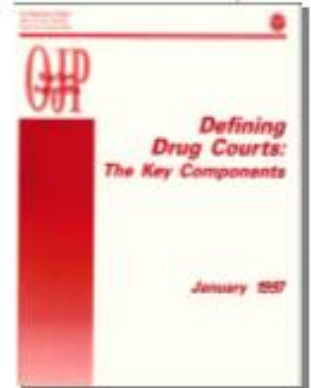


New Jersey's Drug Courts, Special Probation and Proposal for Reform



The New Jersey
Commission to
Review Criminal
Sentencing

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MESSAGE FROM THE HONORABLE BARNETT E. HOFFMAN, J.S.C. (RET.), CHAIRMAN

As chairman of the New Jersey Commission to Review Criminal Sentencing (Commission), it is my pleasure to present the Commission's second major report about the history and role of drug courts in New Jersey. In addition, the report focuses on the interplay between drug courts and what is commonly referred to as the special probation statute, N.J.S.A. 2C:35-14, and the Commission's proposal to amend and improve this provision, thereby expanding treatment for offenders in lieu of imprisonment.

During the last quarter of the twentieth century and the first decade of this century, the most significant impact on the criminal justice system has been the issue of illicit drugs. There is no other criminal issue that touches so many individuals and families.

Drug dependency is an equal opportunity offender. It strikes the rich and the poor, minorities and non-minorities, the urban resident and the suburban resident, as well as the young and the old. People charged with drug offenses are very often drug abusers themselves. In fact, the drug dealer personified in Hollywood films such as "Scarface" has little basis in reality: many, if not most, of the drug offenders who are annually processed through New Jersey's criminal justice system are low-level users and dealers. Many sell drugs to sustain their drug habits.

The "war on drugs" has been ongoing for decades. It is not the purpose of this report to assess whether it has succeeded. Rather the purpose of the report is to illustrate what has, based on available evidence, worked in effectuating positive change – the drug court movement in general and the New Jersey Drug Court program (NJADCP) in particular. As will be discussed at length in the report, one means by which criminal offenders participate in NJADCP is by being sentenced to special probation pursuant to N.J.S.A. 2C:35-14. Special probation is specifically aimed at dealing with the underlying substance abuse problems of non-violent offenders who would otherwise be sentenced to prison at far greater expense to New Jersey's taxpayers.

Prior to becoming a member of the New Jersey Commission to Review Criminal Sentencing, I was a Superior Court Judge assigned to the Criminal Division in Middlesex County. Based on my experience as a judge and, before that, as a prosecutor, I grew keenly aware of the horrendous impact that drugs have on the individual and on society. I also believe that the vast majority of drug-dependent people want to be free of their addictions. Unfortunately, there is a paucity of drug treatment programs in the country and in New Jersey. This problem is especially acute for the impoverished who lack the financial wherewithal to afford effective treatment.

When I was on the Bench, with others, I started a drug court treatment program within the walls of the Middlesex County Adult Correction Center. With the support of the freeholders and warden, we began a program for drug-dependent people who wanted to use the time they were serving to help themselves. The program commenced on October 1, 2001, and is called the Adult Substance Abuse Program (ASAP). Through a series of grants from the Robert Wood Johnson Foundation, over 500 people have graduated from this program. Not all, but many, are now drug free, employed and otherwise fully-functioning members of society. Recent statistics show that ASAP graduates have a significantly lower recidivism rate than the national average.



There is a similar program in Bergen County. A recent editorial in the *Newark Star Ledger* recommended that every county in New Jersey should fund and implement such a program.

As with the Commission's previous report on New Jersey's drug-free zone laws, this report focuses on hard fact as opposed to anecdotal evidence. To be certain, more comprehensive and independent studies should be conducted with respect to New Jersey's Adult Drug Court Program, a point candidly acknowledged in this report. Nonetheless, the evidence compiled thus far regarding the program's ability to reduce recidivism and reduce corrections costs has persuaded the entire Commission -- an entity comprised of members with very diverse backgrounds and perspectives -- that legislative changes should be made to enlarge eligibility for enrollment into the program by amending the special probation statute in accordance with the Commission's recommendations.

As Commission chairman, I am genuinely grateful for the hard work and dedication on the part of all who worked tirelessly on this important project. I especially wish to thank Public Defender Yvonne Segars who chaired the Special Probation Working Group (Working Group) and whose extensive professional experience with drug courts proved extremely helpful. Throughout the previous year, this group met regularly to carefully examine the issue. It ultimately developed the recommendations that were subsequently endorsed by the entire Commission. Special thanks are also due to Burlington County Prosecutor Robert Bernardi. A member of the Working Group, Prosecutor Bernardi effectively and vigorously represented the interests of law enforcement while always keeping an open mind.

I also want to express particular gratitude to Deputy Attorney General Ben Barlyn, the Commission's executive director. Ben serves as the Commission's only staff member and is the principal author of this report. His passion for rational sentencing reform and unflagging efforts on the Commission's behalf go without saying. Lastly, I wish to thank those legislators in the Assembly and Senate who created the supportive climate that created the Commission and have ensured that its work will serve as a template for progressive programs in the criminal justice system.

Respectfully submitted,

Hon. Barnett E. Hoffman, J.S.C. (Ret.)
Chairman



EXECUTIVE SUMMARY

What follows is a concise summary of the key findings and recommendations of the New Jersey Commission to Review Criminal Sentencing concerning N.J.S.A. 2C:35-14, commonly referred to as the special probation statute.

- ☞ The special probation statute was enacted as part of the Comprehensive Drug Reform Act of 1986 and provides for rehabilitative treatment and intensive supervision for non-violent, drug-dependent offenders.
- ☞ The special probation statute was intended by the Legislature to divert appropriate offenders subject to state imprisonment to a five-year period of intensive supervision conditioned upon a mandatory six-month period of in-patient drug treatment.
- ☞ The special probation statute predated by several years the establishment of drug courts in New Jersey and serves as a mechanism pursuant to which otherwise prison-bound offenders are admitted into New Jersey's Drug Court Program.
- ☞ The special probation statute and the New Jersey Adult Drug Court Program are not synonymous. The New Jersey Drug Court program is administered by the Administrative Office of the Courts and involves a collaborative relationship between representatives of the criminal justice system, including judges, prosecutors, defense attorneys and probation officers, and drug treatment professionals. The special probation statute defines with particularity which prison-bound defendants, i.e., those who are subject to a presumption of imprisonment or a mandatory minimum term of incarceration, may gain entry into the Drug Court Program. The provision also enumerates specific conditions that must be adhered to by these offenders while participating in the Drug Court Program.
- ☞ There exists compelling evidence that individuals who use illicit drugs are more likely to engage in criminal behavior, and that many offenses are commonly committed by individuals who had used drugs or alcohol during or just prior to committing their crimes.
- ☞ The drug court model was developed in response to a widespread recognition that the conventional criminal justice process had little impact on the rehabilitative prospects of drug-dependent offenders.



- ☞ The principal goal of drug courts is to reduce drug use and associated criminal behavior by engaging and retaining drug-involved offenders in coerced treatment.
- ☞ At the center of the collaborative approach embodied by the drug court model is the trial judge. The investment of judicial resources in drug court programs has been validated by a study reflecting that “high-risk” offenders perform better in drug court when subject to bi-weekly status hearings.
- ☞ While acknowledging the methodological flaws in a substantial number of studies, the New Jersey Commission to Review Criminal Sentencing (Commission) has nonetheless reviewed recent literature on the impact of drug courts and concluded there is substantial and empirically reliable evidence that drug courts are indeed effective in reducing recidivism among offenders who have successfully completed drug court programs.
- ☞ Although more comprehensive and methodologically rigorous studies are certainly warranted, the available outcome data for offenders sentenced under N.J.S.A. 2C:35-14 compares favorably to the data on outcomes for non-drug court state prison offenders.
- ☞ The Commission unanimously agrees that the following amendments to N.J.S.A. 2C:35-14 are necessary and appropriate based on its collective consideration of data, studies, and the experience of those, including drug court judges, involved in the day-to-day operation of New Jersey’s Adult Drug Court Program.
 - The special probation statute should be amended to clearly specify that it applies only to persons who are subject to a presumption of incarceration or a mandatory minimum term, and that a person who is eligible for, and sentenced to, a conventional probationary term under Chapter 45 of the Code may be subject to the same conditions of probation as available under N.J.S.A. 2C:35-14.
 - The eligibility criteria should be amended so that defendants with two or more prior third-degree convictions will be statutorily eligible for admission into special probation. Prosecutors will possess statutory authority to “veto” admission of defendants with two or more prior third-degree convictions. Defendants with a prior third-degree conviction and first-degree conviction or second-degree conviction will remain ineligible for entry into special probation.
 - The special probation statute should be amended to authorize early discharge from special probation provided the person has served at least two years of special probation and made exemplary progress in the course of treatment provided that the person: 1) has satisfactorily completed treatment; 2) did not commit a substantial violation of any term or condition of special probation within the preceding twelve



months, and 3) is not likely to relapse or commit an offense if probation supervision and related services are discontinued.

- The special probation statute should be amended to provide judges with discretion to require the offender to participate in either a residential or non-residential treatment program that the court determines to be appropriate after the offender receives a substance abuse evaluation.
- The special probation statute should be amended to permit the court to reduce the mandatory Drug Enforcement and Demand Reduction penalty where the offender has successfully completed a drug treatment program and where she can demonstrate that collection of the remaining penalty will result in an “extreme fiscal hardship.”
- The special probation statute should not be amended to authorize judges to place special probation enrollees in out-of-state treatment facilities under certain conditions.
- The special probation statute should be amended to indicate that the bar into the Intensive Supervision Program (ISP) upon the revocation of special probation is limited to the present offense.
- The special probation statute should not be amended to provide that a person placed into a non-residential treatment facility shall be deemed subject to official detention for purpose of the escape statute.



