot be done half-way.

participants in vocational training and job placement.

Not all counties which have attempted to set up Drug Courts have succeeded. Applications from Ocean and Morris Counties, for example, were turned down for federal grants, although Ocean County has now managed to obtain a planning grant. The U.S. Drug Courts Program Office has a very clear design in mind for what it deems Drug Court proposals, teams and planning processes should look like, and if it does not feel that its expectations are met, it does not come across with requested grant money.

Several of New Jersey's OJP Drug Courts have reached a second federal funding cycle; Camden is about to begin its third. A Multi-Jurisdictional Enhancement grant dedicated to facilitating statewide coordination of New Jersey Drug Courts was awarded to the AOC last year, enabling the former statewide TASC Coordinator to begin to function as a statewide Drug Court Coordinator. The future of federal OJP grants is uncertain at the present time, however. Even though they are flowing generously at the moment, OJP grants alone do not amount to sufficient funding to fully support Drug Courts, in any case, and the budgets and personnel of the judiciary, probation and county prosecutors' offices must be relied upon as well to maintain the programs. Agencies such as the Office of the Public Defender have allocated attorney time to staffing Drug Courts without any budgetary support other than the team training money written into some of the OJP grants.

C) The Current Status of Drug Courts in New Jersey

As of March 1, 2000, Drug Courts and/or Drug Treatment Programs are operational in some form in seven counties, with an eighth and more waiting in the wings.

Counties with both OJP and DCI programs are:

- Camden County (Adult) Criminal Drug Court;
- Essex County (Adult) Criminal Drug Court;
- Passaic County (Adult) Criminal Drug Court; and
- Union County (Adult) Criminal Drug Court.

One county has a DCI program only:

- Mercer County (Adult) Criminal Drug Court (which has had to develop an aftercare component which does not "piggyback" onto an existing OJP Drug Court).

Two counties have OJP Juvenile Drug Courts:

- Camden County Juvenile Drug Court; and
- Hudson County Juvenile Drug Court (which has been named a “Mentor” Drug Court by the NADCP).

One county currently has an OJP planning grant for an Adult Criminal Drug Court:

- Ocean County Criminal Drug Court Planning Team.

Three counties currently have OJP-funded technical support for Juvenile Drug Court planning purposes:

- Mercer County
- Passaic County
- Essex County.

While the concept of Municipal Drug Courts has not been endorsed to date by either the AOC or the Assignment Judge in Monmouth County, two municipalities in Monmouth County have obtained OJP-funded planning grants for Municipal Drug Courts:

- Long Branch Municipal Government; and
- Middletown Municipal Government.

Other known Drug Court activity includes the OJP multi-jurisdictional enhancement grant described supra and at least one Municipal Drug Court entirely funded by local county dollars, in Trenton. Preliminary planning discussions have occurred in Middlesex County, Hudson County (for an Adult Criminal Drug Court) and possibly Burlington County; and there have been preliminary Family Drug Court planning discussions in Camden, Ocean and Essex Counties and possibly Gloucester and Monmouth Counties. In addition, proposed legislation has been introduced from time to time concerning Drug Courts. Pending at the moment, for example, is Senate Bill 70, which would establish a hybrid form of Drug Court in Morris County⁹⁰. Since the growth of Drug Courts in New Jersey is blossoming, there may very well be other significant preliminary activity as well that has not come to the attention of the authors of this paper.

Statistics provided from coordinators in the seven Superior Court Drug Courts

⁹⁰ While the intent of the bill may be well-meaning, it does not seem very feasible, based upon the manner in which the New Jersey Judiciary is structured, or what has been learned about how to establish a successful Drug Court.

operational as of March, 2000, indicated the following information as of March, 2000:

1. Date when planning began for a Drug Court:

Camden County (Adult):	Late 1995
Camden County (Juvenile):	Early 1998
Essex County (Adult)	May, 1996
Hudson County (Juvenile):	April, 1997
Mercer County (Adult):	Spring, 1998
Passaic County (Adult):	Spring, 1998
Union County (Adult):	August, 1997

2. Date when participant intake began:

Camden County (Adult):	April, 1996 (February, 1997 for DCI; April, 1997 for OJP)
Camden County (Juvenile):	March, 1998
Essex County (Adult):	May, 1997
Hudson County (Juvenile):	February, 1998
Mercer County (Adult):	April, 1999
Passaic County (Adult):	November, 1997 (for DCI; June, 1999 for OJP)
Union County (Adult):	March, 1998 (for OJP; September, 1998 for OJP)

3. How close to full capacity, and what that number would be (none reported being at full capacity yet):

Camden County (Adult):	Additional funding could enable capacity of 400-500; present number of over 300 is close to capacity with present resources
Camden County (Juvenile):	Close to full capacity of 50, anticipated to be reached by August, 2000

Essex County (Adult):	Anticipate reaching full capacity of 175 in 6-12 months
Hudson County (Juvenile):	Full capacity of 35-40 might be reached by January, 2001
Mercer County (Adult):	Close to full capacity of 50, anticipated in two months
Passaic County (Adult):	DCI already exceeds capacity of 100; OJP not yet at capacity of 150)
Union County (Adult):	At least another year to get to anticipated full capacity of 300-400

4. Number of total participants to date:

Camden County (Adult):	781 (of 849 applicants; 305 of these DCI)
Camden County (Juvenile):	55
Essex County (Adult):	170
Hudson County (Juvenile):	80
Mercer County (Adult):	38
Passaic County (Adult):	206 (177 DCL, 29 OJP)
Union County (Adult):	61 (46 of these DCI)
Total:	<hr/> 1391

5. Number of "successful" participants (defined as still participating, or having graduated so far):

Camden County (Adult):	367 (of total of 781)
Camden County (Juvenile):	41 (of total of 55)
Essex County (Adult):	132 (of total of 170)
Hudson County (Juvenile):	45 (of total of 80)

Mercer County (Adult):	35 (of total of 38)
Passaic County (Adult):	145 (of total of 206)
Union County (Adult):	55 (of total of 61)
Total:	<u>820 (of total of 1391)</u>

By the time this paper is published, updated statistics should be sought, of course, to gain a current sense of the statistical trends in existing New Jersey Drug Courts.

