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**ALTERNATIVES TO PRISON FOR DRUG DEPENDENT OFFENDERS AND  
MINOR DRUG OFFENSES**

## **ALTERNATIVES TO PRISON FOR DRUG DEPENDENT OFFENDERS AND MINOR DRUG OFFENSES**

### **INTRODUCTION**

At the request of the Canadian delegation at the twenty-sixth regular session of the Inter-American Drug Abuse Control Commission of the Organization of American States (CICAD/OAS) in Montevideo, Uruguay in November 1999, the Secretariat has prepared an overview of alternatives to prison for drug dependent offenders and minor drug offenses. As a survey document, it is meant to present historical aspects, results, current prospects and outlooks to inform Commission decisions. It is not definitive.

The legal basis for any alternative to prison for drug involved offenders stems from two sources: the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and most importantly, each Member State's existing criminal legislation.<sup>1</sup> Below appear various alternatives developed in this hemisphere, those among the fifteen Member States of the European Union, and a few across the globe. The purpose here is not prescriptive, suggesting a certain alternative for a corresponding legal system. Rather, an array of options is presented, recognizing that each Member State mandates, through its legislature, the latitude courts and judges have in applying alternatives. The degree of integration between the legal and health and social services is also a function of the administrative decentralization in each country.

### **ALTERNATIVE MEASURES TO PRISON FOR DRUG DEPENDENT OFFENDERS AND MINOR DRUG OFFENSES: KEY POINTS**

- Alternative measures & Drug Courts provide a course of treatment for criminally accused and convicted offenders.
- Alternatives to prison are determined by each Member State's criminal legislation.
- The coordination between the criminal justice system and the social and health service providers is both the key link and common difficulty in all programs.
- Alternative measures can provide increased health and social benefits, as well as reduced costs, for Member States experiencing rising rates of drug use, drug-related crime and incarceration.
- Drug Courts and alternative measures exist globally.
- Alternative measures to prison directly impact (community based) treatment service providers.
- Drug Courts and other alternative measure to prison, require political will, integration and cooperation of criminal justice, treatment and community support systems.

### **SURVEY OF ALTERNATIVE MEASURES**

Virtually every nation-state experiences the adverse consequences of drug abuse and drug related crime. Many governments are faced with the reality of simultaneously increasing rates of drug abuse and drug related crime among their citizens. In some cases judicial initiatives are pulling the community; in other locales, social, political and economic pressures are

forcing governments, at all levels, to confront the problems through new and efficient state and community mechanisms.

In response to these trends and pressures, some states have turned to separate courts to deal with drug dependent criminal offenders. So called "drug courts" have emerged in Western common law legal systems. The section below, "Drug Court Background," identifies the key elements of existing and successful drug courts. It also provides a global and hemispheric overview of the drug court experience thus far.

While highlighting common components and problems of the drug court experience, this section is not a blueprint for implementation. Researchers and practitioners alike stress that no two drug courts are the same. Officials can not simply replicate a successful program from another jurisdiction in their own. Drug courts must reflect the local reality when addressing drug use and drug related crime, as these activities vary greatly by jurisdiction.

First, this section highlights other alternative measures available and that some, namely European, states utilize. The common thread between these alternative measures and the drug court is that they both provide a course of treatment for the accused or offender, and occur after a "positive legal act," understood here as an action by a member of the criminal justice system. The alternative measures can occur during one of three phases: police inquiry, hearing and the execution of the sentence. Sentencing is the most common phase of submitting a defendant to treatment, although alternatives exist on an ad hoc basis during police inquiries and hearings.

The options open to European courts may be illustrative to OAS Member States, due to different legal systems, social contexts and types of drugs abused throughout Europe. The alternatives used there may have potential application in many different venues, including the Americas. Some of the alternative measures include judicial warnings and referral to health and social care, as in France. Swedish courts levy administrative fines with drug counseling, or the court conducts special proceedings without a formal charge being issued. Other European measures include sentencing with a proviso that an offense is removed from the defendant's arrest record upon completion of treatment, or the offender is placed on probation with treatment required. Administrative fines without treatment, or no prosecution for personal use or possession for personal use, which are available to many European courts, effectively decriminalize the use and possession of drugs for personal use, in those jurisdictions.

In the European alternative measures models, the judge and the social/health care service providers may not be in direct contact, as in Belgium, Denmark, France, Luxembourg, United Kingdom, Sweden and Ireland. Alternatively, direct contact between judge and service providers

may exist as in Italy, or different coordinating mechanisms between the judge and health and social service providers may be developed, as preferred in Spain, Germany, Austria, Greece and Finland.

