

## **REPORT BY THE DRUG COURT ADVOCACY GROUP ON EXPERIENCE IN BOSTON, USA ATTENDING A DRUG COURT CONFERENCE AND SESSIONS OF DRUG COURTS DURING AUGUST 2004.**

*"If the only tool you have is a hammer then you tend to believe every problem is a nail!" Maslow*

The Drug Court Advocacy Group's final report after attending the New England Association for Drug Court Professionals conference in Boston on 4 and 5 August 2004, as well as sessions of the Southern Boston District Drug Court and the Roxbury District Drug Court. We include in this report some thoughts on drug court systems for South Africa. First is what we learnt from our experience:

Drug courts in Boston are fairly informal in that they do not have specific legislation and rely to a large extent on the commitment, vision and personality of a district judge (magistrate in South Africa) who sets aside about two hours every Friday to judicially supervise the recovery processes of addicted offenders who had been sentenced to attend his or her drug court program. They normally have to appear once or bi-weekly for a period of up to a year. (It is therefore not a specialist or separate court in the full sense of the word.) In some other states they are more institutionalised and underpinned by legislation, but even these are informal in that the district judge will still be doing his normal case load and simply sets aside one or two hours once a week to run the drug court system from his courtroom. In between he may still hear urgent motions, unrelated to the drug court. It is a flexible and smart system, geared towards maximising existing resources and certainly not extravagant.

We were surprised to discover that the Boston courts, unlike some of the other drug courts in the US, focused primarily on high risk offenders (treatment resistant offenders who are on the verge of being sent to prison.) The judges say they get the biggest bang for the dollar when they focus on this group. Violent predatory criminals are however not eligible for the drug court program and lower risk addicted offenders, for instance first offenders without long histories of drug abuse, are processed in a different manner towards prevention and/or treatment programmes. At the conference we heard from researchers that the so-called high risk offender responds better to the intensive supervision offered by a drug court. It is a waste of resources to sentence low risk offenders to a drug court.

Research in Boston, according to our hosts has shown that an addicted offender on average commits two crimes a day to support his habit. Imagine the saving for the community and the criminal justice system, even if only one out of ten is successfully treated for his/her addiction. Americans are learning fast that punishment, without treatment for an addicted offender, is a waste of time, resources and counter productive. The revolving door of recidivism, according to the drug court professionals in Boston, mean that a staggering 70 percent of US prisoners, re-offend and are sent back to prison within 3 years of their release!

As an ex-magistrate one of our members was interested in the carrot and stick approach

followed by these courts. We were advised by a number of the judges that structured rewards (incentives) and the power of praise by an authority figure like a judge or magistrate has a significant impact on the recovery of addicted offenders, as does structured sanctions like short periods of incarceration, for more serious violations of the program or additional community service work (Cleaning of police cells or cars for instance). Sustainable recovery from addiction, according to treatment experts at the Boston conference, is unlikely without behaviour modification and drug treatment courts appear to facilitate this process with graduated sanctions and rewards in a court room setting.

In Boston the drug courts generally deal with people society had given up on and it was a profound moment for us to hear a judge say to a 20 year old addicted offender, who had relapsed, that he, the judge refuses to give up on him. Equally powerful is the moment when an addicted offender graduates from the drug court and the judge stands up in a show of respect for what the participant has achieved. We cannot help but think this must be a rewarding experience for a judge, who would not normally witness the positive outcome of his or her judicial work.

The New England Association of Drug Court Professionals (NEADCP) conference in Boston on 4 and 5 August 2004 gave us an opportunity to learn more about these courts from the professionals who run them and the researchers who have extensively researched the phenomena of drug courts. Treatment providers and other treatment specialist attended the conference as well, giving us some insight in the relationship between treatment programs and drug courts in New England.