I. INTRODUCTION: THE PROMISE OF SPECIAL PROBATION

When the Comprehensive Drug Reform Act (CDRA) was enacted in 1987, it held out the promise of distinguishing between high level drug traffickers and those who commit drug offenses simply to support an addiction. The former would receive severe criminal sentences, but the latter -- those amenable to rehabilitation -- would be eligible for "special probation" as provided by N.J.S.A. 2C:35-14. Special probation offered those who do not have a history of violence or high level criminality an alternative to incarceration -- closely monitored substance abuse treatment. The New Jersey Commission to Review Criminal Sentencing has conducted a thorough examination of special probation as it has evolved since 1987. The Commission's analysis confirms that, indeed, intensely supervised treatment helps break the cycle of addiction, reduces recidivism, and saves significant tax dollars.

The population of drug offenders who qualify for special probation under N.J.S.A. 2C:35-14 is extremely narrow. Individuals charged with or previously convicted of violent or high level offenses are automatically excluded from special probation. To ensure successful outcomes, even those who qualify to apply for special probation are painstakingly screened by court-employed professional drug treatment evaluators according to stringent standards. Further, programs that combine comprehensive treatment, intensive supervision and judicial oversight cost substantially less than prolonged periods of imprisonment. Consequently, the public benefits not only from the reduction in crime, but also from significant savings in tax dollars.

Developed by the Judiciary in close collaboration with other key stakeholders, New Jersey's Adult Drug Court Program is specifically intended to address the serious substance abuse problems of non-violent criminal defendants. There are at present two distinct routes into the Adult Drug Court Program: defendants sentenced under N.J.S.A. 2C:35-14, the special probation statute, and defendants sentenced to conventional probation pursuant to Chapter 45 of the Code of Criminal Justice. The drug courts themselves are structured around a specialized team of treatment evaluators, prosecutors, public defenders and members of the probation department who, under the direction of the drug court judge, ensure that participants in the program receive an effective course of treatment and do not present a threat to public safety. Drug courts mandate substance abuse treatment, including in-patient and out-patient programs, frequent random drug testing, intensive supervision, and continual judicial monitoring. Graduated sanctions, including terms of incarceration, are used to respond to program violations. Expectations of participants are high and encompass all aspects of their lives. Participants are taught to follow society's rules, obtain education and vocational training, obtain gainful employment, pay outstanding fines and penalties, and properly care for children. Participants become taxpayers rather than recipients of public resources. Many participants find Drug Court more challenging than prison but the results change lives and dramatically reduce recidivism.



After analyzing the data and obtaining extensive input from the Administrative Office of the Courts, the Commission has concluded that it is time to carefully expand special probation to additional non-violent offenders who are amenable to rehabilitation through a continuum of substance abuse treatment. Our prisons are burgeoning with a population that cannot be helped or prevented from re-offending if substance abuse is not addressed in a comprehensive community-based manner. The Commission herein proposes modifications to the special probation statute, N.J.S.A. 2C:35-14 that will accomplish this goal. These proposals will enhance the Judiciary's ability to utilize special probation by offering additional treatment options and flexibility in the length of special probation sentences, and by revising and clarifying legal barriers to admission to special probation.

The Commission respectfully encourages the Legislature to accept these findings and adopt the proposed amendments to N.J.S.A. 2C:35-14 set forth in the Appendix.



II. THE CAUSAL RELATIONSHIP BETWEEN DRUGS AND CRIME COMPELS THE SEARCH FOR CRIME-PREVENTION STRATEGIES THAT ADDRESS DRUG ADDICTION

The connection between substance abuse and crime is stark, incontrovertible and consistent. In a 1997 survey, the Bureau of Justice Statistics (BJS) estimated that about 70 percent of state and 57 percent of federal prisoners had used drugs regularly prior to incarceration. More recently, a 2002 Bureau of Justice Statistics survey reported that 52 percent of female prisoners and 44 percent of male prisoners met the criteria for alcohol or drug dependence upon incarceration.

In a special report entitled “Drug Use and Dependence, State and Federal Prisoners, 2004,” the BJS concluded that the prevalence of prior drug use among state prisoners remained constant between 1997 and 2004. A third of state inmates reported having committed their current offenses while under the influence of drugs. Over half had used drugs in the month before the commission of those offenses and more than two thirds had used drugs regularly at some time in their lives. Conversely, that same BJS report also demonstrated that many prisoners who met the criteria for recent drug dependence or abuse had extensive criminal records. Among state prisoners who were dependent on or abusing drugs, 53% had had at least three prior sentences of probation or incarceration, compared to 32% of other inmates. At the time of their arrests, drug dependent or abusing state prisoners (48%) were more likely than other inmates (37%) to have been on probation or parole supervision.

According to a 2006 report issued by the National Institute on Drug Abuse, substance abuse is regularly implicated in at least three different types of drug-related offenses: 1) offenses defined by drug possession or sales, 2) offenses directly related to drug abuse (e.g., stealing to get money for drugs), and 3) offenses related to a lifestyle that predisposes the drug abuser to engage in illegal activity, for example through association with other offenders or with illicit markets.

Statistics compiled by the New Jersey Department of Corrections projected a similar picture. In 1996, an analysis of the criminal backgrounds of New Jersey’s then-rapidly growing prison population found more than 7,500 inmates incarcerated for a drug law violation with no prior conviction for violent offenses. More than 2,000 of those inmates had no prior conviction at all. Moreover, Department of Health and Department of Corrections studies revealed that the overwhelming majority of these offenders had serious drug and/or alcohol addictions. Many were addicts who had become low-level dealers to support their own habits and were serving three-year terms of imprisonment for violations of New Jersey’s school-zone drug law.

The foregoing studies lead to these inescapable conclusions: individuals who use illicit drugs are more likely to commit crimes, and that many offenses, including violent crimes, are commonly committed by individuals who had used drugs or alcohol prior to committing those crimes, or





who were using at the time of the commission of the offenses. Therefore, addressing drug addiction must be an integral part of any effective, long-term crime control strategy.



III. DISRUPTING THE DRUG ABUSE/CRIMINAL JUSTICE CYCLE: A BRIEF HISTORY AND OVERVIEW OF DRUG COURTS

The “war on drugs,” which commenced in the mid-1980’s, involved the enormous mobilization of criminal justice resources at the federal, state, and local levels to combat illicit drug use and trafficking. By the late-1980’s, many state and local criminal justice systems, including New Jersey’s, were confronting an exponential rise in drug cases. Court dockets became inundated with drug cases and drug-involved offenders, leaving fewer resources available to adjudicate serious violent crimes. By this time, ironically, experts were also beginning to understand that the conventional criminal process, which relied on the threat and imposition of imprisonment to motivate lawful behavior, had a negligible impact on the offenders whose criminality was drug-driven. Those who were sentenced to incarceration for substance-related offenses exhibited a high rate of recidivism, apparently undeterred by the traditional punishment model. Because the traditional adjudication process would result in sentences of probation or imprisonment which were not paired with effective treatment and close community supervision, offenders’ substance abuse issues remained unaddressed, thus making recidivism much more likely.

These realities prompted a number of jurisdictions in the late 1980’s and early 1990’s to reconsider the conventional, adversarial approach to non-violent, drug-dependent criminal offenders and begin to conceptualize a treatment court model for them. The first drug court was established in Miami, Florida in 1989 by administrative order from the Chief Judge of Florida’s eleventh judicial circuit. The judge assigned to design and coordinate the establishment of Miami drug court astutely noted that:

-  Putting more and more offenders on probation just perpetuates the problem.
-  The same people are picked up again and again until they end up in the same state penitentiary and take up space that should be used for violent offenders. The drug court tackles the problem head-on.

The drug court approach pioneered in Miami began to spread quickly throughout the country as other jurisdictions recognized its potential impact.

The operation of drug courts differs in many respects from the traditional approach to processing criminal defendants. Because the key goal of drug courts is to reduce drug use and associated criminal behavior, the drug court model is directed more at engaging and retaining drug-involved offenders in treatment services, concentrating expertise about drug cases into a single courtroom, and addressing other defendant needs through clinical assessment and effective case management. The drug court model is a collaborative process that depends upon coordinated efforts of the traditional actors in the criminal justice system - including judges, prosecutors,



defense attorneys, probation officers, as well as substance abuse treatment providers - to leverage the coercive power of the court to promote abstinence, law-abiding behavior, and constructive personal change in the lives of the program participants.

TRADITIONAL PROBATION	DRUG COURT
Judge involved post-disposition only w/ violations of probation	Post-dispositional judicial oversight
Traditional probation caseloads avg. 108 cases	Intensive probation Supervision (max. 50 cases)
Probation is sole agency	Multi-disciplinary team
Drug testing is limited (ie: once per month)	Frequent and random drug testing (ie: 2x/wk)
Only court sanction is in response to a violation of probation	Swift sanctions imposed by the Drug Court judge
Probation case plans	Comprehensive treatment plans
Compliance monitoring	Recovery support

Indisputably at the heart of this team-centered approach is the drug court judge. In the traditional system of criminal adjudication, the role of the judge is that of a passive, neutral arbiter akin to a referee positioned between two adversaries – the prosecution and defense. Judges exercising their traditional roles have very limited interaction with offenders after imposing punishment. In the pre-drug court era, when judges ordered offenders into drug treatment as a condition of sentencing or probation, they were largely uninvolved with monitoring or mentoring the offenders’ compliance with treatment conditions. On the other hand, the role of a drug court judge differs markedly in scope and function from that of a conventional criminal court judge.



The Drug Court Team







- Superior Court Judge
- Assistant Prosecutor
- Assistant Deputy Public Defender
- Drug Court Coordinator
- Team Leader
- Substance Abuse (TASC) Evaluator
- Treatment Provider(s)
- Probation Supervisor
- Probation Officers

It is now widely recognized that the drug court model depends for its success on the ongoing, direct, and aggressive involvement of the judge in the treatment and supervision of defendants. During regularly scheduled status hearings, which take place in an open courtroom, the drug court judge holds the defendant publicly accountable for his/her progress in treatment. In addition, the judge uses progressive or “graduated” sanctions and incentives, to reward success and to discourage, and, if necessary, punish transgressions. In short, drug court judges work to keep participants engaged in treatment.