A European Monitoring Centre for Drugs and Drug Addictions (EMCDDA) study pointed to a feature common in most jurisdictions using alternative measures: the difficulty that the judiciary and social, health and educational communities have in coordinating supervision of a drug dependent offender. Significant philosophical and cultural differences must be overcome to successfully integrate criminal justice and treatment professionals in a single system. Despite this difficulty, and perhaps reflecting the efficacy of the integrative approach, the Europeans are collectively moving toward cooperation between national, regional and local health, social, education and criminal justice systems.<sup>ii</sup>

### **Drug Court Background**

While the drug problem has existed in the United States for nearly one hundred fifty years, only a few measures represent "alternatives" to either incarceration or decriminalization. Federal drug treatment hospitals beginning in the 1930s, and later converted to "treatment prisons," in Lexington, KY and Ft. Worth, TX are two notable exceptions. Another is the Treatment Alternatives to Street Crime (TASC), a 1970s initiative, which successfully bridged the efforts of the treatment and criminal justice communities. It exists as a court diversion mechanism, monitoring and reporting on the drug dependent offender's treatment progress to the court. TASC continues today, but is distinct from the drug courts described below. The federally funded TASC initiative to link treatment and criminal justice systems was a precursor to the drug court. However, TASC does not provide the same integrated and participatory approach that drug courts take with the drug dependent criminal offender.<sup>iii</sup>

Drug courts grew out of a then unique complex of factors existing in the United States in the 1980s. Drug use, drug-related crime, as well as arrests and convictions for drug-related crimes reached all time highs. Analysts point to seven specific "pressure points" that caused U.S. officials to look for alternatives to traditional criminal justice solutions and incarceration.<sup>iv</sup>

The pressures for change included a visible proliferation of drug related crime, occurring largely in many cities. Underlying the drug related crimes were the ever-increasing numbers of drug dependent offenders. As a result, rates of incarceration increased and soon, prison overcrowding. The drug using offenders also exhibited high recidivism rates for crime and drug use. By the mid-1980s the US justice system represented a sort of revolving door for drug dependent criminal offenders, passing in and out of the courts and prisons. Workloads in the court systems increased to nearly unmanageable levels. Soon the public demanded that federal, state and local officials offer alternatives to the address the drug dependent criminal offender.

Reform of the system began and continues at the state and municipal level. The

federal government supports drug court programs through the U.S. Department of Justice, Drug Court Program Office and over \$50 million dollars in funding between 1995 and 1997.<sup>v</sup> However, the actual structural and operational changes within the justice system can be found in over 400 state and local drug court programs operating in the U.S. in 1999.<sup>vi</sup>

The current drug court programs can be traced to the emergence of separate courtrooms and judges hearing drug cases, and later special “Narcotics Courts,” most notably in New York City in the 1970s. These initial programs provided little access to treatment for offenders and did not exhibit the key elements now associated with successful drug court programs.

Today the term “drug court” specifically refers to those programs that integrate the criminal justice system with the treatment, rehabilitation and public health systems. The broad stated objectives of the drug court are to stop the abuse of alcohol and other drugs and related criminal activities.<sup>vii</sup>

Reducing recidivism among drug dependent criminal offenders may be the most important and objective measure of drug court success. Drug courts also promote recovery from alcohol and drug dependency. Some notable drug court programs include Dade County Felony Drug Court (FL), Oakland Municipal Court (CA) and Maricopa County Drug Court (AZ); all exhibit the elements that drug court professionals agree are key in the operation of a successful and on-going drug court program.

### **Ten Key Components**

As noted above, drug court programs vary widely by jurisdiction. Variability is necessary given the broad range of court systems and operations, as well as significant quantitative and qualitative differences in the substances abused across jurisdictions. Despite these differences, researchers and practitioners have identified ten key components that define a successful drug court program.

These ten key components distinguish a treatment-based program, which integrates criminal justice, drug treatment, rehabilitation and public health professionals, as a “drug court,” from other programs:

- 1) Most importantly, drug courts integrate treatment services with the criminal justice case processing system.
- 2) A climate of cooperation exists between prosecutor and defense counsel, who use a non-adversarial approach to insure that public safety and the participants’ rights are protected.
- 3) The same participants are also identified early for placement in the program.
- 4) Treatment and rehabilitation services must be accessible and provide a comprehensive therapeutic experience.
- 5) Frequent testing monitors participants’ drug and alcohol abstinence.
- 6) An integrated strategy governs the drug courts responses to participants’ (non) compliance.
- 7) Judges must interact with participants on an ongoing basis.
- 8) The program’s goals and effectiveness must be monitored and evaluated.

- 9) Drug court planning, implementation and operations are enhanced with the interdisciplinary continuing education of officials.
- 10) Finally, drug court effectiveness is enhanced by partnerships between courts, public agencies and community based organizations.<sup>viii</sup>

In addition to the ten key components, Judge Jeffrey Tauber, Director of the National Association of Drug Court Professionals, writes that the successful drug courts also operate as an educational tool. The court in effect indoctrinates a courtroom full of offenders, in which the court hearing is used to educate the audience and offenders about the consequences of entering the program. The judge admonishes, cajoles, congratulates and may punish participants already in the program. In contrast to other criminal proceedings, new participants are put on notice of exactly what is expected of them and the consequences if they do not meet those expectations. In a drug court, the Judge, prosecutor and defense attorney play these roles for the purpose of facilitating the offenders' rehabilitation.<sup>ix</sup>

### **Judicial Leadership**

While not giving primacy to any one component of the drug court program, judges play a pivotal role in the operation of a successful drug court. Judges provide the key link to treatment, rehabilitation and public health services, using judicial discretion and authority when remanding the participants to "outside" agencies. In exercising this authority, the judge also serves as a monitor, source of encouragement and most importantly, the source of sanctions for the participants.