As an outgrowth of significant Drug Court activity and momentum, a conference of New Jersey Adult Drug Court Coordinators has formed in the past year, which meets periodically and is engaged in considering and relating to the AOC its sense of resources and recommended initiatives as well.

Many entities in New Jersey are extremely interested in and supportive of implementing, sustaining and institutionalizing Drug Courts of all varieties. Others, however, are wary and raise concerns that merit attention. Specifically:

- Some judges disagree or are uncomfortable with the wisdom of the transformed judicial role necessitated in the Drug Court model;
- Some leaders in court administration feel that the resource-intensive and schedule-intensive Drug Court model is a luxury that an over-burdened system with a crowded docket cannot afford;
- Development of Municipal Drug Courts has been hampered by the lack of coordination between local municipalities and any central administrative entity;
- Many law enforcement officials and county prosecutors remain skeptical of the Drug Court concept;
- Many legislators remain wed to the notion that the electorate will not tolerate any activity in the criminal justice arena that is not of the “lock ‘em up and throw away the key” variety;
- The fragmentation in the development of the two main Drug Court models in the state has caused a significant amount of confusion and duplication of effort which still to some degree remains uncoordinated;
- Despite the best efforts of many to take into account all important considerations before taking virtually irrevocable steps affecting the course of implementation of treatment-based programs in New Jersey’s Criminal Justice System, a recent set of amendments to 2C:35-14 was passed which

unintentionally guts part of the DCI program⁹¹;

- The financial support available to maintain existing Drug Court programs must be stretched so thin that at times intake must be shut down, as it had to be recently in Camden County's OJP Drug Court⁹²;
- Sustainability is a looming challenge for Drug Court programs which so far have depended in great measure on federal grants but cannot assume their continuation in perpetuity;
- Unless quickly addressed, a critical shortage of suitable and sufficient treatment facilities and beds will mean increased difficulty in placing offenders in need of treatment as the numbers grow of those who are given Drug Court dispositions;
- Confusion and frustration about how to link Drug Courts with the very important component of community support is hampering the expansion of broad-based assistance and access to additional resources for these programs;
- The public does not understand the inadequacy of the traditional criminal justice approach⁹³ to drug-driven criminality and the long-range costs of

⁹¹ 2C:35-14 as amended (effective January 14, 2000) provides, *inter alia*, that individuals with two or more prior 3rd degree charges (such as, for example, theft over \$500.00, possession of a stolen motor vehicle, or forgery) other than simply possession of CDS -- no matter how old those convictions may be -- are no longer eligible for the DCI program because they are not eligible for the "special probation" created by the amendments that now must be imposed in order to become eligible for a DCI slot. Experience has shown that the bulk of offenders most appropriate for DCI consideration are those offenders whose long term addiction has driven them to recidivate repeatedly, have "bottomed out" and are ready to work hard in rehabilitation, if given the opportunity. Many of those offenders carry prior histories of at least two 3rd degree convictions, and thus, will no longer be eligible for DCI slots, a phenomenon that should have been foreseen and forestalled before the new legislation was passed.

⁹² Federal grant money used to supplement participants' payment to treatment providers, who have often had to provide services on credit, was exhausted on February 1, 2000 in the Camden County Adult OJP program, many months before the end of the fiscal year. Intake, consequently, has been shut down by the Presiding Judge of Camden County's Criminal Division for the time being, except for those applicants who can pay the freight. Program administrators are frantically seeking alternate funds in order to bring to a close an era in which indigent defendants may be denied a privilege that continues for non-indigent defendants.

⁹³ "An analysis of public surveys published by the Journal of the American Medical Association last spring found waning enthusiasm for financing treatment for drug addicts, with the public believing that tougher criminal penalties can solve the problem." "Drug

maintaining the status quo;

- Because Drug Courts do not exist in the majority of New Jersey counties, many citizens are so far unfairly precluded from the benefits that are conferred on those who live in counties where such an option does exist; and
- Too small a sample exists so far from which to infer whether expansion of Drug Courts should occur in New Jersey.

Notably on the other hand, however:

- The Chief Justice of the New Jersey Supreme Court, the Governor's Office, the Office of the Attorney General, the Office of the Public Defender, the former and present Directors of the Administrative Office of the Courts, and the Director of the Division of Addiction Services have all publicly and vocally supported moving forward with plans for carefully implementing Drug Courts in New Jersey;
- The majority of New Jersey's Presiding Judges of Vicinage Criminal Divisions have signaled private approval of the Drug Court concept, and are expected to do so publicly in the near future;
- Every New Jersey judge who has ever served as a Drug Court judge remains consistently supportive of the concept;
- Leaders in the Division of Youth and Family Services, members of the state's Children in Court Committees, and child advocates such as the Association for Children of New Jersey are actively seeking the establishment of Family Drug Courts in the Child Welfare arena;
- County leadership in a number of counties has supported indigenous Drug Courts, even, to some degree, financially;
- The new leadership of the New Jersey Juvenile Justice Commission supports the development of Juvenile Drug Courts as an alternative to detention resolutions in delinquency matters;
- Local police officers in jurisdictions that have Drug Courts frequently recommend to drug-driven offenders whom they arrest that they try to get case dispositions into Drug Court programs;
- Several of the existing Drug Courts in New Jersey have gained national prominence; and

courts help reduce arrest rates", *The Jersey Journal*, *supra* at footnote 8.

- Some members of the State Legislature's Judiciary Committees have expressed interest in establishing legislation supportive of Drug Courts in New Jersey.

V) CONCLUSIONS

Rather than defining its criminal justice policies by whether they are "tough" or "soft", New Jersey needs to focus on ensuring, instead, that they are *smart* and *effective* in their impact on public safety, public resources and community justice. We believe that a problem solving approach, not an oversimplified knee-jerk response⁹⁴, is needed in formulating public policy in this area and establishing the means to execute it in order to achieve those ends which will best enhance the quality of life of all citizens of the state. Despite whatever myths prevail or resistance to change endures, it is patently clear that New Jersey's systemic responses to drug-driven crime and anti-social behavior must transform in order to have a discernible degree of success in changing those behaviors and stopping the toxicity that they bring about in our communities.

