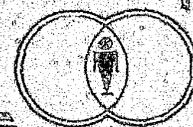


National Institute on Drug Abuse

CRIMINAL JUSTICE
ALTERNATIVES FOR DISPOSITION
OF
DRUG ABUSING OFFENDER CASES

JUDGE

58148



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

Alcohol, Drug Abuse, and Mental Health Administration

NCJRS

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ACQUISITIONS

CRIMINAL JUSTICE
ALTERNATIVES FOR DISPOSITION OF
DRUG ABUSING OFFENDER CASES

JUDGE

Criminal Justice Branch
Division of Resource Development
National Institute on Drug Abuse
5600 Fishers Lane
Rockville, Maryland 20857
U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service
Alcohol, Drug Abuse and Mental Health Administration

This monograph is one of a series of three prepared for the Criminal Justice Branch, Division of Resource Development, National Institute on Drug Abuse.

- . Criminal Justice Alternatives for Disposition of Drug Abusing Offender Cases--Defense Attorney
- . Criminal Justice Alternatives for Disposition of Drug Abusing Offender Cases- Judge
- . Criminal Justice Alternatives for Disposition of Drug Abusing Offender Cases--Prosecutor

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FOREWORD

The National Institute on Drug Abuse, Division of Resource Development, is pleased to publish this report on Criminal Justice Alternatives for Disposition of Drug Abusing Offender Cases. This is one of a set of three reports developed by our Criminal Justice Branch to assist judges, prosecutors, and defense attorneys in planning appropriate responses to the treatment needs of the criminally involved drug abuser.

Drug abuse treatment works. Recent studies have shown it reduces daily heroin use and criminal activity when properly applied. It is hoped that the cooperative strategies and specific mechanisms outlined in this report will provide the basis for more effective use of available drug abuse treatment resources by all elements of the criminal justice system.

Laurence T. Carroll, Ph.D.
Director
Division of Resource Development
National Institute on Drug Abuse

ACKNOWLEDGMENTS

This monograph is one of a series of three focused on opportunities for drug abuse treatment intervention during the criminal justice process. Each monograph emphasizes the critical role of the judge, prosecutor, or defense attorney as the key actors who must face the complex problems and issues in handling the drug abusing offender in the criminal justice system. The series is intended to be a primary source document for criminal justice officials and for treatment and health care personnel seeking to increase their knowledge of criminal justice system operations and issues.

The monograph series was commissioned by the National Institute on Drug Abuse, Division of Resource Development, Criminal Justice Branch, and developed by Macro Systems, Inc. The monographs were developed and written by John L. Williams, Martin Kotler, James Ross, and Lynne P. Cannady of the Macro staff, with the review and assistance of James C. Weissman, J.D., and are based on practical approaches and ongoing practices observed in the field. Additionally, the series was reviewed by a committee of experienced legal experts from across the Nation.

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We gratefully acknowledge the constructive criticism and support provided by the Review Committee and assistance of the many criminal justice officials and treatment personnel contacted during the project.

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CRIMINAL JUSTICE ALTERNATIVES FOR THE
DISPOSITION OF DRUG ABUSING OFFENDER CASES

I. INTRODUCTION

Over the years, the Department of Health, Education, and Welfare, National Institute on Drug Abuse (NIDA), has built a nationwide community-based drug abuse treatment network in 55 States, commonwealths, and territories. This network is administered largely by the Single State Agency (SSA) of each State to support local treatment programming. In 1976, approximately 42,000 clients, 17 percent of the entire treatment population, were directly referred to treatment from the criminal justice system.^{1/}

The problem of the drug abusing criminal offender is a significant and growing national concern. That many drug abusers demonstrate a history of repeated involvement with the criminal justice system is a recognized fact. Repeated studies of the criminal justice system reveal that drug abusers may be found throughout the justice process and that a significant amount of crime is drug related.

To minimize the negative social impact of this phenomenon and to maximize the constructive utilization of available community resources, cooperative strategies between the drug treatment and criminal justice systems must be forged. Numerous Federal and State commissions and task forces have underscored the importance of achieving this goal. The prestigious National Commission on Marihuana and Drug Abuse recommended, for example, that:

"All states attempt to rationalize the operation of the criminal justice system as a process for identifying drug-dependent persons and for securing their entry into a treatment system. The states should establish, as part of their comprehensive prevention and treatment program, a separate treatment process which runs parallel to the criminal process, and which may be formally or informally substituted for the criminal process."^{2/}

To assist State and local governments in attempting to achieve this aim, the Federal Government, through the Department of Justice, Law Enforcement Assistance Administration (LEAA), has established a major program, Treatment Alternatives to Street Crime (TASC), to enable communities to refer large numbers of offenders into treatment programs. As of late 1977, 47 communities had become involved in the TASC program and over 33,000 offenders had entered TASC.^{3/} Also, many NIDA-funded treatment programs have established a close working liaison with courts and other criminal justice agencies for referral and treatment of persons involved with the criminal justice process. In addition, LEAA provides assistance to its TASC projects, and NIDA, through its Project CONNECTION, provides technical assistance to drug treatment programs or agencies of the criminal justice system concerned with problems of the drug abusing offender.