Drug court successes also require drug abuse to be understood as a serious debilitating disorder. The "court" must recognize that relapses among drug abusers are common, that long-term treatment is usually necessary, that interventions must occur immediately and the drug dependent offender is often in denial when entering a drug court program. All of this falls to the judge when participants appear in their court. The authority given to judges in this system represents in many ways, a return to an era when mandatory sentences were virtually non-existent, and the judge had wide latitude in administering justice.<sup>x</sup>

### **International Perspective**

The U.S. drug court experience has led to the development of similar programs around the globe. As more countries experience rising drug abuse and drug related crime among their citizenry, they also witness pressures similar to those in the U.S. in the 1980s. Societal, political and economic factors force governments to adopt innovative measures in dealing with the drug dependent criminal offender.

As a result, pilot drug courts operate in common law jurisdictions such as Toronto, Canada and the United Kingdom. The Canadian pilot program is significant in that country for a number of reasons. First, the program seeks to return drug dependent offenders to productive and law abiding roles in society.

The Toronto Pilot Drug Treatment Court, as it is formally known, specifies two types of offenders and proceedings: diversion for less serious drug offenses (simple possession of crack cocaine or heroin), and post-plea treatment for more serious offenders (simple possession for the purpose of trafficking). These two streams make important distinctions on the nature of the offense and exclude certain types of offenses. For example, if the offense occurred on or near a school, or if it constitutes trafficking of drug under Canadian law, offenders are not eligible for the program. In sum, if the Toronto program is successful in reducing drug use and recidivism among certain "minor" drug offenders, it may be used as a model for other drug courts in Canadian jurisdictions.<sup>xi</sup>

Data from studies of arrestees in the United Kingdom confirmed that drug courts were needed there. Nearly sixty percent of arrestees were testing positive for alcohol or drugs at the time of arrest, according to the International Arrestee Drug Abuse Monitoring (I-ADAM) program. These studies are increasingly replicated worldwide, with similar results.<sup>xii</sup>

Australians reviewed the drug court experience in the U.S., Canada and the U.K. and started a number of "pilot" drug court programs there. In 1999 the pilot programs gained the support of the Federal Government which agreed to fund early intervention treatment and rehabilitation sites linked to police and court diversion. Caribbean states, most sharing a common law system, are potential benefactors of the drug court approach. The International Association of Drug Court Professionals (IADCP), funded by the European Commission, U.S., U.K. and Bahamian governments, has prepared a prospectus on the use of drug courts in the Caribbean.<sup>xiii</sup>

According to Judge Jeffrey Tauber, Director of the National Drug Court Institute and the IADCP, Jamaica is likely to initiate a drug court in 2000, and members of the Judiciary in Barbados, Bermuda, Brazil and Trinidad have expressed a similar interest. Interest is also seen as growing among members of the Mexico City judiciary, as they have made initial inquiries to Judge Tauber.<sup>xiv</sup>

In short, the drug court program, wherever applied, usually exhibits the same ten key components outlined above, requires the same commitment from the criminal justice, treatment and public health systems, as well as strong leadership from judges and support from community organizations. Most agree, without these elements, drug courts will not succeed, regardless of resources available or applicability to the legal system.

Finally, within the U.S., approximately 100 juvenile drug courts are currently in operation, with others being implemented. Also in the U.S. and other legal frameworks, juvenile substance abuse treatment is yet another measure in which the social service and treatment personnel work with the criminal justice system. Similar to the drug court approach, juvenile substance abuse treatment seeks to reduce the abuse of alcohol and other drugs, and reduce other high-risk behaviors including serious and violent criminal behavior. According to the Physician Leadership on National Drug Policy, evidence suggests that such programs produce "sustained turnaround" by juveniles who were at high-risk for escalating criminality and drug abuse.<sup>xv</sup> The juvenile programs do so without stigmatizing

the youthful offender with a drug charge on their permanent criminal record.

### **Latin American Context**

As in Europe, the term "drug court" does not have the same connotation in Latin America as it does in the United States, Canada and other venues. However, legislation currently exists in fifteen OAS Member States to address the wrongful use of drugs and treatment for the offender. Argentina, Bolivia, Colombia, Costa Rica, Chile, Dominican Republic, Ecuador, Honduras, El Salvador, Mexico, Nicaragua, Panama, Peru, Uruguay and Venezuela all have existing laws addressing wrongful drug use. Among these, Argentina, the Dominican Republic and Venezuela exhibit comprehensive and clear legislation. As a result, programs in those countries are widely and consistently used. While programs operate in the other Member States, these are less developed, and depend largely on local initiative and interest. The Argentine, Dominican and Venezuelan laws are illustrative and briefly considered here.<sup>xvi</sup> A more thorough discussion of the types of alternative measures provided for in the legislation of various OAS Member States is found in the Technical Annex, below.

Argentina exhibits well-developed and clearly written laws on alternative measures for drug dependent offenders and minor drug offenses. At least three separate sections of the Argentine criminal code specifically address how an abuser of can be remanded to treatment. These can occur during sentencing when a case specifically applies to the relevant penal section, or the Argentine code allows the judge to send the offender to a "detoxification," at his or her discretion. Offenders must also appear in the national criminal registry.

In the Dominican Republic, narcotics laws are also well defined. National-level responsibility for different aspects of the problem, enforcement, prevention, treatment, etc. are also clearly distinguished and integrated in the Dominican Penal Code. For example, the *Consejo Nacional de Drogas* (CND) has wide anti-drug responsibilities in the country including policy formulation as well as treatment and prevention initiatives. These are integrated with the *Direccion Nacional Control de Drogas* (CNDC) to insure that those offending for the production, distribution and personal use of narcotics receive the proper sentence. Drug users may enjoy provisional freedom (*libertad condicional*) at which time treatment will be recommended by the relevant personnel in the CND or *Asociacion Medica Dominicana* (CAMD). These features all appear in the extensive Dominican narcotics legislation.