Indeed, we cannot afford not to change. The accelerating rate and cost of incarceration is eating up present and future resources at an alarming pace, and crowded prisons must allocate more and more space to accommodate expanding numbers of serious offenders who will be remaining in custody for increasing lengths of time. There is little room to incarcerate non-violent offenders, particularly when doing so has been demonstrated to be a waste of time, space and resources.

Criminal offenders who spend their time taking advantage of family members, trashing poor urban neighborhoods and hustling in order to support their addictions need, instead, to become better educated, wage-earning, tax-paying, and home-owning members citizens. We need to be much more effective in reducing drug-driven recidivism in our communities and among our youth, before they become too embroiled in the criminal justice system.

Substance - abusing parents must be more quickly and effectively helped to heal if possible, so that we can comfortably allow them to return to the responsibilities of caring for and financially supporting their children, and bringing healthy babies into the world. We are running out of time in which to try to make dysfunctional families that have fractured due to drug-driven abuse and neglect of children whole, and because we are running out of sufficient foster and adoption homes for children who are the victims of drug-driven abuse and neglect, we face an urgent need to diminish the foster care cycle

⁹⁴ This view is shared by former Governor Brendan Byrne who expressed the opinion in the 2/9/00 airing of the New Jersey Network Program "Due Process" that it is time to acknowledge that drug laws fail to stop drug use, and that it is time to stop "tolerating politicians whose only solution... is to increase the penalties and make the sentences mandatory."

in New Jersey.

To reach these goals, New Jersey needs to explore, pilot and adequately fund more effective strategies than simply containment and removal of non-violent law-breaking addicts. Drug Courts are precisely the type of endeavor in which we need to be willing to engage. Just as we ask participants in Drug Courts to change long-standing dysfunctional thought processes and behaviors, our institutions and our leaders must be willing to do the same⁹⁵: we must be willing to change. At this point, we have very little to lose.

We are at critical crossroads in the implementation of Drug Courts in New Jersey, for the present need to plan for more secure long-term infrastructure and funding coincides with concern by some that it may still be too soon to be certain that they work well enough to merit unqualified support. Perhaps an epidemiological analogy helps: when a community suffers from an endemic disease, the development of a promising new medicine is embraced. Carefully calibrated clinical trials are fully enabled, and once into the clinical trials for the medicine, researchers track preliminary results for trends that signify likely success or failure of the medicine to impact the illness which it was developed to remedy. At a certain point, it can become clear that a given piloted medication is, in fact, particularly efficacious, even if the clinical trial is not yet complete. At that point, while it could still be pulled from final FDA approval and the marketplace if further testing signifies that it is not the remedy it appears to be, it becomes unconscionable not to make it more widely available to alleviate suffering.

It appears that New Jersey has reached the point where it would be unwise, if not unconscionable, to allow a tremendously promising response to drug-driven non-violent criminality to wither away due to lack of sufficient resources to maintain it. It is time to thoroughly embrace, carefully implement, and take the measures that are necessary to sustain the Drug Court approach in New Jersey.

VI) RECOMMENDATIONS

Given the systems, processes, dynamics and agendas which have been reviewed

⁹⁵ The primary lesson learned in Leadership New Jersey is that the best remedies to problems are arrived at after careful and non-judgmental consideration of all of the issues to be addressed and agendas to be satisfied, not as a response to wishful thinking. While it may be easier for addicts to think that the remedy to their pain is to have another fix or another drink, and it may be comfortable for the public to believe that the solution to drug-driven crime is tough time and lengthy confinement, neither solution is actually efficacious. Continuing to resort to measures to cure problems that will never be capable of curing those problems is foolish and ultimately unsatisfying and unproductive. As author Geneen Roth observed in her first book about compulsive eating, "you can never have enough of what you don't really want". *Feeding the Hungry Heart*. New York: Dutton, 1993.

in this report, we make the following recommendations surrounding the further implementation of Drug Courts in New Jersey:

A. MEASURES THAT SHOULD BE TAKEN BY THE LEGISLATIVE BRANCH

1. Alternative sources of funding should be established to pay for all necessary components of Drug Courts.

The Legislature should establish sources of revenue to help sustain the cost of Drug Courts by allocating toward them some of the money derived from tobacco settlement money, taxes on casino gambling/liquor and tobacco sales, prosecutorial forfeitures, and the collection of DEDR penalties (fines collected in all convictions/adjudications of drug offenses).

2. Those who engage in legislative activity with regard to court programs and proposed legislation that are related to them should not depend exclusively upon Law Enforcement and AOC input, but should actively seek input from all affected sectors when considering proposals and their projected impact.

Legislators must do a better job of soliciting and considering every relevant voice with regard to proposed legislation, regardless of how popular that voice might be. Listening exclusively or primarily to only one or two points of view limits the ability of law-makers to fully consider the probable impact of potential measures. The input of the Attorney General's Office, even if learned and offered in good faith, will not always catch a potential difficulty in suggested amendments with criminal justice impact, for example. If divergent points of view are expressed and given attention, there is a higher likelihood that unintended consequences of a given bill will be missed.

B. MEASURES THAT SHOULD BE TAKEN BY THE EXECUTIVE AND LEGISLATIVE BRANCHES TOGETHER

3. The backlog in judicial appointments must be reduced.

It is very difficult to successfully introduce needed and exciting new programs into a Judiciary System which is chronically understaffed. The pressure of keeping current with existing caseloads and speedy trial constraints is difficult enough when the judiciary is fully staffed; when it is understaffed, the work burden is overwhelming and tension over it discourages systemic support for needed innovation. While literally every state agency whose

involvement is necessary to smoothly operating Drug Courts has been supportive of their introduction, the Judiciary has been the most ambivalent about embracing them because of concerns over judicial workload and concomitant resource allocation.

4. Any remaining impediments to Judiciary control of its own budget must be eliminated.

To effectuate its share of programs such as Drug Courts which interface with contributions from other governmental agencies, the Judiciary is in the best position to determine its own allocation of resources, internally. The remarkable shift which the Executive Branch was able to broker to reallocate dollars from the Corrections budget to the DCI budget could not have come about if the Executive Branch had not been able to shift around its own resources internally. As proposed in the Judiciary Strategic Planning Committee's 1998 Report, the Judiciary needs the autonomy to be able to do the same.