The degree of judicial involvement with respect to an individual defendant is critical. Not only does the judge review the progress of each defendant many times during the course of treatment, but he or she also regularly engages the defendant directly. These interactions may involve praise or encouragement. Conversely, if the participant has committed an infraction (e.g., a dirty drug screen or missed appointment) the judge will demand an explanation, then warn the participant and, if warranted, impose a sanction. The authority embodied by the judge, both morally and legally, is essential. Judicial leadership is the defining characteristic of the drug court model, according to Professor John Goldkamp of Temple University, one of the nation’s foremost experts on drug courts. As one former drug court judge put it, “the symbolic impact of the black robe can’t be underestimated; it shows defendants that the system takes the defendant’s conduct seriously.” A methodologically rigorous study underscored that “high risk” offenders performed “significantly” better when they were assigned to more frequent judicial status hearings, thus justifying the heavy investment of judicial resources.



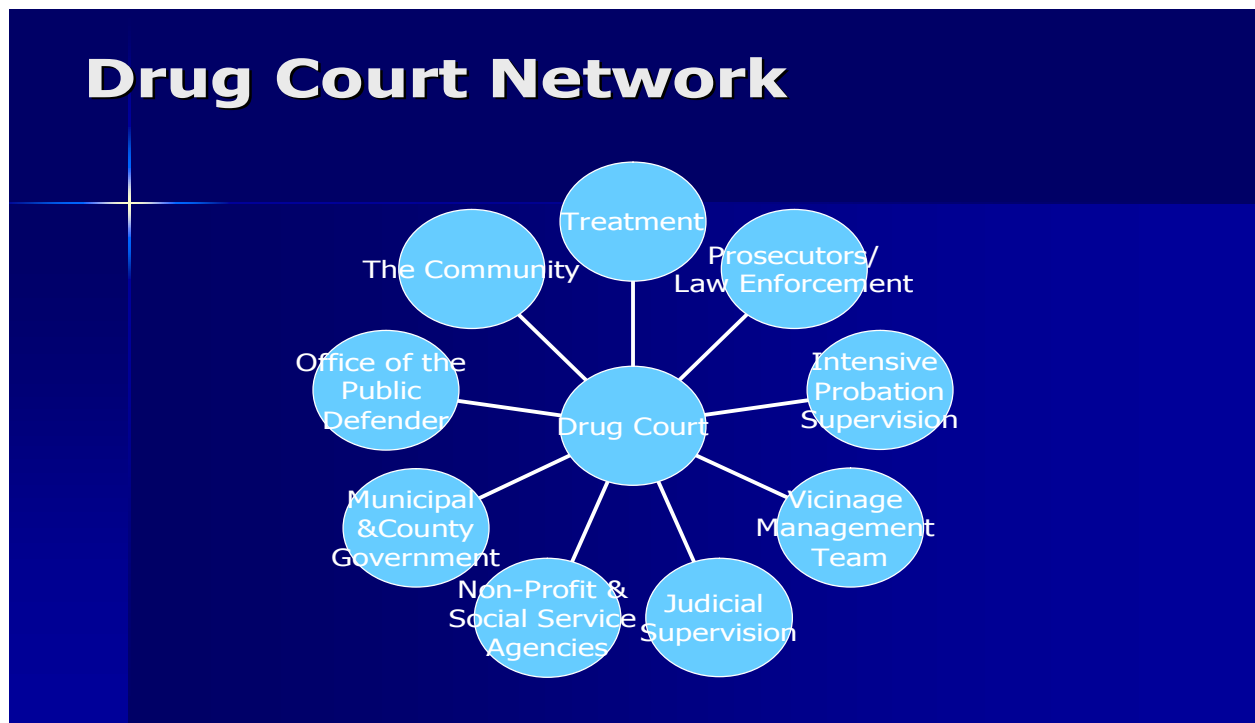
By 1996, drug courts were in operation in 45 states and more than 100 jurisdictions. One year later, the National Association of Drug Court Professionals and the U.S. Department of Justice's Office of Justice Programs published "Defining Drug Courts: The Key Components," a document which synthesized and enunciated the basic elements that define the drug court model and offered performance benchmarks to guide implementation. The ten key components identified are:

-  Integration of substance abuse treatment with justice system case processing.
-  Use of a non-adversarial approach, in which prosecution and defense promote public safety while protecting the right of the accused to due process.
-  Early identification and prompt placement of eligible participants.
-  Access to a continuum of treatment, rehabilitation, and related services
-  Frequent testing for alcohol and illicit drugs.
-  A coordinated strategy among the judge, prosecution, defense, and treatment providers to govern offender compliance.



- 📄 Ongoing judicial interaction with each participant.
- 📄 Monitoring and evaluation to measure achievement of program goals and effectiveness.
- 📄 Continuing interdisciplinary education to promote effective planning, implementation, and operation.
- 📄 Partnerships with public agencies and community-based organizations to generate local support and enhance drug court effectiveness.

Today the drug court approach has been implemented extensively throughout the country.



IV. THE BENCHMARKS FOR SUCCESSFUL DRUG COURTS: REDUCED CRIME AND LOWERED COSTS

A. DRUG COURTS CAN REDUCE CRIME

Do drug courts work? Based on the remarkable proliferation of drug courts across the country since 1989, the answer might seem self-evident. As of December 31, 2004, there were 1,621 drug courts operating in the United States. Between 2004 and 2005, the total number of operational drug courts increased by 37 percent and more than 16,200 participants graduated from drug court.

These numbers, however, are not a valid measure of success. Instead, as noted by Professor Goldkamp, the question of whether drug courts work implicitly embodies a comparison that lies at the heart of the genuine inquiry, namely: Compared to how the judicial system was working without a drug court, is the addition of a drug court an improvement?

The most commonly employed benchmark cited by experts, public officials, and practitioners in assessing the potential utility of drug courts is crime reduction, with cost reduction a close second. Simply stated, officials want to know if drug courts reduce crime and save money. Regardless of the evaluation criteria examined, (e.g., dollars saved and/or crime and drug use reduced), the only rational way to gauge drug court efficacy is to compare drug court participants with an appropriate comparison group not undergoing drug court treatment. With respect to recidivism, if drug court participants are rearrested less frequently than their counterparts, it is fair to interpret the data as supporting the argument that drug courts “work” or that, compared to the condition of not having the drug court, drug court participation reduces crime among participants. Put differently, drug court participants should show better results than defendants conventionally processed through the traditional criminal justice system.

In preparing this report and proposed legislative changes to New Jersey’s special probation statute, the Commission has reviewed the research literature evaluating the efficacy of drug courts. Many drug court evaluations have been published within the last six years, and all are incorporated into this report’s appendix by reference. In examining this literature, the Commission recognized that many evaluations employed weak methodological designs, small sample sizes, and poor measures of outcomes. Such evaluative work is of little value to a critical determination of drug court efficacy.



The Commission was concerned that its judgments about drug court effectiveness be based on evaluation research that did not embody the weaknesses outlined above. A 2004 *Drug Court Review* article by Charles Michael Johnson and Shana Wallace, “Critical Elements to Consider for Methodologically Sound Impact Evaluations of Drug Court Programs,” outlines three essential elements that sound drug court evaluations must embody. First, the evaluation must compare program participants to non-participants. Knowing outcome data for drug court clients is insufficient in and of itself, unless we know outcomes for similarly situated offenders who did not receive the drug court intervention. Second, the evaluation should collect and analyze data at several points in time. For example, capturing outcome data for offenders while they are enrolled in drug courts is informative, but knowing outcomes of drug court clients post program release is more powerful. Third, Johnson and Wallace stress the importance of having qualified social scientists conduct drug court evaluations, rather than relying on program administrators to serve this function.

In an effort to ensure that only findings from evaluations that employed these critical elements were considered, the Commission relied on a meta-analysis of the drug court evaluation literature published by the U.S. Government Accountability Office (GAO) in February, 2005. This report, entitled, “Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes,” concluded:

Overall, positive findings from relatively rigorous evaluations in relation to recidivism, coupled with positive net benefit results, albeit from fewer studies, indicate that drug court programs can be an effective means to deal with some offenders. These programs appear to provide an opportunity for some individuals to take advantage of a structured program to help them reduce their criminal involvement and their substance abuse problems, as well as potentially provide a benefit to society in general.

Although not representative of all drug court programs, our review of 27 relatively rigorous evaluations provides evidence that drug court programs can reduce recidivism compared to criminal justice alternatives, such as probation. These results are consistent with those of past reviews of drug court evaluations. Positive results concerning recidivism are closely associated with program completion. Specifically, while drug court participation is generally associated with lower recidivism, the recidivism of program completers is lower than for participants in comparison or control groups. Thus, practices that encourage program completion enhance the success of drug court programs in relation to recidivism.



The GAO urged continued study into the workings of drug courts, observing that, “[t]o the extent that research can help discern best practices for drug courts, the models for effective programs can be enhanced.”

In addition to the GAO report, the Commission accorded significant weight to the research and commentary of three nationally recognized drug court researchers, Douglas B. Marlowe, J.D., Ph.D., Professor Goldkamp, and Steven R. Belenko, Ph.D. All three experts can fairly be characterized as cautious drug court proponents, and each has judiciously acknowledged that a sizeable body of drug court research over the last twenty years has occasionally lapsed into wish fulfillment by its more ardent proponents, with the result that certain evaluations are of such poor quality that the results cannot be interpreted from a scientific perspective. Nonetheless, Goldkamp, Marlowe, and Belenko analyzed several studies which, in their estimation, were rigorously conducted and which provide relatively strong and empirically reliable evidence that the drug courts under review do indeed produce a crime-reduction effect.

The Commission also reviewed all existing data relevant to determining the efficacy and outcomes for New Jersey’s own drug courts. While no comprehensive evaluation of New Jersey’s drug courts has been completed, the Administrative Office of the Courts (AOC), which oversees New Jersey’s drug courts, does maintain outcome data on offenders admitted to drug courts. Specifically, the AOC tracks rearrest, reconviction and reincarceration data for offenders admitted into drug courts. In addition, each year the AOC, as part of its budget requests, provides the Office of Management and Budget (OMB) with data regarding costs and savings with respect to the New Jersey drug court program.