Similarly, Venezuela's legislation provides for specific legal remedies, such as compulsory treatment, for cases of drug dependent offenders. The options open to the court include mandatory treatment for a one-year period, and supervised release (*libertad vigilada*) in which the offender is required to check-in daily or weekly with an officer of the court. In addition to treatment, supervised release usually requires drug testing and other counseling with the court officer. The major distinction in the Venezuelan system is that these alternatives can occur in any court, not just a specified drug court, and the options are clearly articulated in the law. Judicial discretion may be less relevant in these circumstances.



In sum, legislation currently exists in some Latin American venues that, when utilized, constitute significant alternative measures and approximate the "drug court" scenario in the U.S., Canada and elsewhere. They key factors include clearly written legislation, integration of the criminal justice and treatment systems, and a commitment to a strong and transparent judiciary.

### **Implications for Treatment Services**

All of the alternative measures described above, regardless of jurisdiction, have significant implications for treatment service providers. All specify a course of treatment for the accused or offender, after a positive legal act. However, in order for this system to function, consideration of the current state of the drug treatment system in the country must be taken.

In many countries in the Hemisphere the current drug treatment system is lacking in funding and basic infrastructure. Staff is limited, and is frequently in need of training. Typically there are not enough slots available in treatment centers, whether inpatient or outpatient, to fully meet the population in demand of treatment. There exists the further issue of areas in the country where legal jurisdiction exists, but no treatment services exist at all.

A major issue for many countries is whether people referred to treatment by drug courts should be treated in separate facilities from those who enter treatment voluntarily or are referred by means other than the judicial system (such as the family or workplace). This could have major implications for the cost effectiveness of alternative treatments seen in the United States and Canada.

Firstly, in many countries outpatient treatment for people sent to mandatory treatment by a drug court may not be an option. As a result, in order to guarantee the person receives the mandatory treatment, the only available option would be on a closed, inpatient hospital or unit. However, this is an extremely expensive mode of treatment, second only in costs to incarceration.

Furthermore, estimates for the differences in cost for incarceration versus treatment, appearing below, are derived from the United States and Canada where the costs of incarceration for an individual during one year are very high. This may not be the case in other countries where the prison system is less resource intensive. Given the scenario where the only alternative measure is mandatory inpatient treatment, the cost of treatment could be higher than for prison.

Certainly, in theory, there are other alternatives. Rather than sentencing to inpatient treatment, there is the option of obligatory outpatient treatment with parole, which exists in some jurisdictions. The question that will have to be addressed is which scenarios are feasible given the circumstances of each country. With these many factors in mind, it will be important to address not only current state of the treatment system, but also what additional services can be absorbed by the system given the fiscal reality of each country.

It seems also that ethical considerations exist regarding coerced treatment. It is

understood that the cost for sentencing a person to treatment is significantly less than a prison sentence. However there is already a dearth of services available for people who wish to enter treatment voluntarily in many countries. Furthermore, where treatment services exist, few, if any, jurisdictions are able to absorb, into their community based treatment programs, the large number of referrals that drug courts create.

It is possible, since drug court participants are mandated by law to enter treatment, they will receive priority admission over those entering voluntarily. We should therefore recognize the problems inherent in filling spaces in treatment centers that could otherwise go to people who are voluntarily seeking treatment, or have been referred by means other than a drug court. What happens in the case that a person is sent to mandatory treatment, but there are no slots open in any nearby treatment centers? Are they sent to prison? Is another person pushed out? Are they sent to another jurisdiction?

Unless the system is in some way expanded to accommodate the added burden created through drug courts, a conundrum (acertijo) could arise for persons wishing to enter treatment on their own. The addict wishing to get off drugs, and not be involved in crime will find themselves ineligible to receive treatment in a system that is flooded with drug court referrals. Implementation of a drug court therefore needs to take into account the burden that the current treatment system can handle, how much of an additional burden it can absorb, and the implications for people seeking treatment voluntarily, or through means other than a drug court.

Experience in the U.S. has demonstrated that relying on infrastructure alone will not provide adequate treatment to those in need. Jurisdictions need not have additional resources to implement certain programs. Practitioners stress that a drug court program will work quite well, without additional resources, if all of the participants agree to work together before a shortage of treatment resources occur. This has been the case in Jacksonville, FL where the jurisdiction did not allocate additional resources for the drug court program. The key first step in that program, indicates the founder of the program, was bringing law enforcement, judicial and treatment services together to discuss integration. This type of integration can have profound positive effects by increasing interagency cooperation and essentially changing ineffective government structures and barriers. These are valuable lessons in any jurisdiction that seeks to create a drug court or other alternative measure, integrating the criminal justice and treatment service systems.<sup>xvii</sup>

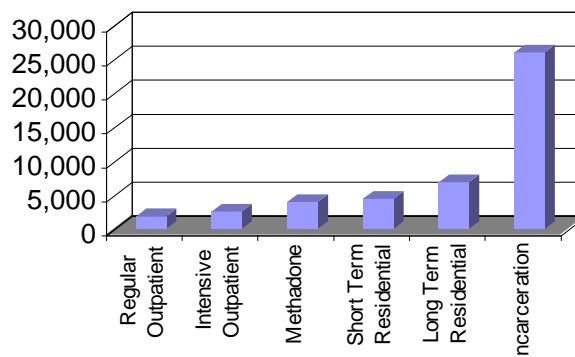
Clearly then, there are also positive impacts drug courts could have for the treatment system. In order for implementation to be achieved partnerships between the criminal justice system and substance abuse treatment programs will need to be formed. This could result in an approach increasingly focused on problem solving rather than punishment.