^{1/} "NIDA Chief Reviews Efforts to Channel Offenders into Treatment," The Connection I:1 (April, 1978). The Connection is the bulletin of NIDA's Project CONNECTION, which provides technical assistance to improve cooperation between criminal justice and drug abuse treatment agencies, (NIDA Contract Number, 271-77-4525).

^{2/} National Commission on Marihuana and Drug Abuse, Drug Use in America: Problem in Perspective, Government Printing Office, Washington, D.C., 1973.

^{3/} Remarks by Peter L. Regner, National TASC Director, Fifth National Treatment Alternatives to Street Crime Conference, Orlando, Florida, October, 1977.

It is in this direction that the monograph proceeds. Options permitting rational and planned linkage between the two systems are considered. The values emphasized in this process are planning, cooperation, appropriate use of community resources, and careful balancing of community interests. The aim is to encourage criminal justice referral of drug abusers into treatment programs at various decision points in a manner which sustains rather than challenges predominant community values and attitudes.

In pursuing this approach, specific benefits accrue to the criminal justice and drug treatment systems, to the offender, and to the community at large. These include:

For the criminal justice system--

- . Relieve jail tensions, discipline problems, the associated drain on custodial resources, and general overcrowding
- . Provide the court with additional dispositional alternatives for dealing with drug abusing offenders
- . Allow the court to focus its resources on those types of cases where deterrence-oriented criminal prosecution can better achieve results
- . Reduce the costs incurred by the system in full criminal processing
- . Provide probation with additional supportive services needed for effective supervision of its caseload
- . Reduce the demand for illicit drugs
- . Reduce criminal activity related directly or indirectly to drug abuse
- . Provide community-based treatment on a selective basis in lieu of incarceration.

For the drug abuse treatment system--

- . Make treatment programs available to more individuals who need and want their services
- . Secure a means to motivate prospective clients to enroll in treatment
- . Develop a cogent argument to convince clients that they should stay in treatment
- . Achieve or maintain a volume of service delivery optimal for cost-effective operation.

For the drug abusing criminal offender--

- . Obtain the option of treatment in lieu of conventional criminal processing
- . Obtain the opportunity to remedy conditions which contribute to future criminal behavior
- . Obtain access to pretrial release programs often withheld from identified drug abusers who are awaiting trial
- . Obtain access to the advantages of diversion heretofore withheld from identified drug abusers and thereby avoid "stigma" and the "bitter taste" of the criminal process, remain with family, continue employment, or credit standing, etc.

For the community--

- . Increase the level of supervision imposed on drug abusers living in the community
- . Reduce the level of crime
- . Reduce the drain on the public dole by helping many drug abusers keep or obtain legitimate jobs, keep their families intact, and thereby contribute their share to the tax burden
- . Reduce the necessity for the criminal justice system to duplicate treatment resources available at less expense through existing treatment channels.

The fundamental objective of this monograph is to identify the decision-making points throughout the criminal justice system where treatment intervention may occur and then to review the possible treatment intervention options, with a discussion of the underlying operational and developmental considerations. The focus is on decision-making points in the adult criminal justice process which offer the opportunity for alternatives to incarceration and referral to community-based treatment. Although treatment intervention options ranging from prearrest diversion to treatment referral as a condition of split probation/jail sentencing are examined, the common denominator is the utilization of community correctional and treatment resources. Institutional-based treatment is not investigated in this monograph.^{4/} Also, this is not to suggest that services other than drug treatment should not also be considered. The provision of vocational training, educational programs, family counseling services, civil legal aid, and other services may be appropriate and important in particular cases.

It should be noted at the outset that these monographs are intended to point out and provide a general description of treatment intervention options and the pertinent policy, legalistic, and operational issues around use of such options. Understanding of these questions is approached from a multidisciplinary perspective which touches upon a myriad of relevant considerations. For instance, the ubiquitous and significant constitutional issues of due process and equal protection of the law are repeatedly addressed. This monograph is not intended to be a definitive statement of the legal issues of diversion/intervention or a detailed discussion of treatment approaches. The stimulated reader wishing to examine specific issues in greater depth is referred to the literature resources identified in the bibliography of this document.

It is anticipated that this monograph will present a comprehensive overview of options available to criminal justice and treatment system personnel in dealing with the drug abusing criminal offender along with an understanding of the many and complex variables which affect that process. As each judge, prosecutor, and defense attorney exercises a high degree of discretionary judgment and authority, wide diversity in referral philosophies and practices is to be expected. Individual values, community attitudes, the nature of the drug abusing offender population, and the applicable criminal statutes prescribed by the legislature shape the environment which determines the local fate reserved for the drug abusing offender. No simple formula for predicting the outcome of an individual offender exists.

By examining these issues in an integrated fashion, it is hoped that light may be shed on these decision-making processes. The aim of three monographs in this series is to increase knowledge and expand interest in the development of linkages between the drug treatment network and the justice system and to enhance a coordinated approach to the disposition of the drug abusing criminal offender.