In 1996 New Jersey funded five Drug Court Initiative (DCI) pilot drug courts specifically constructed to sentence offenders under the provisions of N.J.S.A. 2C:35-14. These provisions require participants to undergo six (6) months of residential drug treatment and five (5) years of “special probation” supervision. To date, 276 offenders have graduated from these pilot drug courts. While the length of time “at risk,” or post program completion, varies for these graduates, only 24 (9%) have been rearrested. Of these 24 recidivists, 8 (3% of all graduates) have been convicted of a new criminal offense, and 7 (3% of all graduates) have been sentenced to a new term of imprisonment. Among the graduates, those who have been in the community for longer periods of time post-graduation are more likely to have recidivated. For example, among the eighty-two (82) offenders with less than one year post-graduation, only two (2%) have been rearrested. Among the forty-two (42) who graduated at least three years ago, 8 (19%) have been rearrested.

When all drug court graduates (635) – including those sentenced under the special probation statute, N.J.S.A. 2C:35-14 – are considered, 66 (10% of all graduates) have been rearrested following graduation. Twenty-four (4% of all graduates) of those



individuals have been convicted of a new offense and 11 (2% of all graduates) have been sentenced to a new term of imprisonment. Among the 156 offenders who have been in the community less than one year after graduation, only 4% have been rearrested. Among the 231 participants who graduated at least three years ago, 33 (14%) have been rearrested.

Of course, the logical question is how do these recidivism rates compare with the rates for similar offenders (in terms of instant offense, criminal history, severity of addiction, etc.) who did not receive the drug court intervention. Unfortunately, there are no data for a comparable control group to which to compare the drug court offender recidivism rates. The New Jersey Department of Corrections has published a report detailing rearrest, reconviction and reincarceration rates for offenders released from state prisons in 1991, however. These data provide a baseline, albeit not a directly comparable one, with which to compare the New Jersey drug court outcome data.

The Department of Corrections study found that of all state prisoners released in 1991, fifty-three (53) percent were rearrested, forty-one (41) percent were reconvicted, and twenty-six (26) percent were reincarcerated in state prison within three years post-release. For just those prison inmates sentenced for drug distribution offenses, a group somewhat more closely comparable to the drug court clients, fifty-one (51) percent were rearrested, forty (40) percent were reconvicted, and thirty-four (34) percent were reincarcerated in a state prison within three years post-release.

All of the outcome data for New Jersey drug court offenders sentenced under N.J.S.A. 2C:35-14 compares very favorably to the data on outcomes for non-drug court state prison releasees. For example, both the nine (9) percent rearrest rate for all drug court graduates and the nineteen (19) percent rearrest rate for drug court graduates who have had at least three years in the community post-release are significantly less than both the fifty-three (53) percent rearrest for all state prison releasees and the fifty-one (51) percent rearrest rate for offenders released from state prison after serving a term for a drug distribution offense. The Commission notes that while these data are informative, the lack of a rigorous evaluation of New Jersey's drug court is a significant and acknowledged shortcoming. Given this, the Commission notes the value that a methodologically rigorous evaluation of New Jersey's drug court programs would have for policy makers considering the expansion of such programs.

Nevertheless, given the national level evaluations and the limited data from New Jersey drug courts, the Commission has therefore concluded with a high degree of confidence that drug courts generally "work" in reducing recidivism. A more complex question is why or how drug courts work. The current drug court evaluation literature has not been able to determine which of the individual core components of drug courts may be responsible for the significant success that the treatment court model has effectuated. It is not yet known, therefore, whether all components working together to create a



synergistic effect are necessary to produce positive results, or whether only one or more of the core components (such as the non-adversarial approach, the ongoing involvement of a judge, frequent drug testing, etc.) are responsible and therefore necessary to bring about the kind of successes documented in the evaluation literature.

Similarly, little is known about which drug-dependent defendants are most likely to benefit from participation in drug court. However, according to a recent study published by the Center For Court Innovation entitled, “The State of Drug Court Research: Moving Beyond ‘Do They Work,’” preliminary data suggest that there are three categories of defendants who are most likely to succeed in drug court: 1) “high-risk” offenders, i.e., those with criminal records and weaker community ties; 2) those offenders facing greater legal consequences for failing drugs courts, including serious prison time; and 3) drug offenders (as opposed to offenders arrested for property crimes and other offenses).

The study also noted findings that participants perform better in drug court if their offenses were more serious – and hence face more severe legal consequences if they fail. When comparing those processed through drug court with those processed through the conventional system, it turns out that drug court makes a relative difference in reducing the likelihood of re-offending for those with a prior record. The practical implication of this finding, according to the study, is that drug courts produce better outcomes if they expand their eligibility criteria to offenders with a prior criminal record or those who have previously failed treatment and, conversely, limit drug court participation for those facing less serious types of offenses. This impact is thought to derive from the fact that drug courts that select participants over whom they can exercise more legal coercion stand to produce better outcomes.

B. DRUG COURTS SAVE MONEY AND AVOID COSTS

The 2005 GAO report provides a very clear framework for assessing the potential fiscal benefits of drug court programs through a cost-benefit analysis. A cost-benefit analysis determines the costs associated with implementing or operating a program and weighs those costs against any benefits derived from the program. On the basis of the general principles of cost-benefit analysis, the GAO identified five criteria to use in conducting the cost-benefit analysis of the drug court programs it reviewed. Those criteria are depicted in the following table:



Five Criteria for Assessing a Cost-Benefit Analysis of a Drug Court

Program Criterion Description

1. **States the program's purpose:** In general, the purpose of a drug court program is to reduce repeated criminal behavior—to reduce recidivism—by reducing offenders' substance-using behavior.
2. **Identifies the baseline:** The baseline, or alternative, is what would happen to an offender if the drug court program did not exist.
3. **Assesses all relevant costs:** The costs involved in a drug court program are those associated with the program's operation and those associated with the baseline.
4. **Assesses all relevant benefits:** Benefits usually attributed to drug court programs are costs avoided because of reduced recidivism; they accrue to the criminal justice system and potential victims of crime. Other benefits an analysis could consider include reduced medical costs and successful program participants' increased productivity.
5. **Assesses uncertainty in cost and benefit estimates:** Most cost and benefit estimates entail uncertainty from imprecision in the data underlying the analysis and the assumptions built into the analysis. Assessing uncertainty enhances confidence in the estimates used in evaluation.

Source: GAO analysis.

Using these criteria, the GAO examined eight drug court programs that provided information about costs. Of those eight, four reported sufficient data on both costs and benefits for the GAO to adequately assess the reported net benefits of the drug programs. Specifically, the GAO was able to ascertain for those four programs whether the reduction of recidivism -- the benefit -- outweighed the actual costs of the program.

The GAO's conclusion was that although the cost of three of these four programs was more expensive than the cost of conventional case processing, all four programs



engendered net benefits ranging from about \$1,000 per participant to about \$15,000 per participant. These benefits were specifically attributed to reduced victimization based on lower recidivism rates. In so finding, the GAO emphasized that the true, full benefits of these drug court programs may have been underestimated because the data evaluated did not include information about indirect or intangible benefits which might have been factored into its analyses. Those factors might be items such as costs avoided because treated drug addicts did not use medical services that would otherwise have been required; fewer periods of unemployment and higher wages for successful program participants; and resulting higher taxes paid by successful participants. While these benefits are difficult to quantify in assessing a drug court program, their absence suggested to the GAO that the reported net benefits which it evaluated were understated.

At present, this analytical framework enunciated by the GAO has not been utilized to facilitate a comprehensive cost-benefit study of New Jersey's Adult Drug Court Program (ADCP). Nonetheless, statistics compiled by the AOC underscore the immediate and substantial savings to New Jersey taxpayers simply by virtue of the fact that a considerable number of otherwise prison-eligible defendants have been diverted away from state prison and are instead being intensively supervised and treated for their substance addiction. It currently costs New Jersey \$37,223 each year to imprison one inmate, and \$6,992 to supervise one parolee upon release from prison. In marked contrast, the placement of one drug court participant in a residential treatment facility for one year costs \$19,800, and the cost of drug court participation with intensive outpatient treatment costs \$10,300.

Between March 1, 2002 and January 1, 2007, 4,390 criminal defendants have been sentenced to the ADCP. According to the AOC, 93% of these defendants were prison-bound. Moreover, 60% of these defendants were initially placed in long-term residential treatment, 20% were initially placed in short-term residential treatment, and 20% were provided intensive outpatient treatment. The AOC projects a total active adult drug court caseload of 3,122 participants by the end of Fiscal Year 2007.

Beyond the direct savings referenced above, the following collection of outcome measures for 445 drug court graduates compiled by the AOC in February 2006 depicted in the chart on the following page, illustrates that intangible or indirect benefits derived from the ADCP -- apart from costs avoided because of reduced recidivism -- are considerable.



<u>AOC DRUG COURT GRADUATE COMPARISON DATA</u>			
<u>FOR 445 GRADUATES</u>			
OUTCOME MEASURES	START OF DRUG COURT	UPON GRADUATION	PERCENT DIFFERENCE
Employment	27%	92%	65%
Covered by Medical Benefits	13%	47%	34%
Minor Children Residing with Participant	36%	48%	12%
Drivers License Valid	6%	52%	46%
Average Length of Employment (in months) while in Drug Court			23 months
Participants who improved their educational/vocational level			13%
Total Court Fines/Fees/Penalties paid by Graduates			\$582,326
Average Amount Paid to Court			\$1,296



V. DRUG COURTS IN NEW JERSEY: A BRIEF HISTORY

A. THE COMPREHENSIVE DRUG REFORM ACT AND ITS IMPACT ON NEW JERSEY'S PRISON POPULATION

New Jersey's criminal justice response to the devastating impact of the crack cocaine epidemic in the mid-1980s paralleled that of the rest of the country in many ways. Many states sought to address the crisis by criminalizing substance abuse and treating the problem as a predominantly criminal justice matter, rather than as a public health problem. New Jersey followed suit, substantially enhancing punishment, especially for drug crimes, in newly enacted legislation. On April 23, 1987, former Governor Thomas Kean signed into law the Comprehensive Drug Reform Act of 1987 (CDRA), a sweeping revamping of New Jersey's criminal drug laws. The Act at once: 1) consolidated and revised all criminal drug statutes, many of which were situated outside of New Jersey's Code of Criminal Justice prior to 1986; 2) harmonized these provisions with the basic philosophical and structural framework of the Code of Criminal Justice enacted eight years earlier, and 3) established several new crimes to delineate and punish more severely those drug offenders perceived as especially dangerous. Several of these provisions authorized the imposition of mandatory periods of parole ineligibility, referred to commonly as "mandatory minimums."