C. MEASURES THAT SHOULD BE TAKEN BY THE JUDICIARY BRANCH

5. The Conference of Presiding Criminal Judges should publicly endorse Drug Courts as a "Best Practice."

Reluctance of individual Assignment and Criminal Presiding Judges to allow the introduction of Drug Court pilots into their respective vicinages has hampered the widespread forward progress of the model, and threatens to engender outcry about lack of Equal Protection and equal access to services from those who cannot benefit from what Drug Courts have to offer solely because of where they reside. Declaring Drug Courts a "Best Practice" would encourage a more fair distribution of court services across the state, and would help to implement one of the goals of the 1998 Judiciary Strategic Planning Committee Report, which is to establish consistency in practice from county to county. Each Drug Court does not have to be identical, as to a large extent each is a creature of indigenous resources and culture, but uniform access to a court which operates with the Drug Court approach is optimal, as is clarifying common essential components.

6. Judicial Assignments should take into account to a greater degree the individual preferences of judges who are inclined to take on special, innovative, or unpopular roles.

While traditionally a province of Judicial Management, the assignment of judicial positions which require special expertise,

training and performance should be made optimally to those jurists who are most interested in functioning in and developing those non-traditional roles. It makes little sense for those judges who do not feel comfortable in roles such as Drug Court Judge to be so designated; by the same token, the discomfort of some should not impede the willingness of others to embrace transformed roles on the bench.

7. In furtherance of Strategic Initiative 10A recommended by the 1998 Judiciary Strategic Planning Committee (that the AOC provide statewide guidance, support and direction for court/community partnerships and initiatives), guidelines should be established which provide a roadmap to the manner in which non-judiciary personnel can participate in, support and contribute to the maintenance of court programs.

Drug Courts, in particular, could function at their maximum potential if they enjoyed broad community support and participation. Some of the permissible interface between court programs and the community is readily apparent, such as information sessions or court/community committees that make non-binding suggestions for improvement of court services. Other cooperative endeavors present more ambiguous possibilities for collaboration and often do not accomplish all that they might out of fear of improperly crossing some ill-defined ethical line. Drug Courts could greatly benefit from private sector contributions and sponsorships and from linkages with the Faith Community and other resources that can provide child care, housing and jobs, for example, but the permissible parameters of doing so are so murky that very little has been done so far to draw upon these community resources. Clarification is needed as to how and to what degree such contributions could be made.

8. Non-judiciary participants in Judiciary programs should be included in the "TQM" loop.

Judiciary programs such as Drug Courts depend upon the participation of non-Judiciary participants as well as employees of the Judiciary, such as treatment providers, prosecutors and public defenders. Extending the concept of Total Quality Management to *de facto* members of integrated case management teams would reap further benefits for the entire teams, and result in better programmatic planning and fewer of the glitches that occur when people "in the trenches" are not consulted about strategies and decisions that affect the group or program as a whole.

9. Juvenile Drug Courts and Family Drug Courts should also be widely

piloted as soon as possible, and if a successful track record for them is established, then the Conference of Presiding Family Court Judges should consider adopting them as "Best Practices" in Family Courts.

While pressure for Adult Criminal Drug Courts derives in large measure from the expensive, crowded and ineffectual overincarceration of drug-driven non-violent offenders, other significant additional and alternative pressures exist for establishing Juvenile Drug Courts and Family Drug Courts in New Jersey. Derailing youthful offenders from long careers of drug-driven criminality and anti-social behavior should be a priority for our communities. Although Juvenile Drug Courts present different challenges than do Adult Drug Courts, we should actively engage in advancing them in order to perfect a New Jersey prototype for them. Early "front-end" intervention of this kind can be expected to yield myriad benefits for offending youth and the communities they victimize. Moreover, the pressures of *AFSA* are already upon us, and there is no time to lose in establishing alternative mechanisms designed to facilitate the possibility of family reunification as permanency resolutions for the abused and neglected children of drug dependent parents and to end the cycle of foster care in raising New Jersey's children.

10. A Supreme Court Task Force on Drug Courts should be established.

As admirable as the efforts of the DCI Steering Committee/Working Group are, as welcome as the anticipated establishment of Drug Courts as a "Best Practice" in Adult Criminal Court is, and as likely as it is that many in the AOC and elsewhere hope to institutionalize Drug Courts in New Jersey, it is apparent that there is no overall comprehensive planning process in place for potential statewide implementation of Drug Courts in New Jersey. The mechanism to do so should be established in two ways. First, a Supreme Court Task Force should be established, not only to consider how to implement Drug Courts as a Best Practice in Adult Criminal Court, but also to consider whether and if so how Drug Courts should be piloted in Family and Municipal Courts, and whether and if so how Drug Courts could be piloted for discrete populations such as those who are dually diagnosed, those who are mentally ill, and those who have driven while intoxicated.

D. MEASURES THAT SHOULD BE TAKEN BY COMBINED EFFORTS OF THE EXECUTIVE, JUDICIARY AND LEGISLATIVE BRANCHES

11. The scope of the Steering Committee's concern should widen or,

alternatively, a new statewide Steering Committee should be established, in order to plan strategically for cross-agency implementation of Drug Courts in New Jersey.

Up until now, the focus of the DCI Steering Committee has been primarily on the DCI initiative, and its development of piecemeal policy concerning Drug Courts in New Jersey has reflected that somewhat limited scope. This has led to some unintended distortions, such as passage of recent amendments to 2C: 35-14 whose full effect on the New Jersey Drug Court landscape was not anticipated by the members of the Steering Committee who had a chance to preview it. Particularly with the increasing number of OJP-seeded Drug Courts in New Jersey, it is time to create a second mechanism for comprehensive Drug Court planning in New Jersey: a Drug Court Steering Committee that will concern itself with multi-agency interactions covering the entire spectrum of Drug Court activity in the state. A managing entity needs to be planning for the day when federal grant money dries up⁹⁶ and the state will have to assume the funding burden for the programs. Numerous other sustainability contingencies need to be considered and coordinated as well, and not all of these could be done by either the AOC or a Supreme Court Task Force on Drug Courts.