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^{4/} For a thorough discussion of institutional programs for drug offenders, see Roger C. Smith, Drug Programs in Correctional Institutions (Law Enforcement Assistance Administration, Washington, D.C., 1977).

The following chapters are organized to describe:

- The Criminal Justice Process--To provide a basic frame of reference for later discussion of treatment intervention options
- Treatment Intervention Options--To identify a variety of options being used and to discuss particular advantages and disadvantages around each
- The Role of the Judge (Prosecutor) (Defense Attorney)--To offer suggestions in dealing with drug abusing offender cases
- Operating Considerations--To suggest operating considerations to be addressed for all treatment intervention options
- Developmental Considerations--To present considerations in the development of treatment intervention options.

II. THE CRIMINAL JUSTICE PROCESS

The criminal justice process is complex and somewhat different for every jurisdiction. The process for juveniles is different than that for adults. It is different for felony and misdemeanor offenses. In many western States, information filing is used as an alternative to grand jury indictment. In some communities, prosecutors and/or judges are elected; in others, appointed. In some States, treatment intervention is prescribed by statute; in others, by court rule or informal policy; in still others, not at all; and so on. However, with all of the differences and idiosyncrasies that distinguish criminal justice systems from one community to another, it is important to recognize the common elements and phases of the criminal justice process in order to appreciate the opportunities for treatment intervention during the justice process.

Granted that judges, prosecutors, defense attorneys, and others are already familiar with the complexities of the criminal justice process, this chapter presents a basic model of the criminal justice process for the adult offender as a common reference point for all readers. Particular treatment intervention options are discussed in chapter III in relation to the criminal justice process and should be considered in light of the needs and the criminal justice system in your community.

COMMON ELEMENTS OF THE CRIMINAL JUSTICE PROCESS

Our basic model of the criminal justice process for the adult offender, as presented in the exhibit following this page, is comprised of eight elements.

(1) Arrest

Arrest marks the normal point of entry into the criminal justice process and is characterized by the police taking a suspect into custody. Assuming that probable cause for the arrest exists, at this point the police officer must decide whether to arrest or not and, if not, whether to direct a drug-involved suspect into treatment. The period prior to making this formal decision will be referred to as the prearrest phase of the criminal justice process.

(2) Booking

Booking marks the administrative recording of the arrest and is conducted at the police station house or at the local lock-up. The decision to book and detain a suspect is made in the first instance by the arresting officer and may be subject to the approval of a magistrate or an attending prosecutor. The decision to release a suspect in lieu of detention may be contingent upon identification of satisfactory alternatives to detention, such as supervised release, or may be a function of a monetary bail system supervised by a judicial officer. Release practices vary dramatically from jurisdiction to jurisdiction and according to the seriousness of charge (misdemeanor vs felony).

(3) Filing Of Charges

Following booking, the prosecutor contends with the critical decision to charge the suspect with a particular offense. Under the traditional doctrine of prosecutorial discretion, the prosecutor may exercise significant freedom in determining what level of crime to charge; this discretion includes the authority to defer charges or to drop the matter entirely. In reaching his/her charging decision, the prosecutor evaluates the evidence against the suspect, determines the likelihood of conviction for the possible offenses to be charged, and considers the interests of justice to the community and to the suspect. This "screening" process may include assessment of relevant social data, such as drug abuse involvement, insofar as they relate to a particular prosecutor's charging policies. If the prosecutor chooses to proceed with the charging process, he/she then files a formal charging document with the court.

The period from arrest to the filing of charges will be referred to as the prefiling phase of the criminal justice process.

(4) Initial Court Appearance

The initial court appearance marks the accused's formal introduction to judicial proceedings. It is characterized by the prosecutor notifying the defendant of the charge(s) against him/her and the court advising the accused of his/her legal rights. Typically, a pro forma plea of not guilty is entered at this initial court appearance.

The nature and setting of this initial appearance proceeding vary considerably on the basis of the seriousness of the charge. In misdemeanor cases, the defendant often elects to proceed with a formal adjudication of the charges and the trial is conducted during this appearance. In felony matters, however, the pattern may differ significantly by jurisdiction.

The character of the initial court appearance also reflects differences in legal systems, statutes, or procedures. Many judicial systems reserve the initial court appearance for the setting of bail and advising of legal rights pending the filing of final charges by the prosecutor; in such systems, the initial court appearance immediately follows booking and detention. In other systems, the initial court appearance constitutes a formal arraignment following charging by grand jury indictment or filing of an information of the prosecutor, with determination of bail and advising on preliminary rights conducted in a less formal setting. Irrespective of the differences in the timing of these events, all jurisdictions maintain procedures for the timely consideration of bail, advising of legal rights, appointment of counsel where indicated, and notification of charges against the defendant.