The impact of the Act was profound in both fiscal and human terms. In 1987, the year the CDRA was enacted, 11 percent of the state prison population was incarcerated for drug offenses. Today, 32 percent of the inmates in state prison are locked up for a drug crime; in fact, New Jersey imprisons the highest percentage of drug offenders in the country (the national average is 20%). In 2003, 73% of those imprisoned drug offenders were African-Americans.

Moreover, the Department of Corrections has calculated that 62 percent of the growth in state prison population since 1987 is directly attributable to provisions that have resulted in more drug offenders being incarcerated for longer periods of time. The Corrections budget in 1987, the year the CDRA was enacted, was \$289 million. In fiscal year 2006, the annual budget of the Department of Corrections was \$1,033 billion. As an aside, the growth of Corrections spending has outpaced all other segments of New Jersey's budget. For example, the Department of Corrections budget grew by a factor of 13 from FY79 to FY06, while the state budget grew as a whole grew by a factor of 6 (from \$4.4 billion to \$27.4 billion).



B. NEW JERSEY'S ADULT DRUG COURT PROGRAM – THE BEGINNING

As will become evident, the history of drug courts in New Jersey is a story of intense collaboration, innovation, and remarkable initiative. For example, drug court programs were established in Camden and Essex Counties before the receipt of any federal or state grant funds to support their activities. Subsequent to their local efforts, both Camden and Essex Counties began a formal training and planning process upon the receipt of federal “Drug Court Planning” grants through the Office of Justice Programs (OJP).

C. THE SPECIAL PROBATION-DRUG COURT INITIATIVE (DCI)

In 1994, personnel from the Judiciary, state legislators and representatives of New Jersey criminal justice agencies began exploring whether New Jersey might benefit from treatment alternatives to incarceration. They educated themselves about drug rehabilitation treatment for addict offenders, attended at least one seminal conference on the topic, started to think about how it might be integrated into the New Jersey landscape, and eventually became involved in the federal government’s planning and seed funding efforts out of the its Office of Justice Programs.

At the same time, statewide policy planners in the executive branch were growing increasingly alarmed at New Jersey’s burgeoning incarceration rate. As the statistics 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 New Jersey should embark on a more intelligent course in order to logically apportion its resources within the existing institutions and statutory scheme in order to alter this self-defeating trend.

A novel idea surfaced among these policy-makers: 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 Stout (a member of this Commission) convened a Steering Committee in late 1995 or early 1996, which included representatives of those who had already been thinking about treatment alternatives to incarceration. This working group started meeting regularly to explore and develop this concept. It heard, expressed and reviewed the interests and concerns of numerous stakeholders, 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 a rarely-invoked provision of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:35-14 (special probation statute).

Enacted as part of the CDRA in 1987, the special probation statute authorized rehabilitative treatment specifically as an alternative to incarceration in appropriate cases. Indeed, the special probation provision had actually been expressly crafted to enable the diversion of eligible prison-bound non-violent offenders, (i.e., those convicted of first and second degree crimes and crimes which carry a mandatory period of parole ineligibility) into treatment premised on intensive supervision and a mandatory commitment to a residential treatment facility for a period of no less than six months.

The CDRA's special probation provision prefigured, to a significant extent, the drug court model previously discussed. Prior to extensive amendments by the Legislature in 2000 and 2001, the special probation statute 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 typically involving 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 1,000 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 was joined in by the prosecutor;
- ☞ if a drug dependent person convicted of a second degree crime 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.

By enacting this provision, the Legislature presumably anticipated that a sizeable number of suitable defendants would be spared imprisonment and instead receive treatment under intensive supervised probation, and that new drug treatment facilities would be built to accommodate the corresponding increase in patients.



In fact, neither expectation was realized. Although the market for quality drug rehabilitation continued, the means to fund 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. Because 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 the special probation provision.

Mindful of the underutilization of rehabilitative sentencing authorized by the special probation statute and of the projected savings 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 "special probation 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, every person who sell drugs in school zones - even a user/dealer - is faced with the same mandatory incarceration under the sentencing provisions of the CDRA unless the county prosecutor in the county in which the offense occurred agrees to recommend an alternate case disposition.

Reasoning that many first-time school-zone offenders were engaged in criminal behavior to support their addictions, the Steering Committee decided to initially target that group of offenders in several carefully crafted and fully funded pilot programs which became known as the Drug Court Initiative (DCI). 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 was the fact that the special probation provision required that eligible defendants spend, without exception, at least six months in a residential treatment program. This "containment" factor made the experiment more palatable from a public safety point of view.

All 21 counties were offered the opportunity to apply for inclusion in the special probation/DCI pilot program. Among the few applicants were counties with large urban centers and high crime rates. Ultimately, DCI pilot programs were established in Camden County (the oldest program, started in early 1997), Essex County, Passaic County, Union County and Mercer County. The Steering Committee determined to fully fund these five programs, and not to add more locations until it had gathered and been able to study enough long term statistical information in order to determine their efficacy. The Steering Committee subsequently leveraged substantial cross-agency expertise and effort to facilitate the transfer of funds and to create the coordinated infrastructure necessary to support the DCI pilots, which became known as "School Zone Drug Courts". In each pilot county, drug offenders were entitled to apply for a space in its special probation/DCI program. If they were deemed legally eligible for inclusion by the respective County Prosecutor's Office, these applicants were diagnostically screened to



determine whether they were clinically appropriate candidates for long term inpatient drug treatment of at least six months' duration. If so, they were accepted into the special probation program. In time, the Steering Committee permitted candidates presenting with certain other offenses to apply who were also demonstrably prison bound and in all ways fit the eligibility criteria. At that point, the DCI program was no longer considered or designated exclusively as the "School Zone Program," although DCI funds continued to be applicable to only those who were sentenced to the drug court program via the 2C:35-14 special probation mechanism.

D. THE OFFICE OF JUSTICE PROGRAMS (OJP) DRUG COURTS

If the special probation/DCI pilot program embodied a top-down implementation strategy, drug courts concurrently established by federal grants in several counties represented a bottom-up, grass-roots approach. In fact, these drug courts preceded the implementation of the special probation/DCI pilot program. As noted previously, Camden County began operating the state's first drug court in April 1996, even before it received a federal planning grant funding from the Drug Courts Program Office of the Office of Justice Programs (OJP), U.S. Department of Justice. Camden County's drug court became the first OJP Drug Court in New Jersey when it actually received its first federal implementation grant in April 1, 1997. Essex, Passaic, and Union Counties likewise received funding from OJP to establish a drug court. Programs in these counties started, respectively, on June 5, 1997, June 29, 1999, and March 29, 1999. Grant applications from Ocean and Morris Counties, however, were rejected by OJP.

Importantly, eligibility for admission into the OJP funded drug courts was not governed by the special probation statute. Accordingly, defendants who, by virtue of the charges against them, were not eligible for special probation were nonetheless eligible for enrollment in the OJP funded drug court programs if they met OJP's eligibility criteria. In addition, these programs did not condition participation upon mandatory in-patient residential treatment and a fixed five-year period of special probation as required under the special probation statute. Instead, treatment was based on the individual needs and requirements of the participant.

Once enrolled in drug court through either the DCI/special probation route or the OJP-funded route, the treatment experiences of drug court participants were exactly the same, except that those who came in through the DCI/special probation route were mandated to undergo an initial six months of in-patient treatment while there was no such requirement for those who entered through the OJP path (although some of those participants did undergo inpatient treatment because this was clinically appropriate for them). The funding for each group remained separate, however. Thus Camden, Essex, Passaic and Union Counties each had a drug court in which some participants were OJP funded and some participants were DCI funded with special probation restrictions, and Mercer County had a drug court with only DCI funded participants.



E. THE STANDARDIZATION OF NEW JERSEY'S DRUG COURTS

By the late 1990's, an anomalous situation existed in New Jersey with respect to both the funding and operation of drug courts. Although drug courts were in place in several jurisdictions and broadly functioned in accordance with the generic drug court model, funding for these programs derived from very different sources or "streams" – the federal government and state treasury. Consequently, eligibility and participation criteria differed, even within counties, depending on the source of funding.

A significant move toward the standardization of New Jersey's drug court programs occurred in May 2000, when the Conference of Criminal Presiding Judges recommended that drug courts be established as a "Best Practice" in the Criminal Division of the Superior Court of New Jersey. In order to assure equal access, the Presiding Judges recommended that the drug court caseload consist of prison-bound defendants, i.e., those defendants who fell within the ambit of the special probation provision, as well as defendants sentenced to ordinary probationary terms in need of drug treatment. In June 2000, the Judicial Council adopted drug courts as a "Best Practice" in the Criminal Division and called for a comprehensive statewide proposal. That proposal, entitled "Drug Courts: A Plan for Statewide Implementation," was developed by the Administrative Office of the Courts in December 2000. On September 6, 2001, legislation was enacted to facilitate implementation of the statewide plan. Specifically, this legislation authorized appropriations from the General Fund to the Administrative Office of the Courts as "Special Purpose Funding" to be used exclusively to establish additional judgeships and staff for operation of drug courts. The legislation also authorized an appropriation to the AOC from the General Fund specifically for the establishment of in-patient and out-patient substance abuse treatment for adult criminal offenders. The AOC and DAS shortly thereafter entered into a cooperation agreement under which the latter was authorized to manage the procurement of treatment funds for adult drug courts. The agreement became effective on April 1, 2002.

In 2002, the *Manual for Operation of Adult Drug Courts in New Jersey, (Drug Court Manual)*, was approved by the Judicial Council for statewide use. It was developed utilizing the collective expertise of professional staff assigned to the pilot drug court programs and was a joint product of the Criminal Presiding Judges, Criminal Division Managers, Vicinage Chief Probation Officers, Vicinage Drug Court Coordinators and staff from the AOC Criminal Practice and Probation Services Divisions. As part of the preapproval process, the Attorney General's Office, the County Prosecutors Association of New Jersey, the Office of the Public Defender and the Department of Health and Senior Services, Division of Addiction Services, all reviewed the draft manual. The *Drug Court Manual* sets forth drug court case processing guidelines and details the different phases of the drug court program and the different levels of supervision within each



phase. The *Drug Court Manual* also details program eligibility criteria which the Judicial Council specifically approved at its June 27, 2002 meeting.