## **Coerced Treatment**

Implicit in all the alternative measures considered above, is an assumption that coerced treatment by the courts or other state entity, is an effective and cost efficient mechanism in reducing drug abuse and recidivism among drug involved criminal offenders. (Coercion can mean giving the offender a choice between entering a treatment program or prison (US), or simply sentencing an offender to treatment as in Venezuela). The assumption stems from a significant body of scientific evidence suggesting that drug abuse is an illness; and that drug addiction treatment has results as favorable as those medically prescribed for illnesses such as diabetes, asthma and hypertension. Addiction treatment is also viewed as an effective anti-crime measure and less costly than prison, as illustrated in the figure below. Treatment also reduces recidivism among drug dependent offenders, is a cost-effective medical intervention and reduces the overall medical and other societal costs.

Another compelling argument is the comparison of coerced and voluntary drug treatment participants. According to one study, drug court participants are nearly twice as likely to remain in treatment for one year, as are those voluntarily seeking treatment. According to one analyst, an estimated sixty-percent of drug court referrals are in treatment after one-year, while only 10-30% of those voluntarily in residential therapeutic treatment facilities remain.<sup>xviii</sup>

**Figure 1 Costs per Drug Addict in U.S. Dollars<sup>xix</sup>**



Yet, even among some agreeing that treatment represents the best way to confront addiction among criminal offenders, coerced treatment is viewed as a less than ideal option. The scientific evidence here appears thinner, but proponents make a few key points. Drug courts often fail to account for the inevitable relapse during treatment; some treatments are inappropriate for certain groups; and, drug courts fail to use effective methadone maintenance programs for those addicted to heroin. Finally, the treatment environment loses some of its effectiveness if it relies solely on referrals from drug courts, due to decreased peer pressure among participants, and poor service delivery among a "captive

audience." In sum, coercing those not ready to recover through treatment, reduces the efficacy of addiction treatments.

The debate on the efficacy of voluntary versus coerced substance abuse treatment is deep-seated and long-standing. Proponents on both sides of the debate are able to point to scientific evidence supporting their argument. The debate is beyond the scope of this paper.

### **Implications**

Scientific evidence, anecdotes and the experiences of judges, police, treatment service providers and others, all suggest that drug treatment is an effective and cost-efficient mechanism in reducing the abuse of drugs and alcohol, recidivism and some other high-risk behaviors among drug dependent criminal offenders. These findings, when taken in conjunction with the successful drug court or other alternative measures to prison for drug involved offenders worldwide, indicate that all jurisdictions should examine the feasibility of using an alternative measure within their legal system. However, these initiatives require the commitment of legislators to draft appropriate laws; prosecutors and judges to work in a non-adversarial environment for the betterment of the drug dependent criminal offender; the justice system must effectively integrate with the health and social service care providers; and the community organizations and citizenry must support these initiatives, if they are to enjoy success. These are daunting requirements in the best of circumstances. In the U.S., where considerable momentum exists for drug court programs, not all programs reduce drug abuse and/or recidivism among drug involved criminal offenders, although advocates insist that most do. In many venues, the antecedent conditions required for a successful alternative to prison initiatives, are not apparent.

### **Prospects**

This paper indicates that a variety of alternative measures to prison for drug involved criminal offenders are available to the concerned member states. A global perspective on the issue also illustrates that a number of important conditions must first be met before undertaking a drug court or other alternative measures to prison for the drug dependent or minor drug offender. As suggested at the outset of this paper, the necessary legal basis for an alternative measure stems from each Member State's criminal legislation. Whatever alternatives have been presented above are meaningless, unless the political will is sufficient in each state to enact laws, integrate the criminal justice and treatment systems and treat the drug dependent criminal offender.

**Latin American context**

*In Latin America, the United States, and Canada, as in Europe, the definition of "drug court" varies from one jurisdiction to another. However, in certain OAS member States (approximately 15), there is a system of laws governing the illegal use of drugs and the treatment of drug offenders. In Argentina, Bolivia, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Honduras, El Salvador, Mexico, Nicaragua, Panama, Peru, Uruguay, and Venezuela there is legislation in effect regulating the illegal use of drugs. Argentina, the Dominican Republic, Peru, and Venezuela have comprehensive legislation and, accordingly, the programs in those countries can be used more broadly and consistently.*

***In Argentina** there is legislation providing for alternative mechanisms to deal with drug-dependent offenders and drug-related crime, including the system governing treatment centers based on different procedures. In sentencing, a penalty ranging from one month to two years in prison may be imposed when it is evident from the small quantity found in the offender's possession and other circumstances that the drugs are for personal use. If an offender found guilty of any crime is drug dependent, in addition to any penalty that is imposed, a curative sentence may be assessed consisting of detoxification treatment and rehabilitation for such time as is needed to achieve this purpose and he will be discharged by judicial order based on an expert's opinion if such action is advised.*