(5) Preliminary Hearing

As indicated earlier, misdemeanor cases typically proceed immediately from the advisement of charges to trial; in felony matters, however, the defendant may request a preliminary hearing. Where prosecutor direct information filings are used in lieu of grand jury indictment, this opportunity for judicial review of the charging decision may be a valuable opportunity for the defendant.^{5/}

At the preliminary hearing, the prosecutor presents the State's evidence and attempts to convince the court that a prima facie case against the defendant exists. The defense counsel challenges that allegation and the court rules on the sufficiency of the evidence in terms of meeting the required legal standard of probable cause that the accused has committed the offense in question. If the court rules that sufficient evidence has not been adduced to meet that standard, the charge is dismissed.

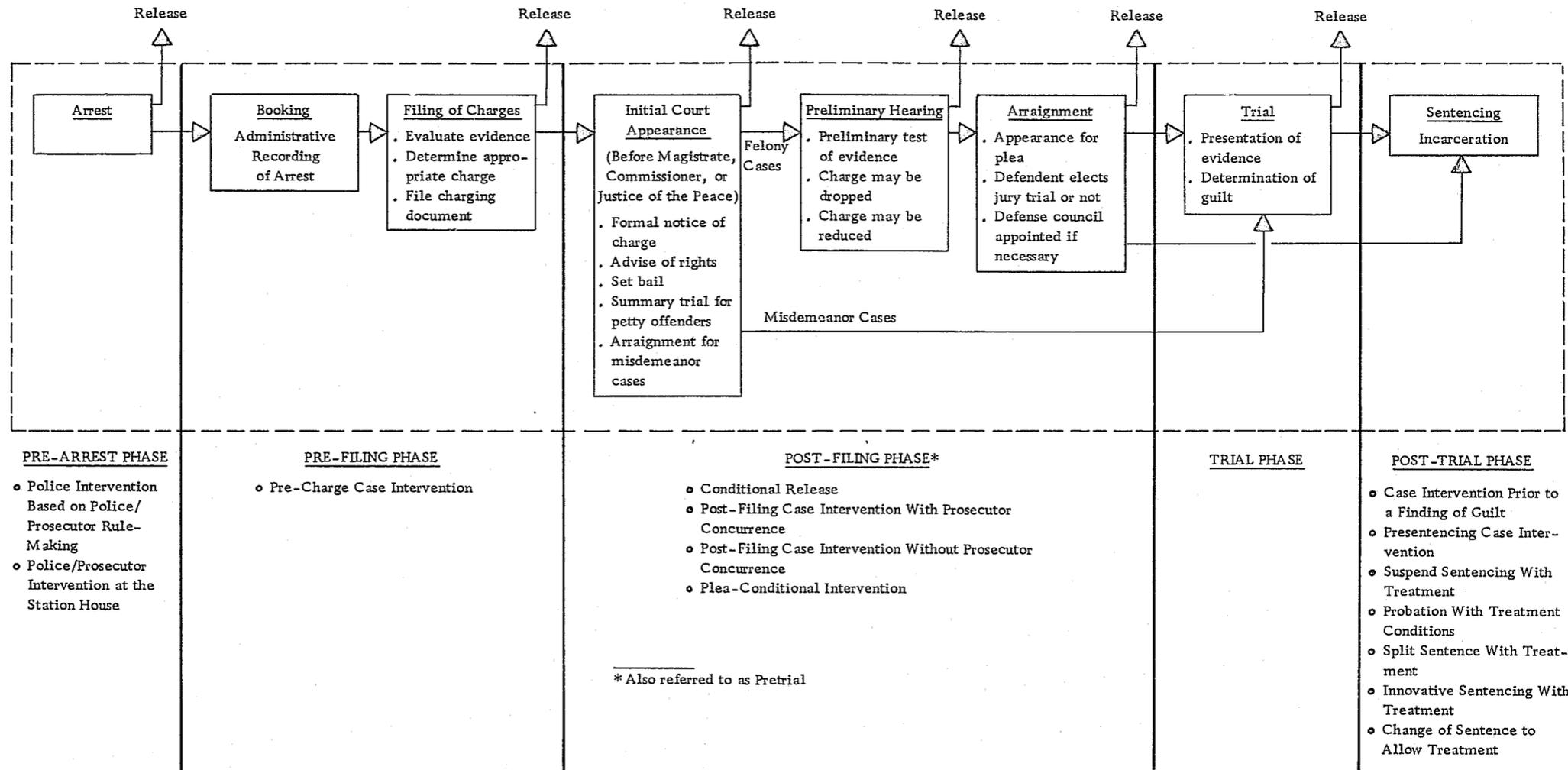
Preliminary hearings are typically held in lower criminal courts which are not authorized to adjudicate the merits of felony cases. If probable cause is certified, the lower court binds the case over to a felony court for formal arraignment and trial. In the majority of criminal cases, however, the defense acknowledges the existence of probable cause by waiving the preliminary hearing and proceeding directly to arraignment.

(6) Arraignment

In felony cases, an arraignment is conducted after the accused has been bound over to the higher court. This hearing is characterized by the accused entering a plea, subject to official acceptance by the court, and the setting of a trial date. Various pretrial motions, such as motions to suppress evidence or to produce an informant, may be raised during the period between arraignment and trial.