In Boston we met Joseph Stanley, who works as a treatment specialist for the Boston drug courts. He is the only additional staff member employed, shared by the various drug courts and works closely with the judge and probation officers in creating a treatment plan, appropriate for the personal circumstances of each drug court participant. He is a qualified addiction counsellor and the link between the courts and treatment programs. He guides the traffic of addicted offenders to these programs and knows exactly where and when a place is available in an in- or outpatient program. We see once again how existing resources are maximised by the drug court system.

The probation officers of Boston are very involved in these courts. They seemed to be passionate about their work with addicted offenders and many were participating delegates at the conference. In the Southern Boston District Court we observed an instructive discussion between the probation officers over the progress of each drug court participant. They were well informed and clearly experienced members of the drug court team. We were left with little doubt that they had the experience to recognise the first signs of a participant's relapse. In which case the participant is given the option to come clean or face a drug test. He will know from the outset what the sanction for dishonesty will be. The courts do not regard a relapse, as a failure per se, but rather an opportunity for the participant to learn from. The judge meets and discusses each case with the probation officers before the participants are

called to appear before her. It is apparently unusual for the drug court team, led by the judge not to reach consensus on the progress and way forward for each participant.

Defence lawyers and prosecutors appear to play a less prominent role in the Boston drug courts. The local prosecutor of the Southern Boston District Court attended the meeting with the judge and probation officers, before disappearing to work in another court. None of the participants had chosen to use a defence lawyer in this court on the day we observed the proceedings. In the Roxbury Drug Court a defence lawyer and local prosecutor were in attendance throughout but without affecting the general cooperation or team spirit so evident in these courts.

Twelve step programs such as Narcotics Anonymous, Alcoholics Anonymous are essential resources for drug courts in Boston. The treatment plan for addicted offenders in the Boston courts includes attending meetings of these groups and finding a sponsor (mentor) to help them recover from addiction. All the participants we spoke to were members of Narcotics Anonymous. This community based resource is free and the only requirement for membership is the desire to stop using drugs, not excluding alcohol. We are fortunate in South Africa to have a well established fellowship in Alcoholics Anonymous and fast growing fellowship in Narcotics Anonymous to provide this service. We see no reason why existing mosque, synagogue and church based and other non-religious programmes should not also be used by future drug courts in South Africa.

The Drug Court Advocacy Group also learnt that the US equivalent of our Department of Correctional Services is a big supporter of drug courts as an alternative to a prison sentence. The latest development for instance is the so called Reentry Drug Court System, in terms of which a prisoner is released earlier on probation on condition he attends a drug court program. US prisons are very overpopulated, incarceration very expensive and it is therefore understandable why the US prison authorities are supportive of drug courts. Drug courts have according to Judge Jeff Tauber created a culture of cooperation between the different role players in the American criminal justice system, something the South African government is known to be striving towards.

We are able to distil from our experience in Boston the following defining ingredients or features of a drug court system:

- Judicial involvement in the treatment process;
- Probation officer driven supervision;
- Graduated sanctions and reward--constructive coercion;
- Cooperation between legal and treatment agencies;
- Optimisation of existing treatment resources;
- Alternative sentence to direct imprisonment.

The main argument we have encountered against drug court systems for South Africa has been that implementing them would be putting the cart before the horse. This argument suggests that treatment, the “horse” in South Africa is in such a parlous state that implementing drug courts, the “cart” would be premature until adequate and viable treatment is available in the community.

Although this concern has value we believe it is based on the misconception that drug court systems require formal treatment for all addicted-offenders caught up in the criminal justice system, whereas they are an add-on to existing resources and as such they provide an additional (constructive coercion) tool for existing treatment. A sentencing magistrate may for instance not have this sentencing option if feasible first phase treatment for the addicted-offender is not available. We hope however that drug court systems will be a catalyst for community based treatment programmes to make this effective sentencing option more widely available for the sentencing of addicted-offenders.