12. A cross-agency working group should be established to explore strategies for providing substance abuse treatment on demand in New Jersey.

The same sort of effective high-level steering committee that has cut red tape and built consensus with regard to the DCI initiative should be formed to brainstorm methods for making substance abuse treatment universally available on demand in New Jersey. While there are public safety reasons to make universal Drug Court treatment a priority, there are equally compelling reasons to offer substance abuse treatment to every New Jersey citizen who seeks it.

13. While it is premature to mandate universal implementation of Drug Courts in every New Jersey judicial forum, it is critical to fully fund, staff

⁹⁶ Indeed, if such an entity were already in existence, then perhaps the unfortunate current moratorium on intake in Camden's Adult OJP Drug Court due to lack of sufficient federal funds to pay treatment providers could have been better anticipated and avoided. The payment of treatment providers (over and above participant contribution) in a number of the Drug Courts has been hampered continually by fragmented funding methods and practices to the extent that they have often provided services on "credit". Other intake shutdowns loom closely because of this problem.

and allocate resources to every pilot that is established.

Drug Courts, even if designed in conformity with a Best Practice prototype, will only be able to meet their ultimate potential if they evolve out of adequate planning processes and if they are given full support once off the ground. Both because the model intuitively makes sense and because preliminary indications are that it is a successful approach, it is in everyone's interest to conclusively establish whether it can be sufficiently successful over a long term. This cannot be done if we skimp on providing all necessary underlying support for all pilots willing to go the distance. There is no compelling reason not to do so.

14. Leadership in the Municipal Court Divisions and Committees should endeavor to study what sort of Municipal Drug Court prototypes and Best Practices might be adopted.

While Municipal Courts are courts of limited jurisdiction, there seems no reason why they, too, should not consider a Municipal Drug Court prototype and the establishment of Best Practices in that regard. For inexplicable reasons, the New Jersey municipalities that have any sort of Drug Court activity appear to have established that activity completely independently without any sort of coordination through any central network, planning committee or clearinghouse.

15. A hybrid subset of parole should be created which uses a Drug Court approach with drug-driven offenders re-entering the community.

Unless they complete prison without being paroled, inmates who finish incarceration stints are released to routine parole, Intensive Supervision Parole (which resembles Drug Court in its demands but is not specifically geared toward recovery), or "Mutual Assistance Program" (MAP) inpatient drug treatment beds eventually followed by routine parole. They are re-entering the community at some point. Since the vast majority of inmates are drug dependent, the majority of those released are as well. All need to move beyond drug dependency, and some will need more help than others to do so. A new form of parole based upon Drug Court principles should be created, and parolees should be screened to determine suitability for it.

E. MEASURES THAT SHOULD BE TAKEN ON THE COUNTY LEVEL

16. Additional County Prosecutors should agree to have Drug Court pilots

in their counties.

While many different parties must agree to cooperate in order to establish a Drug Court, the support of a County Prosecutor is key. Particularly as the public becomes more educated about the efficacy of Drug Courts, more questions will be raised about why only certain counties have them, and residents of counties without them will want to know why the program is not available locally. More New Jersey prosecutors need to understand and be willing to try the Drug Court route.

17. County governments need to understand Drug Courts and be prepared to contribute to the cost of supporting them.

County health and jail budgets are to some degree relieved by Drug Court operations. They should share some of the financial burden of sustaining them.

F. MEASURES THAT SHOULD BE TAKEN OUTSIDE OF GOVERNMENT

18. Coordinators of and advocates for Drug Court implementation should solicit the support of groups in the public sector such as Mothers Against Drunk Driving (MADD), Councils of Churches, the NAACP and Victims' Organizations.

Drug Courts help many identifiable categories of people avoid criminal recidivism by engaging in more successful recovery-related activity than they would without their existence. This helps both offenders and those who would constitute their future victims but for Drug Court intervention. Natural affinity groups who could be expected to help drive community support for their broader implementation might reasonably include those such as MADD (who would appreciate Drug Courts' firm emphasis on recovery, accountability and responsibility) or the NAACP (who would appreciate the effect of Drug Courts on the otherwise disproportionate number of minorities incarcerated).

19. Advocates for Drug Courts should conduct a public education campaign to get the message across about them.

Community support for Drug Courts is critical for two reasons. First, Drug Courts are most successful when participants are not seen as alien, and when they can link with community resources such as vocational training and literacy programs, faith communities, or transitional housing and job opportunities.

Second, political support is needed for many of the changes that are necessary to sustain a Drug Court system, and in order for politicians to support those changes, they need to feel a groundswell in the electorate for those changes.

20. Entities in the private sector should adopt local Drug Courts.

There are many potential ways that private sector entities can support Drug Courts. Resources are always needed to offer as incentives, to help provide supplies for continual urinalysis tests, to help with logistics such as transportation or to make graduation celebrations festive, for example. Job and housing opportunities are always needed. Charitable "adoption" of a Drug Court by a private entity could be tremendously helpful in lending their participants additional positive reinforcement.

21. Drug Courts and schools should establish regular relationships.

The operations of Drug Courts and life lessons of their participants offer tremendous opportunities for helping young people understand the sad realities of drug dependency. There are many ways in which Drug Courts and schools can link. For example, students can make field trips to visit Drug Courts in session, or write research papers about them. Recovering addicts who participate in Drug Court programs make excellent public speakers at school assemblies and programs seeking to teach, not preach, about the dangers of substance abuse. Middle school and high school aged students, who are notoriously resistant to "anti" messages consistently report that the most compelling presentations they appreciate on this topic are autobiographical appearances from "authentic" addicts.

22. A "Citizens for a Sane Drug Policy in New Jersey" civic sector coalition should form to brainstorm and lobby for further measures best calibrated to better foster assistance to drug dependent New Jersey residents -- court-involved or not.