^{5/} Direct Information Filing--Formal filing of felony charges may be effected in either of two manners: in jurisdictions using the grand jury, the prosecutor presents evidence to a citizen grand jury which determines the existence of probable cause to charge formally. An increasing number of jurisdictions, particularly in western States, substitute a direct filing of information where the prosecutor files a charging document after reviewing the sufficiency of the evidence.

THE ADULT DRUG ABUSING CRIMINAL OFFENDER IN THE CRIMINAL JUSTICE SYSTEM



Treatment intervention may also be effected during this period. Prior to the formal acceptance of the defendant's plea, the prosecutor or defense attorney may enter a pretrial motion for continuance of the case subject to treatment intervention, or the court may elect this alternative upon its own initiative. Treatment intervention may also follow the entry of a guilty plea where that plea is made contingent upon the availability of a treatment opportunity either as a form of a disposition (such as deferred judgment) or as a means of influencing sentencing decision-making on the basis of treatment progress. Typically, such guilty plea arrangements occur following arraignment; the prosecutor and defense attorney exchange concessions leading to the avoidance of trial and the bargain is subject to the approval of the court.

The pretrial period, from the filing of charges to the commencing of trial, will be referred to as the post-filing phase of the criminal justice process.

(7) Trial

In both misdemeanor and felony cases, trial is the phase for the presentation of the State's case against the accused, the defense counsel's rebuttal of the State's case, the weighing of the evidence by the judge or jury, and the determination of guilt or innocence. In the vast majority of cases, however, the ultimate judicial resolution of guilt or innocence is preempted by a plea bargain agreement characterized by waiver of the defendant's right to trial in exchange for a concession by the State. The most common concessions are reduction of the charges, dismissal of other pending charges, sentencing recommendations to the court, and diversion arrangements.

(8) Sentencing

In all cases following a finding of guilt (either by plea bargain or conviction on the merits), the court must determine the type and duration of sentence to be imposed. Frequently, sentencing decisions are based partially or largely on the recommendations of the prosecutor. The decisions concerning sentencing may be influenced substantially by the court's awareness of various sentencing alternatives brought to its attention by defense counsel, probation investigators, or diversion program staff. A variety of sentencing alternatives, many of which are identified in this monograph, can be utilized to effect treatment intervention.

The sentencing decision-making will be referred to as the post-trial phase of the criminal justice process.

From the above discussion, it is reasonable to view the criminal justice process as a continuum of events beginning prior to the arrest and continuing through sentencing. For the purpose of this monograph, these events are grouped into five temporal phases of that process: prearrest, pre-filing, post-filing, trial, and post-trial. With the exception of trial, which is limited to determining guilt or innocence, the process provides ample opportunity for treatment intervention. For each of these criminal justice phases, specific intervention options are discussed in the following chapter.

III. TREATMENT INTERVENTION OPTIONS

There are many persons in the criminal justice process who stand to benefit from drug treatment and for whom release to community treatment with some degree of supervision is more appropriate than detention or incarceration. For these individuals, treatment intervention permits the criminal justice system to use other community agencies to provide treatment and rehabilitative services and appropriate supervision. In addition, treatment intervention enables the prosecutor and the courts to abbreviate the adjudication process, paring the costs and staff time requirements usually incurred by full case processing, thus reducing case loads and providing faster and more efficient judicial processing of other categories of offenders. The individual receives the benefits of treatment and, in many cases, by motivation and conduct, has an opportunity to favorably influence case disposition. At the same time, while remaining in the community, the charged individual may continue to work, support family, and otherwise be productive. Finally, the community is likely to benefit from more purposeful and constructive handling of these persons and from potentially less costly supervision and custody.

While the use of treatment intervention options may benefit the criminal justice process, the individual, and the community, it is important to recognize some potential problems: that the intended specific deterrent effects of other modes of punishment or confinement may be adversely affected by release to drug treatment; that treatment does not immediately benefit all offenders as intended; that inappropriate treatment placements may occur; and that some referred offenders may not only leave programs without authorization, but may commit new crimes while enrolled in treatment. Additionally, in regard to early release or diversion to drug treatment, the defendant may not enjoy the full constitutional guarantees of due process afforded by our traditional adversary system. As release to drug treatment occurs further along in the adjudication process, it becomes increasingly less cost beneficial. Attempting to safeguard the rights of the accused, meet treatment needs, and protect the community from criminal behavior constitutes the quandary that is implicit in deciding upon treatment intervention options.

This chapter describes specific treatment intervention options as they relate to the criminal justice process. They are presented as they occur at: prearrest; pre-filing of charges; post-filing of charges; and post-trial. Particular advantages or disadvantages are suggested as they relate either to the options within a phase of the process or to individual options, as appropriate.

PREARREST PHASE

1. POLICE INTERVENTION BASED ON POLICE/PROSECUTOR RULEMAKING

During the prearrest phase of the criminal justice process, the police officer may advise or direct that a suspect participate in drug abuse treatment. This intervention option may be the product of individual police officer discretion or may be exercised within guidelines established by the police department with or without concurrence by the prosecutor as to the basic circumstances for its use. In general, cases of serious suspected criminal conduct are not considered for this option. This option is typically reserved for minor drug activity, such as possession of small amounts of controlled substances.