*If during the trial, it is shown that the drugs are for personal use, once the accused has been found guilty and to be drug dependent, the judge may suspend the sentence and order him to undergo curative treatment for such time as is needed for rehabilitation. If after treatment the offender is believed to be rehabilitated, the sentence will be waived, or if after two years of treatment an acceptable degree of recovery is not noted owing to a lack of cooperation on the offender's part, the penalty will be imposed and at the same time curative treatment will be pursued for such time as is necessary or curative treatment alone will be ordered. If during the trial, it is demonstrated that the drugs are for the accused's personal use and the latter is narcotic dependent, with the latter's consent curative treatment will be imposed for such time as is needed for his rehabilitation and the criminal proceedings will be suspended.*

*If after two years of treatment, owing to a lack of cooperation on the part of the offender, an acceptable degree of recovery is not achieved, the proceedings will be resumed, a penalty may be imposed, and treatment will be continued for such time as is necessary for recovery, or only the curative treatment measure will be continued. The treatment will be carried out in State approved establishments and will be imposed only with the offender's consent or there is a danger that the latter may harm himself or others. If the accused has just started to take drugs, the judge will substitute educational therapy for the penalty which should include mandatory completion of a specialized program of at least three-months duration offered by the educational authorities. If after a period of three years of such recovery, the accused successfully reintegrates into society, the judge will order the record concerning the illegal use and possession of narcotics stricken from the National Registry of Repeat Offenders.*

***In Peru**, the judge of the lower court, acting at the prosecutor's request or at the request of the party concerned, may order curative treatment for the drug addict who is not under investigation as the suspect in a crime, which exposes his family to misery or who poses a threat to his own safety or the safety of others, or commits an outrage to good morals and customs, and may order, depending on the accused's economic means, his confinement to a state rehabilitation center or a*

*private rehabilitation establishment. These judicial measures will be lifted when the drug addict is believed to be fully rehabilitated.*

*In the case of a drug addict, not under investigation, the police will transfer the case to a civil court and convene a meeting of the family members in order to issue measures considered appropriate for the offender's rehabilitation. Confinement in a rehabilitation center at the order of the civil court will be mandatory in the case of a repeat offender. The civil court may attach the property of the drug addict or of his legal representatives in order to defray the costs of rehabilitation. The drug addict's condition will only be assessed through expert forensic evidence, issued at the request of the judge and with service by the prosecutor, who will be required to be present at the examination of the mental state made by the judge. The medical experts will take into account the nature and amount of the substance producing the drug dependency as well as the history and clinical condition of the defendant.*

***In the Dominican Republic***, a multidisciplinary commission has been set up within the Ministry of Health to advise the Prosecutor. The members of the Commission are a doctor representing the Ministry, a representative of the Medical Association, an government doctor from the National Drug Control Directorate and a doctor representing the Attorney General of the Republic and they will assess the degree of addiction of users charged with simple drug possession who are brought before the courts. The Commission's jurisdiction covers the entire country and where offices do not exist it appoints subcommissions whose members are the prosecutor and a doctor from the Department of Health in the jurisdiction concerned. The Commission makes recommendations to the representative court as to whether the accused should be sent to a public or specialized treatment center or prosecuted.

*The addict's condition is determined after the prosecutor remands the addict before the multidisciplinary commission, which makes a recommendation to the court of rehabilitation for the accused who has been evaluated and found to be an addict. The period of rehabilitation is added to the penalty imposed on the offender, and he is given a full discharge after rehabilitation if treatment is found to have been totally effective. The prosecutor is empowered to assess such measures of safety and supervision as deemed appropriate for individuals ordered to undergo rehabilitation. In the absence of a public rehabilitation center, the court may order that the defendant be confined in a private center, with all expenses being borne by the accused or his family, or covered from other sources. Any person who has fulfilled the requirements set for full rehabilitation must present a certificate to the judge concerned, who will order a final release from the sentence.*

***In Venezuela***, special corrective legal measures are provided by law such as mandatory treatment, for certain types of offenders who are drug dependent. The alternatives available to the court include mandatory treatment for a period of one year and probation, during which the offender is required to report on a daily or weekly basis to a court official. In addition, probation generally calls for drug testing and other forms of guidance under the direction of the court official. The main difference is that in the Venezuelan system these alternatives may be ordered by any court, and not just a specialized drug court, and that the law clearly defines the alternatives. In these circumstances, the discretion of the courts may not be so important.