The two main sources for the eligibility criteria outlined in Section III of the *Drug Court Manual* are the special probation statute and the December, 2000 AOC report entitled, "Drug Courts: A Plan for Statewide Implementation." According to a statement which accompanied the issuance of the report by the AOC, the uniform application of these eligibility requirements would ensure that all of New Jersey's drug court programs comport with the pledges that the Judiciary made to the Legislature in seeking funding for a statewide program. Drug courts now operate under the supervision of the AOC in all 15 vicinages.



<h2 style="margin: 0;">Key Adult Drug Court Statistics</h2> <p style="margin: 0;">April 1, 2002 to present</p>	
Total number of participants enrolled in the New Jersey adult drug court program since 4/1/02	4,390
Number of current (active, non fugitive) participants in drug court	2,736
Number of participants who have successfully commenced to the final phase of the program	446
Number of participants successfully graduated from all phases of the program	679
Cumulative Statewide Retention Rate Statewide Program: (4/1/02 to present) retention rate	68%
Percentage of:	
African American participants:	49%
Caucasian participants:	38%
Hispanic/Latino participants:	12%
Other participants:	1%
Percentage of active participants who are full-time employed	74%
Percentage of participants employed at the time of graduation	92%
Percentage of negative drug tests	95%
Number of drug free babies born to drug court participants <i>(Total from start of pilot projects in 1997 is 87)</i>	56
Number of parents who regained custody of their minor children due to their participation in drug court <i>(Total from start of pilot projects in 1997 is 74)</i>	44
SOURCE: Administrative Office of the Courts, Drug Court Unit, Trenton, NJ, 2006.	



VI. THE COMMISSION'S PROPOSAL TO AMEND THE NEW JERSEY SPECIAL PROBATION STATUTE, N.J.S.A. 2C:35-14

A. INTRODUCTION

Following completion of the drug-free zone initiative, the Commission chose to examine the relationship between the special probation statute and New Jersey's Adult Drug Court program. It cannot be too strongly emphasized that the two, while intimately related, are **not** synonymous. As explained previously, the special probation statute is a mechanism enacted by the New Jersey Legislature in 1987 -- two years before the establishment of the country's first drug court in Miami -- to divert drug-addicted defendants facing certain imprisonment to a five-year period of intensive supervised probation conditioned upon a mandatory in-patient drug treatment. Today, almost twenty years later, the New Jersey Adult Drug Court Program encompasses both prison-bound defendants specifically sentenced pursuant to the special probation statute and non-prison bound defendants, i.e., those facing a maximum exposure of 364 days in the county jail or a non-custodial sentence.

The current iteration of the special probation statute is lengthy and complex. The Commission has therefore prepared a chart, depicted on the following three pages, which clearly delineates three salient aspects of the provision: eligibility criteria, eligibility restrictions, and conditions of special probation enumerated by the statute.



The Special Probation Statute – N.J.S.A. 2C: 35-14

Eligibility Criteria:

Upon notice to the prosecutor, a court may sentence a defendant to special probation when the defendant:

- has undergone an assessment to determine whether and what extent the person is drug or alcohol dependent and would benefit from treatment, and
- is presently drug or alcohol dependent and was so at the time the present offense was committed. and
- will benefit from treatment and monitoring in order to increase the likelihood that he or she will not re-offend, and
- can obtain suitable treatment at a facility licensed and approved by the Department of Health and Senior Services which has agreed to provide appropriate treatment services, and
- does not pose a danger to the community as a result of being placed on special probation, and
- did not commit the offense while in possession of a firearm and did not possess a firearm at the time of any pending criminal charge

Eligibility Restrictions Based On The Present Offense

A defendant is strictly ineligible for special probation if:

- he or she has been convicted of, or adjudicated delinquent for, a first degree crime, or
- he or she has been convicted of, or adjudicated delinquent for, a first or second degree crime enumerated by the No Early Release Act, N.J.S.A. 2C:43-7.2, or
- he or she has been convicted of any crime which authorizes the imposition of a mandatory period of parole ineligibility except, N.J.S.A. 2C:35-7 (the school-zone law), or
- the offense involved the distribution or the conspiracy or attempt to distribute drugs to a juvenile near or on school property

A defendant's eligibility for special probation must be conditioned upon the prosecutor's approval when the present offense:

- involves a violation of the school-zone statute, or
- involves a violation of subsection b. of N.J.S.A. 2C:35-4.1, (use, possession or assembly of booby trap used for drug distribution), or carries a presumption of incarceration, i.e., is a crime of the first or second degree



The Special Probation Statute – N.J.S.A. 2C: 35-14 [Continued]	
Eligibility Restrictions Based on Prior Criminal History	<p>A defendant is strictly ineligible for special probation if:</p> <ul style="list-style-type: none"> • he or she has previously been convicted, or adjudicated delinquent, on two or more separate occasions of crimes of the first, second, or third degree, except for <p>A defendant's eligibility for special probation must be conditioned upon the prosecutor's approval if:</p> <ul style="list-style-type: none"> • he or she has previously been convicted of or adjudicated delinquent for an offense under subsection a. of <u>N.J.S.A. 2C:35-5</u> or similar offense
Conditions of Special Probation	<p>The following are conditions of special probation specified by <u>N.J.S.A. 2C:35-14</u>:</p> <ul style="list-style-type: none"> • the term of special probation is five years • where a defendant has been convicted of, or adjudicated delinquent, for 1) a crime of the second degree, 2) a violation of the school zone statute, or 3) has been previously convicted of or adjudicated delinquent for, an offense under subsection a. of <u>N.J.S.A. 2C:35-5</u> or a similar offense, he or she must be committed to the custody of a residential treatment facility for a period of no less than six months whether or not residential treatment was recommended by the person conducting the diagnostic assessment • a defendant placed in a residential treatment facility shall be deemed to be subject to official detention for purpose of the criminal escape statute • the defendant shall not be eligible for early discharge of special probation • upon a first violation of any term or condition of special probation authorized by the statute, the court may permanently revoke the defendant's special probation • if the court permits the continuation of special probation after a finding that any term or condition has been violated, the court shall order the person to comply with additional terms and conditions, including more frequent drug and alcohol testing • upon a second violation of any term of condition of special probation the court shall revoke the person's special probation unless: <ul style="list-style-type: none"> ○ the court finds evidence to support a finding that the defendant will successfully complete the treatment program if permitted to continue, and ○ the court is clearly convinced that no danger to the community will result from defendant's continued enrollment



The Special Probation Statute – N.J.S.A. 2C: 35-14 [Continued]

<p>Conditions of Special Probation [Continued]</p>	<ul style="list-style-type: none"> • upon consultation with the treatment provider, the court, in lieu of permanently revoking defendant’s special probation, imposes a term of incarceration of not less than 30 days nor more than six months, after which the term of special probation may be reinstated. This disposition may occur only once unless the court is clearly convinced that there are compelling and extraordinary reasons to justify reimposing this disposition • if the court permanently revokes special probation, the court shall impose any sentence that might have been imposed, or that would have been required to have been imposed originally for the offense • Upon successful completion of the required residential treatment program, the defendant shall complete the period of special probation with credit for time served for: 1) any imprisonment served as a condition of probation, and 2) each day which the defendant satisfactorily complied with the terms and conditions of special probation while committed to a residential treatment facility. • if special probation is revoked, the defendant shall be ineligible for entry into the Intensive Supervision Program • as a condition of special probation, the court shall require the defendant to pay that portion of costs associated with his or her participation in any rehabilitation program consistent with her or her ability to pay • as a condition of special probation, the court shall impose any fine, penalty, fee or restitution application to the offense for which the person was convicted or adjudicated delinquent.
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The Commission’s specific focus on the special probation statute is premised on the same considerations that informed the DCI Steering Committee’s reliance on the statute in the late 1990’s when selecting the first class of drug court participants. Simply put, those defendants sentenced under the special probation statute would otherwise be serving their sentences in state prison because their crimes: 1) implicated the presumption of incarceration; or 2) required the imposition of a mandatory period of incarceration. Consequently, as more defendants benefit from coerced treatment as an alternative to incarceration, the greater likelihood of their rehabilitative prospects. In addition to promoting public safety by reducing recidivism, participation in the special probation program by prison-bound defendants incurs direct and substantial fiscal savings to New Jersey because of their diversion from more costly imprisonment.

This initiative commenced in earnest with an overview of New Jersey’s Drug Court Program by two veteran drug court judges, the Honorable Paul Armstrong, J.S.C. and the



Honorable Donald J. Volkert, Jr., J.S.C., and the AOC's Statewide Drug Court Manager, Carol Venditto, to the full Commission at a meeting in February 2006. Thereafter, a Special Probation Working Group (Working Group) was formed to explore and refine changes to the special probation statute initially proposed by the panelists at the February meeting. The Group, chaired by Public Defender Yvonne Segars, convened throughout 2006. At meeting on December 20, 2006, the Working Group reached a final consensus on several amendments to the special probation statute. The Working Group, and, subsequently, the full Commission, unanimously approved the following amendments to the special probation statute at a public commission meeting on January 30, 2007. These proposals are derived from both research undertaken by the Commission and the day-to-day experiences of those intimately involved with the operation of drug courts in New Jersey.

B. SPECIFIC PROPOSALS

The New Jersey Commission to Review Criminal Sentencing is proposing the following amendments to clarify and strengthen the statutes governing special probation.