While the support of Drug Courts is as much an important public safety measure as it is a humanitarian one, all drug dependent New Jersey citizens, court-involved or not, need accessibility to quality treatment on demand, mechanisms to pay for it, and more public understanding of their very difficult struggle. Many substance abusers are not yet court-involved, but may eventually become so if they are unable to stop. Much, but not all, of the effort necessary to address substance abuse in New Jersey, can come from government. In the same way that government needs to do a better

job of overall formulation and coordination of a comprehensive drug policy here, there need to be better parallel efforts in the community to study, come to terms with, and advocate for sensible measures to minimize the drug dependency of New Jersey residents.

23. Numerous additional, adequate drug and alcohol treatment programs in varied locations around the state need to be established.

Managed care era or not, the paucity of available treatment beds in New Jersey is deeply disturbing and puzzling. If only 10% of those who need treatment can find quality treatment beds, then, even if their motives are mixed, those with entrepreneurial spirit should take note. The marketplace will respond.

VII) A FINAL NOTE

It takes authentic leadership to forge ahead with a new problem-solving strategy such as incorporation of the Drug Court process into a state's Criminal and, eventually, Family Justice Systems. We urge everyone in New Jersey to take the time and effort to understand the problems in our state that have given rise to the introduction of Drug Courts here as well as the remaining roadblocks to full implementation of them. In studying those topics and speaking up as we do in this document, we have tried to illuminate the issues surrounding Drug Courts and fully depict the reasons why we feel they are right for New Jersey.

In the final analysis, all of the facts, figures, observations and recommendations pale in persuasiveness compared to the power of direct observation of a Drug Court in session. We are convinced that the most compelling argument in favor of Drug Courts comes from a site visit to a Drug Court, whether in routine operation or on a graduation day. Perhaps nowhere else in the justice system - or, indeed in most bureaucracies - can one observe participants struggling so hard or so bravely to return to living healthy, principled lives. We therefore urge every leader in the State of New Jersey, whether an elected official or a member of the Leadership New Jersey Network, and every other interested party — any one of whom has the potential to become a leader — to personally visit a Drug Court in action.

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2C:35-14. Rehabilitation Program for Drug Dependent Persons; Mandatory Commitment to Residential Treatment Facilities; Revocation. a. Notwithstanding the presumption of incarceration pursuant to the provisions of subsection d. of N.J.S. 2C:44-1, and except as provided in subsection b. of this section, whenever a drug dependent person is convicted of an offense under N.J.S. 2C:35-5, N.J.S. 2C:35-6, section 1 of P.L. 1987, c. 101 (C. 2C:35-7), N.J.S. 2C:35-10, N.J.S. 2C:35-11, or N.J.S. 35-13, other than a crime of the first degree, the court, upon notice to the prosecutor, may, on motion of the defendant and where the court finds that no danger to the community will result and that the placement will serve to benefit the defendant by serving to correct his or her dependency on controlled substances, place the defendant on probation, which shall be for a term of five years. As a condition of that probation, the court shall order the defendant to enter a drug rehabilitation program, subject to such other reasonable terms and conditions as may be required by the court and by law, pursuant to N.J.S. 2C:45-1, and which shall include periodic urine testing for drug usage throughout the period of probation.

b. Except upon the joint application of the defendant and the prosecuting attorney, no person convicted of an offense under N.J.S. 2C:35-6 or section 1 of P.L. 1987, c. 101 (C. 2C:35-7), or who has been previously convicted of an offense under subsection a. of N.J.S. 2C:35-5 or a similar offense under any other law of this State, any other state or the United States, shall be eligible for sentence in accordance with this section.

c. A person convicted of a crime of the second degree or of a violation of section 1 of P.L. 1987, c. 101 (C. 2C:35-7) who is placed in a drug rehabilitation program under this section shall be committed to the custody of a residential treatment facility. The term of such commitment shall be for a minimum of six months, or until the defendant successfully completes the residential treatment program, whichever is later, except that no person shall remain in the custody of a residential treatment facility for a period in excess of five years. Upon successful completion of the required residential treatment program, the defendant shall complete the period of probation, as authorized by subsection a. of this section, with credit for time served in the residential treatment facility and for any imprisonment served as a condition of probation. A person placed into a residential treatment facility under this subsection shall be deemed to be subject to official detention for the purposes of N.J.S. 2C:29-5 (escape).

d. Upon a first violation of any term or condition of the probation authorized by this section or of any term or condition of the applicable drug rehabilitation program, the court in its discretion may, and upon a subsequent violation shall, revoke the defendant's probation and impose on the defendant any sentence that might have been imposed originally for the offense of which he was convicted. In that event, the defendant shall receive credit for any time served pursuant to N.J.S. 2C:45-1, and any time spent by the defendant in a residential treatment facility. An action for a violation under this subsection may be brought by a probation officer or prosecutor. Notwithstanding any other provision of this subsection, if a defendant at any time refuses to undergo urine testing for drug usage as provided in subsection a. of this section, the court shall, upon the application of the probation officer or prosecutor, revoke the defendant's probation. Failure to successfully complete the required drug rehabilitation program shall constitute a violation of the defendant's probation. A defendant who fails to comply with the terms of his probation pursuant to this section and is thereafter sentenced to imprisonment in accordance with this subsection shall be ineligible for entry into the Intensive Supervision Program.

e. The court, as a condition of its order, and after considering the defendant's financial resources, may at any time require the defendant to pay for all or some portion of the costs associated with his or her participation in any rehabilitation program or period of residential treatment authorized by this section.

Adopted. L. 1987, c. 106, §1.