We expect concerns to be raised about the costs of drug court systems and hope that these concerns will also be based on the true nature of a drug court, being an informal, flexible and smart system and not a specialist court. The only additional post that will have to be created for a drug court to function is a treatment specialist and he or she may be shared by the various district courts in proximity of each other. He advises the drug court magistrate and the probation officers on the treatment plan for the addicted-offender and act as the link between treatment and the court. The training of magistrates, probation officers and treatment specialist in addiction, treatment and relapse prevention may be offset by the calculable saving of not sending addicted- offenders to prison. At R109, 00 per day in a South African prison, the drug court sentence of an addicted-offender facing two years in prison for housebreaking, will translate in a saving of approximately R80 000, 00.

To help illustrate how an addicted-offender may end up in the drug court system, we have put together a pro forma drug court sentence that may be used by a sentencing magistrate, assuming that the offence would in the ordinary course of events have been serious enough to warrant a period of direct imprisonment:

### **PRO FORMA SENTENCE**

IN THE MAGISTRATE COURT OF CAPE TOWN  
HELD IN CAPE TOWN.

CASE NUMBER:

THE STATE

Versus

JOHN THE MAN

THE ACCUSED

## DRUG COURT SENTENCE \*

“BEFORE I sentence you to the drug court program of this court I need to know whether you acknowledge you have a drug problem **and** that you are willing to fully participate in the drug court program:

Do you acknowledge that you have drug problem? (Wait for response)Y/N

Do you acknowledge that your drug problem contributes to your criminal behaviour? (Explain and wait for response)Y/N

Are you willing to cooperate fully with the drug court programme and comply with all the rules and responsibilities of your treatment plan? (Explain and wait for response)Y/N

Do you understand that failing to comply with all the rules and responsibilities of the treatment plan of the drug court programme, may lead to your imprisonment for a period of up to thirty days, or any other sanction, which in the discretion of the Drug Court will be in the best interest of your treatment. Your treatment plan will list the sanctions the Drug Court may consider to impose, for instance the cleaning of police and court room cells. (Explain and wait for reply)

**“I HEREBY then sentence you to \_\_\_\_\_ years/months of imprisonment, suspended for five years on the following terms and conditions:**

1. You comply with the rules and responsibilities of your twelve months treatment plan and any other order of the Drug Court, failing which your suspended sentence of \_\_\_\_years/months may be put into operation by the Drug Court;
2. You attend the Drug Court Program in Court\_\_\_\_ on Friday, \_\_th of \_\_\_\_\_2004 at 10H00 and every Friday thereafter at the same time, and stay in attendance until you are excused by the Drug Court;
3. You are not again convicted of theft or attempted theft, committed during the period of suspension.

Do you understand that this sentence makes it your responsibility whether or not you go to prison for \_\_\_\_\_years/months? (Wait for response)Y/N

Do you understand that your first appearance in the Drug Court is on the \_\_\_\_th of \_\_\_\_\_2004 and in Court \_\_\_\_ **and** what the consequences will be if you fail to appear without a good reason?” (Wait for response)Y/N

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**This sentencing option will only exist once the sentencing court has established that an in or outpatient treatment programme is available for the first phase of treatment of the accused and thereafter support groups are available for his or her continued treatment.**

In conclusion we believe that government should in the light of the growing epidemic of drug related crime consider field testing a drug court system in one of the magisterial districts of South Africa. Without being prescriptive we believe the process of implementing drug courts should be guided by a district magistrate with the necessary commitment and vision to make treatment with teeth available for addicted-offenders in her community.

The Drug Court Advocacy Group wishes to thank the US Embassy in Pretoria for the sponsorship, which made it possible for us to attend the conference and drug court sessions in Boston. We have become even more committed, armed with knowledge and experience we would otherwise not have had, to promote the vision of drug treatment courts for South Africa. We also want to thank Susan Snyders, Mpho Napo of the US Embassy and Cheryl Frank of the Open Society Foundation for facilitating the sponsorship and the general encouragement they gave us.

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