1. Clarification of the Special Probation Statute: An issue of overriding importance to the operation of drug courts is whether a defendant may be sentenced to drug court only pursuant to the special probation statute, or whether that disposition is available to an offender under the normal sentencing provisions contained in Chapters 43 and 44 of New Jersey's Criminal Code. Historically, prior to the implementation of a statewide drug court program, offenders could enter drug court either by being sentenced to special probation pursuant to N.J.S.A. 2C:35-14 or to ordinary probation. When the drug court program became a statewide program, the program maintained this structure. The *Drug Court Manual* adopts this structure. From the onset of the statewide program there has been disagreement as to the avenue of entry into drug court. This issue is extremely significant from a practical standpoint because N.J.S.A. 2C:35-14 contains bars from admission to the program, or requires prosecutorial consent to admission, that the ordinary sentencing provisions of Chapters 43 and 44 of the Code do not contain. One view interprets N.J.S.A. 2C:35-14 to apply only to cases where incarceration is required (i.e., where there is a presumption of incarceration or a statute mandating some term of incarceration). As indicated above, this is the position adopted in the Drug Court Manual. See *Manual for Operation of Adult Drug Courts in New Jersey* (Directive # 2-02, July 22, 2002) at pages 10-18. The alternative view is that N.J.S.A. 2C:35-14 provides the exclusive method of entry into drug court. The latter position seems to have been bolstered by a recent Appellate Division decision. See *State v. Matthews*, 378 N.J. Super. 396 (App. Div.), cert. denied, 185 N.J. 596 (2005). Some practical examples might help illustrate the significance of this issue:



- ☒ Is an addicted burglar, or anyone else convicted of a third degree non-violent crime (which therefore is not subject to a presumption of incarceration or mandatory minimum term), who has two prior convictions for third degree crimes eligible for drug court? If the only avenue of entry into drug court is through N.J.S.A. 2C:35-14, that person would not be eligible due to the bar for two prior 1st, 2nd or 3rd degree convictions. See N.J.S.A. 2C:35-14a (6). If sentencing to drug court under Chapters 43 or 44 of Title 2C is an available option, the court would have the discretion to sentence that person to drug court.

- ☒ Is a drug-addicted defendant who committed a theft while not under the influence of drugs or alcohol eligible for drug court? If N.J.S.A. 2C:35-14 provides the only avenue of entry into drug court, that person would seemingly not be eligible (failing to meet the statutory eligibility criteria set forth at N.J.S.A. 2C:35-14(a) (3)). However, if drug court were an available sentence under Chapters 43 or 44 of Title 2C, that person would be eligible for drug court

- ☒ Can a drug-addicted person who is convicted of burglary and who is ineligible because he or she has two prior convictions, be sentenced to regular probation for five years and be required to undergo inpatient treatment? It seems clear that person can still receive that sentence under Chapters 43 and 44 of the Criminal Code, as a presumption of imprisonment would not apply in that case and the judge would have the discretion to sentence as he or she sees fit. Thus, that person will receive less supervision, because probation caseloads are higher under standard probation, and will not receive the benefit of judicial oversight because the person will not be sentenced to drug court.

Accordingly, the Commission proposes to amend N.J.S.A. 2C:35-14a to clearly specify that the statute applies only to persons who are subject to a presumption of incarceration or a mandatory minimum term, and that persons eligible for, and sentenced to, a conventional probationary term under Chapter 45 of the Code may be sentenced to the same conditions of probation as delineated by N.J.S.A. 2C:35-14.

2. Bar for Two Prior Convictions: In addition to bars contained in N.J.S.A. 2C:35-14b and c, N.J.S.A. 2C:35-14a(6) requires that judges make certain findings before a person is eligible for special probation. One such finding is that the person 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.A. 2C:35-10.



The experience of drug court judges, prosecutors and public defenders is that numerous offenders who need and could benefit from treatment, especially those charged with third degree offenses, are barred by the limitation regarding two or more prior convictions, even if under the circumstances the prosecutor would support a drug court disposition. In addition, this statutory provision appears to have a disproportionately negative impact on urban and minority offenders.

The Commission's proposal is to continue the absolute bar for cases where the person has two or more prior convictions for first, second degree or third degree offenses if at least one of the prior convictions was for a crime of the first or second degree. In cases where the person had been convicted on two or more prior occasions for third degree offenses the proposal would give the prosecutor veto power over whether the person is admitted into special probation. This will be accomplished through an amendment to N.J.S.A. 2C:35-14a(6) and c.

3. Suitable Treatment for Offenders: N.J.S.A. 2C:35-14a and d of the Special Probation statute require that, in most cases, a person who receives special probation be sentenced to special probation with a period of inpatient treatment for six months. It has been the experience of drug court professionals that there are many persons who have a drug problem, but who are not clinically suitable for six months residential treatment, i.e., they do not need that type of treatment, that are not being admitted into special probation. Additionally, there are a number of otherwise eligible applicants who are clinically rejected from the program because their clinical assessment indicates that their degree of dependency does not warrant six months of residential treatment. In some situations, offenders are placed in six months of residential treatment despite an assessment that indicates non-long term residential would be more appropriate. These scenarios result in either clinical rejection for a "less-addicted," but still drug dependent, offender or the utilization of a residential treatment bed that is desperately needed by those that actually require this level of care. Additionally, even if the court sentences an offender who is not drug dependent to six months residential treatment, treatment providers may not accept the offender if the provider believes that the referral is clinically inappropriate.

The proposal is to provide the type of treatment that the individual offender needs. This would be accomplished by providing judges with discretion to require the offender to participate in either a residential or nonresidential treatment program that the court determines to be appropriate after the offender receives a substance abuse evaluation. This would be accomplished through amendments to N.J.S.A. 2C:35-14a, d, j and k.



4. **Efficient Use of Probation Resources:** N.J.S.A. 2C:35-14a requires that persons receiving special probation receive five years of special probation without the possibility of early release. Thus, offenders are required to remain under special probation supervision for a full 5 years with no possibility of early release even if everyone agrees that it would be safe for them to return to the community without further supervision.

Offenders under court supervised special probation are often suitable for discharge short of five years. The statutory requirement for the full five years is both economically and programmatically impractical. Supervising offenders who have achieved rehabilitative goals is counterproductive, as it takes valuable resources from offenders who need these probation officers' resources. It also fails to provide an appropriate incentive for these offenders to do well, as they must remain under supervision regardless of the speed of their progress. The judges would like to use the incentive of early discharge to facilitate offender progress and reward those that have achieved their goals. If an offender who has a drug problem is sentenced to probation under N.J.S.A. 2C:43-2, the judge has the discretion to sentence the offender to any length probation term. Standard probation is not as rigorous as special probation, where there is close judicial contact with offenders. Caseloads on regular probation are about 120 per officer. In special probation cases, caseloads can be no more than 50. Probation officers know when to recommend early release to the court. If an offender is ready for discharge, the State should not waste valuable resources supervising that offender.

The proposal is to permit early discharge from special probation provided the person has served at least two years of special probation and made exemplary progress in the course of treatment provided that the person: 1) has satisfactorily completed treatment; 2) did not commit a substantial violation of any term or condition of special probation within the preceding twelve months, and 3) is not likely to relapse or commit an offense if probation supervision and related services are discontinued. This will be accomplished through the addition of a new subsection (l).

5. **Drug Enforcement and Demand Reduction (DEDR) Penalty:** The Code currently authorizes mandatory monetary penalties for indictable drug offenses - \$3,000, \$2,000, \$1,000, and \$750 for drug crimes, respectively, of the first, second, third, and fourth degree. Because these penalties are mandatory, currently they may not be suspended, set aside or reduced under any circumstance. Persons who complete drug court have demonstrated that they are ready to become useful, law-abiding citizens. They are employed and paying taxes. Many are supporting minor children. Very often they are employed in



low-paying entry level jobs. The fines, penalties and fees that they also have to pay make it difficult, if not impossible, to pay the penalties and fines and make ends meet. Most often the largest financial obligation is for the DEDR Penalty. There is no statutory provision that would allow for a vacation of fines and penalties after an offender has completed his or her sentence to special probation. There is, however, a provision in place that allows for the reduction of the DEDR penalty by any amount paid by the offender for his or her participation in a drug or alcohol rehabilitation program. See N.J.S.A. 2C:35-15(e).

The Commission believes it is appropriate to incorporate measures that would help offenders fully re-integrate into society after their sentences to special probation have ended (while at the same time providing an incentive to successfully complete drug or alcohol rehabilitation). The proposal is to permit the court to further reduce the DEDR penalty where the offender has successfully completed a drug treatment program and where he or she can demonstrate that collection of the penalty will result in an extreme financial hardship. The Commission emphasizes that the intended goal of this proposal is not to reduce funding to the Governor's Council on Alcoholism and Drug Abuse, the designated recipient of DEDR proceeds, but rather, to alleviate the financial burden of such penalties where the drug court graduate has: 1) demonstrated his or her clear commitment to recovery by successfully completing special probation; and 2) has demonstrated a compelling basis to justify a reduction of the DEDR penalty because of severe financial hardship.

6. Use of Out-of-State Treatment Facilities: The Commission gave serious consideration to an amendment that would authorize judges in New Jersey to permit offenders to serve special probation in other jurisdictions. The premise was that this would be especially useful in counties, such as Bergen, bordering other states, where suitable treatment could be provided by out-of-state providers where the person was a resident of that state. Although the Commission agreed that the issue is an important one and should be revisited, it concluded that two countervailing factors compelled a rejection of the proposal. First, the special probation statute expressly requires that treatment providers be licensed and approved by the Department of Human Services. See N.J.S.A. 2C:35-14(a). In response to an inquiry by the Commission, the Acting Director of the Division of Addiction Services, Raquel Mazon Jeffers, reasonably explained that because of resource constraints, her Division would be unable to ensure that out-of-state treatment programs adhered to the same treatment protocols as those licensed and regulated in New Jersey by her agency.

Additionally, there are issues regarding probation supervision. Stated simply, the supervision of offenders sentenced to special probation in New Jersey by New Jersey probation officers is extremely problematic since probation officers have no jurisdiction across state lines. Furthermore, the transfer of inmates from one



state to another for regular court appearances would create significant transportation and other logistical problems. Ultimately, the Commission concluded that the paramount necessity of conserving scarce resources presently allocated to in-state inmates subject to special probation transcends the benefits of out-of-state supervision. In this vein, the Commission emphasizes that amending the special probation statute will be an empty gesture, both in terms of reducing recidivism and producing cost savings to New Jersey, if the increase in special probation participants is not accompanied by a commensurate level of adequate funding to ensure effective drug treatment.

Adequate funding for comprehensive approaches to substance abuse testing and treatment for incarcerated offenders is also strongly encouraged. Currently only two jail-based treatment programs currently operate in New Jersey, one in Bergen County and the other in Middlesex County. The latter program, the Adult Substance Abuse Program (ASAP) is implemented at the Middlesex County Adult Corrections Center to serve adult inmates during their incarceration at that facility. The program is staffed by Specialized Addiction Services, which is affiliated with the University of Medicine and Dentistry of New Jersey. The goal of ASAP is to provide a foundation for substance abuse recovery through education, cognitive behavioral techniques, peer support and other proven approaches. Similar programs should be implemented in all twenty-one counties.