2C:35-14 . Rehabilitation program for drug and alcohol dependent persons; criteria for imposing special probation; ineligible offenders; prosecutorial objections; mandatory commitment to residential treatment facilities; presumption of revocation; brief incarceration in lieu of permanent revocation

2C:35-14 . Rehabilitation Program for Drug and Alcohol Dependent Persons; Criteria for Imposing Special Probation; Ineligible Offenders; Prosecutorial Objections; Mandatory Commitment to Residential Treatment Facilities; Presumption of Revocation; Brief Incarceration in Lieu of Permanent Revocation.

a. Notwithstanding the presumption of incarceration pursuant to the provisions of subsection d. of N.J.S.2C:44-1, and except as provided in subsection c. of this section, whenever a drug or alcohol dependent person is convicted of or adjudicated delinquent for an offense, other than one described in subsection b. of this section, the court, upon notice to the prosecutor, may, on motion of the person, or on the court's own motion, place the person on special probation, which shall be for a term of five years, provided that the court finds on the record that:

- (1) the person has undergone a professional diagnostic assessment to determine whether and to what extent the person is drug or alcohol dependent and would benefit from treatment; and
- (2) the person is a drug or alcohol dependent person within the meaning of N.J.S.2C:35-2 and was drug or alcohol dependent at the time of the commission of the present offense; and
- (3) the present offense was committed while the person was under the influence of a controlled dangerous substance, controlled substance analog or alcohol or was committed to acquire property or monies in order to support the person's drug or alcohol dependency; and
- (4) substance abuse treatment and monitoring will serve to benefit the person by addressing his drug or alcohol dependency and will thereby reduce the likelihood that the person will thereafter commit another offense; and
- (5) the person did not possess a firearm at the time of the present offense and did not possess a firearm at the time of any pending criminal charge; and
- (6) the person has not been previously convicted on two or more separate occasions of crimes of the first, second or third degree, other than crimes defined in N.J.S.2C:35-10; and
- (7) the person has not been previously convicted or adjudicated delinquent for, and does not have a pending charge of murder, aggravated manslaughter, manslaughter, robbery, kidnapping, aggravated assault, aggravated sexual assault or sexual assault, or a similar crime under the laws of any other state or the United States; and
- (8) a suitable treatment facility licensed and approved by the Department of Health and Senior Services is able and has agreed to provide appropriate treatment services in accordance with the requirements of this section; and
- (9) no danger to the community will result from the person being placed on special probation pursuant to this section.

In determining whether to sentence the person pursuant to this section, the court shall consider all relevant circumstances, and shall take judicial notice of any evidence, testimony or information

adduced at the trial, plea hearing or other court proceedings, and shall also consider the presentence report and the results of the professional diagnostic assessment to determine whether and to what extent the person is drug or alcohol dependent and would benefit from treatment.

As a condition of special probation, the court shall order the person to enter a treatment program at a facility licensed and approved by the Department of Health and Senior Services, to comply with program rules and the requirements of the course of treatment, to cooperate fully with the treatment provider, and to comply with such other reasonable terms and conditions as may be required by the court or by law, pursuant to N.J.S.2C:45-1, and which shall include periodic urine testing for drug or alcohol usage throughout the period of special probation. Subject to the requirements of subsection d. of this section, the conditions of special probation may include different methods and levels of community-based or residential supervision.

b. A person shall not be eligible for special probation pursuant to this section if the person is convicted of or adjudicated delinquent for:

(1) a crime of the first degree;

(2) a crime of violence as defined in subsection d. of N.J.S.2C:43-7.2;

(3) a crime, other than that defined in N.J.S.2C:35-7, for which a mandatory minimum period of incarceration is prescribed under chapter 35 of this Title or any other law; or

(4) an offense that involved the distribution or the conspiracy or attempt to distribute a controlled dangerous substance or controlled substance analog to a juvenile near or on school property.

c. A person convicted of or adjudicated delinquent for an offense under section 1 of P.L.1987, c.101 (C.2C:35-7), subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1), or any crime for which there exists a presumption of imprisonment pursuant to subsection d. of N.J.S.2C:44-1 or any other statute, or who has been previously convicted of an offense under subsection a. of N.J.S.2C:35-5 or a similar offense under any other law of this State, any other state or the United States, shall not be eligible for sentence in accordance with this section if the prosecutor objects to the person being placed on special probation. The court shall not place a person on special probation over the prosecutor's objection except upon a finding by the court of a gross and patent abuse of prosecutorial discretion. If the court makes a finding of a gross and patent abuse of prosecutorial discretion and imposes a sentence of special probation notwithstanding the objection of the prosecutor, the sentence of special probation imposed pursuant to this section shall not become final for 10 days in order to permit the appeal of such sentence by the prosecution.

d. A person convicted of or adjudicated delinquent for a crime of the second degree or of a violation of section 1 of P.L.1987, c.101 (C.2C:35-7), or who previously has been convicted of or adjudicated delinquent for an offense under subsection a. of N.J.S.2C:35-5 or a similar offense under any other law of this State, any other state or the United States, who is placed on special probation under this section shall be committed to the custody of a residential treatment facility licensed and approved by the Department of Health and Senior Services, whether or not residential treatment was recommended by the person conducting the diagnostic assessment. The person shall be committed to the residential treatment facility immediately, unless the facility cannot accommodate the person, in which case the person shall be incarcerated to await commitment to the residential treatment facility. The term of such commitment shall be for a minimum of six months, or until the court, upon recommendation of the treatment provider, determines that the person has successfully completed the residential treatment program, whichever is later, except that no person shall remain in the custody of a residential treatment facility pursuant to this section for a period in excess of five years. Upon successful completion of the required residential treatment program, the person shall complete the period of special probation, as authorized by subsection a. of this section, with credit for time served for any imprisonment served as a condition of probation and credit for each day during which the person satisfactorily complied with the terms and conditions of special probation while

committed pursuant to this section to a residential treatment facility. The person shall not be eligible for early discharge of special probation pursuant to N.J.S.2C:45-2, or any other provision of the law. The court, in determining the number of credits for time spent in residential treatment, shall consider the recommendations of the treatment provider. A person placed into a residential treatment facility pursuant to this section shall be deemed to be subject to official detention for the purposes of N.J.S.2C:29-5 (escape).

e. The probation department or other appropriate agency designated by the court to monitor or supervise the person's special probation shall report periodically to the court as to the person's progress in treatment and compliance with court-imposed terms and conditions. The treatment provider shall promptly report to the probation department or other appropriate agency all significant failures by the person to comply with any court imposed term or condition of special probation or any requirements of the course of treatment, including but not limited to a positive drug or alcohol test or the unexcused failure to attend any session or activity, and shall immediately report any act that would constitute an escape. The probation department or other appropriate agency shall immediately notify the court and the prosecutor in the event that the person refuses to submit to a periodic drug or alcohol test or for any reason terminates his participation in the course of treatment, or commits any act that would constitute an escape.

f. (1) Upon a first violation of any term or condition of the special probation authorized by this section or of any requirements of the course of treatment, the court in its discretion may permanently revoke the person's special probation.