Within guidelines, referral to treatment is solely at the discretion of the police officer. In practice, this option is most often used in less serious cases involving such conduct as simple possession, public intoxication, and similar misdemeanor offenses. It is sometimes presented as an alternative to arrest and may even include transporting the individual to the treatment program to ensure initial participation.

The major benefit of this option is its timing. At the earliest point in the criminal justice process, it offers the earliest opportunity for treatment. At the same time, the stigma of the individual's involvement with the criminal justice process may be avoided and cluttering of the process with nonessential cases reduced.

There are several potential problems in use of this option. Because discretion is centered with the police officer, intervention is not normally subject to prosecutorial or judicial review. This may not be particularly alarming unless the police officer actually coerces the suspect into treatment by threat of arrest and probable cause has not been clearly established. Drug treatment referrals are not meant to provide police with an alternative to arrest, with criminal activity merely suspected but not proven.

Level of discretion among police officers may vary, particularly if guidelines are not clear. Also, police may not be trained to recognize drug problems and, if so, to make most appropriate referrals. These shortcomings can be partly ameliorated through special awareness and crisis intervention training and by encouraging use of a referral agency.

Finally, an important, practical problem with this option is the availability of treatment intake at night which is most often the time of the arrest decision. If treatment is not readily available, the police officer may feel that there is no alternative to arrest. Thus, there should be an established protocol with the treatment or referral agency to provide for 24-hour admission.

2. POLICE/PROSECUTOR INTERVENTION AT THE STATION HOUSE

Treatment may also be provided prior to arrest through prosecutor intervention at the police station house. As with the option discussed above, discretion is centered on the police officer; however, here a prosecutor is assigned to the station house to advise officers on specific arrest decisions. For the drug-involved suspect, this may provide an opportunity for treatment in lieu of arrest.

The major benefit of this option is, again, in the early timing of treatment intervention. Unlike the previous option, however, the advisory role of the prosecutor at the station house diminishes the potential for problems resulting from misapplication of police discretion and allows for prosecutor review for legitimacy and demonstrable probable cause in each case.

A potential problem of this option is the delay which may result from a requirement for prosecutor advice as a prerequisite to treatment intervention. To offset this possibility, it is important to allow police discretion in specific circumstances or to establish an alternative advisory mechanism. For the latter, this might include a paralegal or police officer with specialized training as backup to the prosecutor.

PREFILING OF CHARGES PHASE

3. PRE-CHARGE CASE INTERVENTION

After arrest, the prosecutor may defer filing of charges against a suspect to provide for treatment intervention. With acceptable conduct and progress in treatment, no charge is entered.

In pre-charge case intervention, the prosecutor is the primary decision-maker, stipulating who will be diverted, what measures will mark success or failure, and what incentives will be offered. Additionally, in some communities, the prosecutor may even refer the drug abuser to a specific treatment program.

Several benefits accrue to this intervention option. In addition to avoiding stigma and reducing unnecessary involvement in the criminal justice process, especially in the case of minor and first offenses, with this option the suspect is more likely to have access to the advice of counsel. Also, more accurate and complete background information is generally available to the prosecutor. Finally, by not filing charges, requirements for the additional burden of court review can be avoided.

The major problem around this option may be the tendency to overdivert simply because case loads are heavy. As with all treatment intervention during the criminal justice process, it is important to be reasonably certain that use of this option is appropriate in each case. Where treatment is more convenient than appropriate, there is likely to be less value to the individual and greater risk of damaging the credibility both of the intervention option and the treatment program. Particularly, where the prosecutor recommends a specific treatment program, it is essential that screening and diagnosis be accurate and that the treatment program participate in the treatment decision.

POST-FILING OF CHARGES PHASE

A variety of treatment intervention options are available after the filing of charges up to trial. During this period, the prosecutor and the court have responsibility for treatment intervention decisions.^{6/} While the prosecutor generally plays the primary decision-making role, the court may also actively participate in or even make decisions. At a minimum, in virtually all jurisdictions, intervention decisions are subject to judicial review.

Several benefits accrue to options during the post-filing period. There is additional opportunity to obtain pertinent information about the defendant to determine the appropriateness of treatment intervention. Where appropriate, the defendant can receive treatment in a supervised setting while remaining in the community prior to trial. The defendant is likely to benefit more from this treatment experience than that of jail detention, with or without treatment. Also, the period of treatment intervention provides an opportunity for the defendant to demonstrate motivation and progress in treatment for later consideration by the prosecutor and the court. Along with treatment, the defendant may continue to work, support family, attend school, and otherwise be productive pending trial. For the criminal justice system, overcrowding of jail population is reduced, allowing better conditions, maximum supervision of those needing it most, and lower costs in jail operation. At the same time, a more appropriate level of supervision of other defendants in a less restrictive community setting may be maintained.