7. Eligibility for the Intensive Supervision Program: A provision of the Special Probation statute provides that an individual who fails to comply with the conditions set forth by the statute and is sentenced to imprisonment “shall thereafter be ineligible for entry into the Intensive Supervision Program.” See N.J.S.A. 2C:35-14(f)(7). The Intensive Supervision Program (ISP) is a long-standing component of the Probation Services Division of the New Jersey Administrative Office of the Courts. The program is an intermediate form of punishment which permits carefully selected state prison offenders to serve the remainder of their sentences in a highly structured and supervised form of community supervision.

The Commission was asked to explore whether it would be advisable to eliminate the bar to ISP. However, studies confirm what common-sense suggests, namely, that offenders who cannot comply with the conditions of special probation will fare no better if subsequently placed in an Intensive Supervision Program, especially since the latter is not specifically geared toward treating an offender’s underlying substance abuse problem. In fact, according to Douglas B. Marlow, enhanced monitoring of offenders in such programs has been paradoxically associated with seemingly worse outcomes because the offenders were more likely to be detected for their infractions. Based on the foregoing, the Commission concluded that the bar to ISP is empirically justified.



There is, however, a perception among some that N.J.S.A. 2C:35-14f(7) provides an absolute bar from admission to ISP for the present offense and all subsequent offenses committed by the offender, i.e., that the bar runs with the offender and not the offense for which he or she was sentenced to special probation in the first instance. To dispel any confusion, the Commission proposes to amend N.J.S.A. 2C:35-14f(7) to make clear that the bar only applies to a violation of special probation for the instant offense.

8. Eighth Proposal -- Official Detention: If the proposals to amend N.J.S.A. 2C:35-14 are adopted, the person who will be sentenced to special probation would have received a sentence to State prison had they not been sentenced to special probation. Where a condition of special probation is participation in a residential drug or alcohol treatment program, N.J.S.A. 2C:35-14(d) provides that a person placed into a residential treatment program shall be deemed subject to official detention for the purposes of N.J.S.A. 2C:29-5 (escape).

A proposal was put forth to amend N.J.S.A. 2C:35-14(d) to provide that a person who leaves a non-residential treatment program be subject to penalties similar to those provided for leaving a residential treatment program. However, it was deemed to be unworkable and unduly harsh to criminalize the failure to attend a nonresidential program.

C. CONCLUSION

In an August 2006 story published in *The Press of Atlantic City*, a 46-year-old woman identified only as Linda described twenty years of unremitting substance abuse, culminating in an addiction to heroin and methadone and an arrest for distribution of drugs to an undercover police officer. Despondent over her circumstances, Linda was sentenced to drug court rather than a five-year state prison term she would have otherwise received. Eighteen months into her sentence, and having undergone eight months of drug rehabilitation, Linda was grateful for the second chance afforded her by drug court, conceding that she “was not going to be able to make it on my own.” “Drug court is the best thing that ever happened to me,” she added, “My family is so proud of me. This is the longest I’ve ever been clean.” Linda’s experience in drug court is hardly unique. One can read of strikingly similar accounts by drug court participants throughout New Jersey.

The New Jersey Commission to Review Criminal Sentencing urges both law makers and the administration to remain enthusiastically committed to the operation of drug courts in this state. In addition, the proposed changes to the special probation statute unanimously endorsed by the Commission’s members will, it is believed, enlarge the opportunities for



more deserving offenders to benefit from drug treatment, thereby reducing the likelihood of their relapse into criminal behavior and sparing New Jersey's taxpayers the expense of imprisoning certain non-violent offenders whose prospects would be greater improved through far less costly diversion to drug court.



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Bruce Stout, Ph.D.
Public Member

COMMISSION STAFF
Deputy Attorney General Ben Barlyn
Executive Director



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-  Carol Venditto, Statewide Drug Court Manager, Administrative Office of the Courts
-  Elizabeth Zupko, Administrative Analyst, the New Jersey Division of Criminal Justice
-  Deputy Public Defender Susan Green
-  Christine Boyle, Ph.D.
-  Assistant Attorney General Stephan Finkel
-  Robert Marron, Sentencing Commission Intern
-  Rachel Farnsworth, Sentencing Commission Intern
-  Diane Fell, Manager Information Technology, New Jersey Office of the Attorney General
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REFERENCES

1998 Class of Leadership New Jersey, *Drug Courts in New Jersey: Past, Present and Future*. Leadership New Jersey (March 2000). Available online at http://www.leadershipnj.org/full_drugcourts.html.

Administrative Office of the Courts, *Manual for Operation of Adult Drug Courts in New Jersey* (July 2002). Available online at <http://www.judiciary.state.nj.us/directive/dctman.pdf>

Aos, S., *Washington's Drug Offender Sentencing Alternative: An Evaluation of Benefits and Costs*. Washington State Institute for Public Policy (January 2005). Available online at <http://www.nicic.org/Library/Default.aspx?Library=020234>.

Belenko, S.R., *Research on Drug Courts: A Critical Review*, The National Center on Addiction and Substance Abuse, Columbia University (1998).

Belenko, S.R., *Research on Drug Courts: A Critical Review 2001 Update*, The National Center on Addiction and Substance Abuse, Columbia University (2001). Available online at <http://www.casacolumbia.org/absolutenm/articlefiles/researchondrug.pdf>.

Bureau of Justice Statistics, *Drug Use and Dependence, State and Federal Prisoners, 2004*, Office of Justice Programs, U.S. Department of Justice (October 2006). Available online at. <http://www.ojp.usdoj.gov/bjs/pub/pdf/dudsfp04.pdf>.

Cissner, A.B., Rempel, M, *The State of Drug Court Research: Moving Beyond 'Do They Work'*, Center for Court Innovation (2005). Available online at http://www.courtinnovation.org/_uploads/documents/state%20of%20dc%20research.pdf.

Fluellen, R., Trone, J., *Do Drug Courts Save Jail and Prison Beds?*, Vera Institute of Justice. (2000). Available online at <http://www.drugpolicy.org/docUploads/drugcourts.pdf>.

Goldcamp, J.S., White, R.D., Robinson, J.B., *Do Drug Courts Work? Getting Inside The Drug Court Black Box*, *Journal of Drug Issues* at p. 27 (2001). Available online at <http://www2.criminology.fsu.edu/~jdi/31n1.htm>. (subscription required).



Goldcamp, J.S., *The Drug Court Response: Issues and Implications for Justice Change*, Albany Law Review at p. 923 (2000).

Government Accountability Office, *Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results For Other Outcomes*. U.S. Government Accountability Office. (February 2005). Available online at <http://www.gao.gov/new.items/d05219.pdf>.

Government Accountability Office, *Drug Courts: Overview of Growth, Characteristics, and Results, Report to the Committee on the Judiciary, U.S. Senate*, U.S. Government Accountability Office (July 1997). Available online at <http://www.gao.gov/archive/1997/gg97106.pdf>.

Hora, P.F., Schma, W.G., Rosenthal, J.T.A., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response To Drug Abuse and Crime in America*, Notre Dame Law Review (1999). Available online at <http://www.ndci.org/admin/docs/notredame.doc>.

Huddleston, C.W., Freeman-Wilson, K., & Marlowe D.B., *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem Solving Court Programs in the United States*, National Drug Court Institute (2005). Available online at <http://www.ndci.org/publications/paintingcurrentpicture.pdf>.

Johnson, C.M., Wallace, S., *Critical Elements to Consider for Methodologically Sound Impact Evaluations of Drug Court Programs*, Drug Court Review, at p. 35 (2004). Available online at http://www.ndci.org/dcr_vol4_iss2.pdf.

Lowencamp, C.T., Holsinger, A.M., Laessa, E.J., *Are Drug Courts Effective: A Meta-Analytic Review*, Journal of Community Corrections, at p. 5 (2005).

Marlowe, D.B., *Drug Court Efficacy v. Effectiveness*, Join Together Online, (2004). Available online at <http://www.courtinfo.ca.gov/programs/collab/documents/DCEfficacyvsEffectiveness.pdf>

Marlowe, D.B., DeMateo, D.S., & Festinger, D.S., *A Sober Assessment Of Drug Courts*, Federal Sentencing Reporter, at p.113 (2003). Available online at <http://caliber.ucpress.net/doi/abs/10.1525/fsr.2003.16.2.153?cookieSet=1&journalCode=fsr>. (subscription required).



Marlowe, D.B., Festinger, D.S., & Lee, P.A., *The Judge is a Key Component of Drug Court*. Drug Court Review, at p. 1 (2004). Available online at http://www.ndci.org/dcr_vol4_iss2.pdf.

Meredith Kolonder, *Offenders Find Help at County Drug Court*, Press of Atlantic City, August 29, 2006.

National Association of Drug Courts Professions, *Defining Drug Courts: The Key Components*, Office of Justice Programs, Drug Court Program Office, U.S. Department of Justice (January 1997). Available online at <http://www.nadcp.org/docs/dkeypdf.pdf>.

National Institute on Drug Abuse, *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide*. National Institutes of Health, U.S. Department of Health and Human Services, (July 2006). Available online at http://www.nida.nih.gov/PDF/PODAT_CJ/PODAT_CJ.pdf.

National Institute of Justice, *Drug Courts: The Second Decade*, Office of Justice Programs, U.S. Department of Justice (June 2006). Available online at <http://www.ncjrs.gov/pdffiles1/nij/211081.pdf>.

Rempel, M., *Recidivism 101: Evaluating the Impact of Your Drug Court*, Drug Court Review at p.83 (2006). Available online at <http://www.ndci.org/admin/docs/DCR.V2.corrected.pdf>

Stout, B., *The Case for Rational Reform*, New Jersey Reporter at p. 36 (February 2006). Available online at <http://sentencing.nj.gov/downloads/pdf/articles/general3.pdf>.



APPENDIX

THE COMMISSION'S PROPOSED LEGISLATION TO AMEND THE SPECIAL PROBATION STATUTE, N.J.S.A. 2C:35-14, & N.J.S.A. 2C:35-15