*The safety measures that may be imposed by the court on the drug user who possesses enough for a dose for his personal use, that is up to 2 grams of cocaine and 20 grams of cannabis, are as follows: confinement in a rehabilitation center, curative treatment or detoxification, social reintegration, probation or supervision, and deportation in the case of a drug user who is a*

*nonresident foreign national. If considered appropriate, the criminal court will transfer the proceedings on drug use to the civil court for purposes of imposing a prohibition or forfeiture of certain rights on the individual who is drug dependent. The individual who is caught using drugs illegally or who acquires or possesses a dose not exceeding the amount required for his own personal daily use will be taken to a special nonprison prevention center and will be tried in accordance with the procedure specified by law.*

*The user will given a medical, psychiatric, psychological, and forensic examination, and if necessary at the request of the judge a further toxicological examination. At least two forensic experts will be designated for this examination. Should it be found that the user is drug dependent, he will have to undergo mandatory treatment at the recommendation of the specialists. If it is found that he is an occasional user, the court will set him free and place him under the supervision of specialists designated for this purpose, for such time as the latter shall indicate. The specialists will report periodically to the judge in the case on the user's condition. In either case, based on the report, the judge will order that the safety measure be continued or suspended.*

*In conjunction with the safety measure imposed, the judge may order the suspension of the user's driving license, boat license, or pilot license, firearms permit and passport or equivalent document for the duration of the preventive treatment. The judge may revoke the suspension of the passport at any time if the drug dependent user is able to demonstrate reliably that he will be treated in a therapeutic establishment outside the country and the latter will be required, upon conclusion of such therapy, to present the corresponding medical report to obtain the revocation of the other penalties imposed. A minor will be placed on probation or with a family under the Minor Guardianship Act for the duration of treatment.*

*If he is found to be a repeat offender, the accused will be placed in a rehabilitation center for a period not exceeding one year and he will required to undergo such mandatory treatment as is recommended by specialists. Any one attempting to evade the treatment to which he has been ordered to undergo will be confined in a rehabilitation center for a period of at least six months. The repeat offender will be confined for the remainder of his term plus six months.*

*In the countries listed below, there also exist regulations in addition to any imposed by a criminal, civil, or administrative court, depending on the laws of each country, with measures for treatment and rehabilitation of addicts.*

***In Colombia*** *the law specifies that anyone who has in his possession, keeps for his own use, or uses cocaine, marijuana, or any other drug that produces a dependency, in an amount considered to be for personal dose, will be liable to the following penalties: for a first offense, up to 30 days in prison and a fine; for a second offense, from one month to one year in prison and a fine provided that the second offense occurs within 12 months after the first one. A user who, in the opinion of a medical examiner, is found to be addicted to drugs and is thus caught in a first offense, will be confined to a psychiatric or similar establishment for such time as is required for his recovery. In this case, he will not be liable to imprisonment or a fine.*

*The competent authority may entrust the drug addict to the care of the family or, under the latter's responsibility, to a clinic, hospital, or health establishment for the appropriate treatment, for such time as is needed for the drug addict's recovery, which will need to be certified by the attending physician and a medical examiner. The drug addict's family will be held responsible for compliance with the conditions, through a bond set by a competent official, taking into*

account the family economic means. The attending physician will report periodically to the authorities hearing the case on the status of the drug addict's health and his rehabilitation. Should the family fail to fulfill its obligations, the bond will be called and the drug addict's confinement will become mandatory. These offenses will be investigated and judged at the first instance by a justice of the peace (Alcalde), and at the second instance by a governing authority (Gobernador).

**In Chile**, any one who uses drugs in a public place or space such as a street, road, square, theater, movie house, hotel, cafe, restaurant, bar, stadium, dance or music hall, or educational or training establishment will be liable to any of the following penalties: fine varying from the equivalent of one half of one to ten monthly tax units, mandatory attendance at drug prevention programs for up to sixty days in institutions considered as suitable by the Health Service. The suspension of a motor vehicle driving license for a maximum period of six months may be imposed as an additional penalty. Identical penalties will be imposed on those who have in their possession or carry in public places the aforementioned drugs or substances solely for immediate personal use. Also liable to punishment will be anyone who has conspired to use drugs in a private place.

The criminal judge decides the corresponding penalty on the basis of the personal circumstances of the offender and those most conducive to his rehabilitation. Any one who, in his capacity as a teacher or official or worker, commits such an offense in a detention center, police station or educational establishment will be liable to the maximum fine prescribed by law. The judge may commute the penalty in exchange for specific community work. The decision should specify the type of work, the place where it is to be performed, its duration, and the person or institution in charge of monitoring compliance. The work will be performed for a period not less than the length of the penalty that has been commuted nor should it double such period, preferably at a time that does not conflict with the offender's work day and at weekends, for a maximum of eight hours per week. Should the offender fail to perform fully and in a timely manner the community work ordered by the court, the commutation will become invalidated by operation of law and the original penalty imposed will have to be served in full, unless otherwise decided by the judge on the merits of the case.

**In Honduras**, all individuals are prohibited from having in their possession, in their clothes or luggage, in their homes, place of work, car, or any other place under their responsibility, unless legally authorized to do so, drugs in any amount. Any person caught in possession of a dependency-inducing drug, in a small amount, such that in the opinion of the Examiner's Office or the courts, or in the opinion of a physician in the State's employ, in the absence of the former, is considered to have it for his own personal and immediate use, will be liable to the following penalties: for a first offense, up to 30 days in prison and a fine; for a second offense, 30 to 90 days in prison and a fine; and in the case of a drug addict, confinement to a rehabilitation center for treatment until he is able to reintegrate into society. This measure will be applied even in the case of a first offense.