^{6/} Several cases indicate that, except where authority to conduct pretrial intervention is vested by statute in a single criminal justice agency, pretrial intervention decision-making necessitates involvement of both the prosecutor and the court. In *U.S. v Gillispie*, 345 F. Supp. 1236 (1972), the U.S. Fifth Circuit Court of Appeals found that the local U.S. Attorney did not have absolute discretion to decide to indict a narcotics addict who meets eligibility criteria for treatment in lieu of incarceration under NARA's Title I. J.P. Bellasai, in "Pretrial Diversion, the First Decade in Retrospect," *Pretrial Services Annual Journal*, 1978, 1(1), at 19, comments on this case: "Though the case revolved around interpretation of a federal statute (NARA) and the Federal Rules of Criminal Procedure, it served as a precursor to later, important state court decisions involving diversion by advancing two important propositions-- that (1) prosecutor's discretion as to who is to be accorded the benefits of treatment in lieu of prosecution is not necessarily absolute; and that (2) the courts have a role to play in monitoring the even-handed administration by prosecutors of diversionary benefits to defendants who meet predetermined eligibility criteria." In *Sledge v Superior Court*, 113 Cal. Rptr 28 (1974), the California Supreme Court refused to strike down a statutory provision vesting sole discretion in the prosecutor to initiate consideration of defendants according to published eligibility criteria, but stated that a defendant denied access to pretrial intervention by the prosecutor for failing to meet eligibility criteria could appeal in court, after conviction, the earlier eligibility exclusion as erroneous. In a second California case, *People v Superior Court*, 113 Cal. Rptr. 21 (1974), the California Superior Court struck down as unconstitutional a provision of the State's drug diversion law which granted veto power to the prosecutor over the court's decision to divert a defendant whom the prosecutor had earlier found met statutory eligibility criteria. In conclusion, these and certain later cases, such as the *Leonardis* decisions in New Jersey, indicate that prosecutorial discretion is not absolute and unreviewable and that both prosecutor and judge have roles in pretrial intervention decision-making.

There are also certain disadvantages with post-filing options. As a general rule, the later the intervention decision in the criminal justice process, the greater the involvement of the court and the greater the overall cost to the criminal justice system. In addition, from a defense perspective, treatment intervention may not be necessary to obtain a given disposition and may be overly restrictive in relation to other available alternatives; in fact, treatment intervention may also show a defendant's lack of motivation to obtain treatment, which may harm his/her case. Finally, there may not be consideration of the time spent in treatment, if not successful, at case disposition.

Specific post-filing treatment intervention options are presented below.

4. CONDITIONAL RELEASE

Conditional release to treatment pending trial can be made by the judge, upon prosecutor or defense request, or as a result of an independent court order at any time during the post-filing period. Conditional release normally requires: (1) court-sponsored supervision, e.g., by a court service or probation agency, and active participation in treatment or (2) supervision by a third party and active participation in treatment. In the latter case, both treatment and supervisory responsibility may be accepted by the treatment program.

5. POST-FILING CASE INTERVENTION WITH PROSECUTOR CONCURRENCE

The prosecutor or defense counsel may introduce a pretrial motion to continue the case pending diagnosis and evaluation of the defendant's drug abuse problem or outcome of treatment participation. The court must rule on the motion and may, with prosecutorial concurrence, continue the case and reschedule the court date, if appropriate. Based on conduct and progress during the treatment period, the prosecutor may recommend that charges be reduced or dropped. Final prosecutor recommendations are subject to court ruling.

6. POST-FILING CASE INTERVENTION WITHOUT PROSECUTOR CONCURRENCE

At its own initiative, the court may permit continuance for diagnosis, evaluation, and/or treatment of the defendant's drug abuse problem. The court may receive the advice of both the prosecutor and defense counsel, but concurrence is not required to permit treatment intervention. The court ultimately rules on case disposition.^{7/}

7. PLEA-CONDITIONED INTERVENTION

This option requires the defendant to enter a plea of guilty as a prerequisite to treatment intervention. The decision to pursue this option is arrived at through agreement between the defense counsel and the prosecutor. If the defendant expresses interest in intervention and is willing to admit guilt, the plea and its ramifications are then explained to the defendant by his/her attorney. The court then reviews the plea with the defendant to ensure that its ramifications are understood. The court may then accept the plea and set conditions for treatment. In accordance with court policy, in many communities, the court will vacate the guilty plea upon good conduct and successful completion of treatment.

In addition to the general advantages and disadvantages of post-filing intervention options, the specific advantages of plea-conditioned intervention are that the court may play an active role in the plea and intervention decision, increasing system accountability and adherence to due process, and that the criminal justice system is better positioned to resume proceedings if the defendant fails to meet conditions for intervention. Finally, the deterrent effects of criminal laws are not compromised.

^{7/} Chapter 123 of the 1969 Massachusetts General Laws, Sections 38-55, as amended in 1974 by Chapter 827, "An Act Clarifying Procedures Relating To Drug Rehabilitation," mandates case intervention in certain instances. First drug offenders who are found to be drug dependent and meet other specified criteria must, if they express interest in both obtaining treatment and not proceeding with the criminal process, be offered treatment by the court. Because legislation requires intervention by the court, prosecutorial concurrence is not required in the original decision to stay proceedings or in the later decision to dismiss charges against those who have completed treatment or otherwise satisfied the court.