(2) Upon a second or subsequent violation of any term or condition of the special probation authorized by this section or of any requirements of the course of treatment, the court shall, subject only to the provisions of subsection g. of this section, permanently revoke the person's special probation unless the court finds on the record that there is a substantial likelihood that the person will successfully complete the treatment program if permitted to continue on special probation, and the court is clearly convinced, considering the nature and seriousness of the violations, that no danger to the community will result from permitting the person to continue on special probation pursuant to this section. The court's determination to permit the person to continue on special probation following a second or subsequent violation pursuant to this paragraph may be appealed by the prosecution.

(3) In making its determination whether to revoke special probation, and whether to overcome the presumption of revocation established in paragraph (2) of this subsection, the court shall consider the nature and seriousness of the present infraction and any past infractions in relation to the person's overall progress in the course of treatment, and shall also consider the recommendations of the treatment provider. The court shall give added weight to the treatment provider's recommendation that the person's special probation be permanently revoked, or to the treatment provider's opinion that the person is not amenable to treatment or is not likely to complete the treatment program successfully.

(4) If the court permanently revokes the person's special probation pursuant to this subsection, the court shall impose any sentence that might have been imposed, or that would have been required to be imposed, originally for the offense for which the person was convicted or adjudicated delinquent. The court shall conduct a de novo review of any aggravating and mitigating factors present at the time of both original sentencing and resentencing. If the court determines or is required pursuant to any other provision of this chapter or any other law to impose a term of imprisonment, the person shall receive credit for any time served in custody pursuant to N.J.S.2C:45-1 or while awaiting placement in a treatment facility pursuant to this section, and for each day during which the person satisfactorily complied with the terms and conditions of special probation while committed pursuant to this section to a residential treatment facility. The court, in determining the number of credits for time spent in a residential treatment facility, shall consider the recommendations of the treatment provider.

(5) Following a violation, if the court permits the person to continue on special probation

pursuant to this section, the court shall order the person to comply with such additional terms and conditions, including but not limited to more frequent drug or alcohol testing, as are necessary to deter and promptly detect any further violation.

(6) Notwithstanding any other provision of this subsection, if the person at any time refuses to undergo urine testing for drug or alcohol usage as provided in subsection a. of this section, the court shall, subject only to the provisions of subsection g. of this section, permanently revoke the person's special probation. Notwithstanding any other provision of this section, if the person at any time while committed to the custody of a residential treatment facility pursuant to this section commits an act that would constitute an escape, the court shall forthwith permanently revoke the person's special probation.

(7) An action for a violation under this section may be brought by a probation officer or prosecutor or on the court's own motion. Failure to complete successfully the required treatment program shall constitute a violation of the person's special probation. A person who fails to comply with the terms of his special probation pursuant to this section and is thereafter sentenced to imprisonment in accordance with this subsection shall thereafter be ineligible for entry into the Intensive Supervision Program.

g. When a person on special probation is subject to a presumption of revocation on a second or subsequent violation pursuant to paragraph (2) of subsection f. of this section, or when the person refuses to undergo drug or alcohol testing pursuant to paragraph (6) of subsection f. of this section, the court may, in lieu of permanently revoking the person's special probation, impose a term of incarceration for a period of not less than 30 days nor more than six months, after which the person's term of special probation pursuant to this section may be reinstated. In determining whether to order a period of incarceration in lieu of permanent revocation pursuant to this subsection, the court shall consider the recommendations of the treatment provider with respect to the likelihood that such confinement would serve to motivate the person to make satisfactory progress in treatment once special probation is reinstated. This disposition may occur only once with respect to any person unless the court is clearly convinced that there are compelling and extraordinary reasons to justify reimposing this disposition with respect to the person. Any such determination by the court to reimpose this disposition may be appealed by the prosecution. Nothing in this subsection shall be construed to limit the authority of the court at any time during the period of special probation to order a person on special probation who is not subject to a presumption of revocation pursuant to paragraph (2) of subsection f. of this section to be incarcerated over the course of a weekend, or for any other reasonable period of time, when the court in its discretion determines that such incarceration would help to motivate the person to make satisfactory progress in treatment.

h. The court, as a condition of its order, and after considering the person's financial resources, shall require the person to pay that portion of the costs associated with his participation in any rehabilitation program or period of residential treatment imposed pursuant to this section which, in the opinion of the court, is consistent with the person's ability to pay, taking into account the court's authority to order payment or reimbursement to be made over time and in installments.

i. The court shall impose, as a condition of the special probation, any fine, penalty, fee or restitution applicable to the offense for which the person was convicted or adjudicated delinquent.

Amended 1999, c.376, s.2.

Monthly Drug Court Report - New Jersey 2C:35-14

<i>Not Eligible:</i>	356	35.1%
<i>Pending:</i>	188	18.6%
<i>Eligible:</i>	469	46.3%
<i>Number Eligible but not Admitted:</i>	71	15.1%
<i>Missed Sentence, Lost Plea:</i>	25	35.2%
<i>New Charge, Lost Plea:</i>	2	2.8%
<i>No Show for Transportation:</i>	1	1.4%
<i>Chose Prison:</i>	28	39.4%
<i>Fugitive:</i>	0	0.0%
<i>Medical:</i>	5	7.0%
<i>Failure to Comply:</i>	1	1.4%
<i>Information Missing:</i>	4	5.6%
<i>Withdrew Application:</i>	5	7.0%
<i>Pending In-Patient Placement:</i>	66	14.1%
<i>Admitted In-Patient:</i>	332	70.8%
<i>Failed, Sent to Prison:</i>	6	1.8%
<i>Currently In-Patient:</i>	142	42.8%
<i>Successfully Completed:</i>	133	40.1%
<i>Bench Warrants:</i>	3	0.9%
<i>Number of Aftercare:</i>	133	40.1%
<i>Failed Aftercare:</i>	25	18.8%
<i>On-going Aftercare:</i>	98	73.7%
<i>Bench Warrants:</i>	1	0.8%
<i>Graduates:</i>	9	6.8%
<i>Total Applicants:</i>	1013	100.0%

Wednesday, December 22, 1999