**In Nicaragua**, any individual caught in possession of narcotics, in an amount of not more than five grams in the case of marijuana, and of one gram in the case of cocaine or any other drug, will be liable, for a first offense, to up to 30 days in prison and a fine. For a repeat offense, the penalty will be from 30 to 90 days in prison and a fine. In the case of drug addiction or a person found under the influence of drugs, based on the opinion of a medical examiner, the judge will commit the individual to a center for rehabilitation, indicating the duration of the medical treatment. A drug addict may also be entrusted to the care of his family for rehabilitation at any



*private or public establishment. To ensure fulfillment of these obligations, the judge will set a bond based on the family's economic means.*

*Should the family fail to fulfill its obligations, the bond will be forfeited and the drug addict will be subject to mandatory confinement.*

***Panamanian law** provides that anyone in possession of drugs who is physically or psychologically dependent thereon and has in his possession a quantity small enough to be considered for his personal use, will be liable only to measures of safety. A small quantity for personal use is understood to mean an amount measured in a single dose, to be determined by a medical examiner from the Attorney General's Office. Individuals charged with drug-related offenses may not be released on bail. However, bail may be posted for those charged with drug possession if the quantity in their possession is small and it is believed to be for the individual's personal use.*

*Under **Uruguayan law**, any one caught using narcotics or improperly using a psychotropic substance or in circumstances suggesting that he may have recently done so or is carrying narcotics for his personal use, is required to appear before a judge so that a medical examination can be ordered performed by a physician from the National Drug Commission and by a Medical Examiner. If the individual is a drug addict, the judge will order treatment in a public or private establishment or as an outpatient subject always to the appropriate medical controls established by the National Drug Commission.*

*The Drug Commission will also seek to ensure that, in any situation of confinement, any scientifically based therapy goes hand in hand with manual, intellectual, or artistic efforts to produce revenue, from which one third will be drawn to pay for the assistance service, one third for the patient's personal expenses, and one third for the patient's family. Should the patient not have a family, this latter third will be deposited in a personal account to be opened especially for this purpose.*

*A new law provides that he will be exempted from criminal punishment in the event that he has a reasonable amount in his possession intended exclusively for his personal use, based on the moral conviction of the judge in this respect, and in his judgement, the latter must indicate the reasons on which this conviction is based.*

<sup>i</sup> This is established in Article 3 of the U.N. Convention, " Subject to its constitutional principles and basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption..." Furthermore, Article 3 (4)(c) and (d) provide alternatives to conviction or punishment "such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare." These provisions of the convention allow a country such as Uruguay, to treat personal possession, or cultivation for personal possession as a public health issue, and not a criminal matter, and provide the type of social services outlined above. These sections of the Convention also provide guidance to countries such as Argentina and others that have criminalized personal possession and consumption, in providing alternatives to conviction or punishment.

- <sup>ii</sup> European Monitoring Centre for Drugs and Drug Addiction 1999. *Annual report on the state of the drugs problem in the European Union*. EMCDDA, Belgium.
- <sup>iii</sup> Inciardi, James, McBride, Duane & Rivers, James, 1996. *Drug Control and the Courts*. Sage Publications, Thousand Oaks, CA.
- <sup>iv</sup> Makkai, Toni, 1998. *Drug Courts: Issues and Prospects*. Australian Institute of Criminology, Canberra.
- <sup>v</sup> Belenko, Steven, 1998. *Research on Drug Courts: A Critical Review*. The National Center on Addiction and Substance Abuse at Columbia University. New York. P.7.
- <sup>vi</sup> International Association of Drug Court Professionals, 1999.
- <sup>vii</sup> Office of Justice Programs, 1997. *Defining Drug Courts: Key Components*. US Department of Justice, Washington, D.C., p.9.
- <sup>viii</sup> *Ibid.*, p. .
- <sup>ix</sup> Tauber, Jeffrey, International Association of Drug Court Professionals (IADCP0, 1999. *Drug Courts And Their Potential for the Caribbean Community: A Common Sense Approach to the Drug Using Offender*. Alexandria, VA.
- <sup>x</sup> *Ibid.*
- <sup>xi</sup> Health Canada, 1999. *The Toronto Pilot Drug Treatment Court*. Government of Canada. Ottawa.
- <sup>xii</sup> Taylor, Bruce & Bennett, Trevor, 1999. *Comparing Drug Use Rates of Detained Arrestees in the United States and England*. International Arrestee Drug Abuse Monitoring Program, US Department of Justice, Washington, D.C.
- <sup>xiii</sup> Tauber, Jeffrey.
- <sup>xiv</sup> Conversation with Judge Tauber, Washington, DC. February 16, 2000.
- <sup>xv</sup> Physician Leadership on National Drug Policy, *Major New Study Finds Drug Treatment As Good as Treatments for Diabetes, Asthma, etc., And Better and Cheaper than Prison*. [www.caas.brown.edu/plndp](http://www.caas.brown.edu/plndp), 12/1/99.
- <sup>xvi</sup> Inter-American Drug Abuse Control Commission, Organization of American States, 1999. *Compilacion de Regulaciones referidas al uso indebido de drogas y al tratamiento de los afectados por su consumo*. Washington, D.C.
- <sup>xvii</sup> National Assembly: Drugs, Alcohol Abuse, and the Criminal Offender. US Department of Justice, Office of National Drug Control Policy, Department of Health & Human Services. Washington, DC. December 7-9, 1999.
- <sup>xviii</sup> Belenko, 1998, pp. 20-22.
- <sup>xix</sup> Physician Leadership on National Drug Policy, *Physician Leadership on National Drug Policy Finds Addiction Treatment Works*. [www.caas.brown.edu/plndp](http://www.caas.brown.edu/plndp), 11/9/99.