Conversely, the specific problems with this option are that the defendant's eagerness for release to treatment may unduly influence his/her guilty plea. In addition, having pleaded guilty to the full charges, the defendant has given up bargaining ability with respect to the charges.

POST-TRIAL PHASE

After trial, a number of treatment intervention options may be available to the court. These may involve presentencing or sentencing decisions. In post-trial treatment intervention, decisions are made by the court, but recommendations by the prosecutor, defense counsel, probation, or treatment program may be considered.

The particular advantage of post-trial options is in the assurance of due process and equal protection rights of the defendant brought about by completion of the adjudication process. Also, more extended participation in the criminal justice process may allow for additional opportunity to assess the defendant's treatment needs and motivation. Additionally, post-trial options satisfy the prosecutor's concern that evidence and witnesses may be lost during a pre-trial intervention period. Also, the deterrent effects of criminal law are not compromised. The primary disadvantage of post-trial options is the added time and resources required to proceed through the full justice process, particularly when earlier treatment intervention is appropriate.

8. CASE INTERVENTION PRIOR TO A FINDING OF GUILT

At the completion of trial, before entering judgment, the court may refer the defendant to treatment and then consider judgment in light of compliance with the intervention conditions.

The specific advantage of this option is that treatment progress will receive favorable consideration by the court and may result in no conviction.

The major disadvantage of this option is that in the event of "failure" in treatment, the time spent in treatment may not be credited at disposition and sentencing. For example, if judgment is withheld for one year pending treatment and the defendant is terminated from treatment after 10 months, that period, even if the defendant is progressing, may not be credited to his/her sentence. In effect, the defendant then "serves" 10 months while in drug treatment and then begins a full sentence.

9. PRESENTENCING CASE INTERVENTION

After rendering judgment, the court may delay the sentencing decision in order to allow the offender to participate in drug treatment. Successful treatment participation may be favorably considered by the court at sentencing and may even result in probation or conviction without sentencing.

As with the previous option, if treatment participation is terminated, the period of treatment may not be credited to the sentence.

10. SUSPENDED SENTENCING WITH TREATMENT

After sentencing the convicted offender, the court may suspend that sentence for a period of time to be spent in treatment. With satisfactory treatment program participation, the court may alter or not execute the sentence.

The court benefits from suspended sentencing combined with drug treatment because judicial supervision is maintained and sentencing flexibility is enhanced by the availability of treatment resources. Moreover, the imminent threat of incarceration may contribute to the offender's motivation toward success in drug treatment.

The related disadvantage of suspending a sentence for treatment is that offender motivation may be reduced because there is no prospect of removing the conviction.

11. PROBATION WITH TREATMENT CONDITIONS

Traditionally, the court has employed the conditions of probation to exercise control over the provisional status of the offender. Recommendations for treatment to be included as a condition of probation may be made by either attorney, probation officer, court services, or other appropriate staff. The court determines if treatment is to be a condition of probation and the particular details of such conditions.

The benefits of including treatment as a condition of probation are that: the criminal justice system maintains direct supervision of the offender; drug treatment programs provide both a viable service and an auxiliary supervision; the court may revoke probation if the offender is not responding to treatment; and the court can modify the treatment conditions if sufficient need is demonstrated.

Again, the potential disadvantage is that motivation may be reduced because there is no prospect of removing the conviction.

12. SPLIT SENTENCE WITH TREATMENT

The court may combine drug treatment with a sentence of incarceration. Treatment may be provided intermittently during or upon completion of the incarceration term. This type of sentence may be used creatively to prescribe weekend jail sentences, furlough arrangements, and "shock probation" terms.^{8/}

The major advantages of split sentencing with treatment are that higher levels of custody are provided than with probation. Where the offender is initially not motivated toward treatment, this option allows for community treatment intervention after the offender has served some time in confinement or in work programs.

The potential problem with this option is that, in many cases, the offender may not be as positively motivated toward treatment as someone in less restrictive circumstances. It may be argued that community placement is the most powerful motivator for successful treatment participation.

13. INNOVATIVE SENTENCING WITH TREATMENT

Courts may incorporate drug abuse treatment as part of innovative sentencing programs. Examples of these are victim restitution with treatment, volunteer work with treatment, and "creative restitution" programming.

Such programs benefit the criminal justice system by increasing the flexibility of sentencing choices and allowing sentencing to be more appropriate to the situation of each offender. For the offender, they provide increased opportunity for treatment and rehabilitation. The community may benefit through the additional availability of restitution services provided by these offenders.

The potential problem with such sentencing programs is that the court may not be equipped to make such fine sentencing distinctions without the aid of a court services component or the community may not have sufficient resources to utilize these alternatives effectively.

^{8/} The Hennepin County Department of Probation often sends the drug abusing offender to the county workhouse and, after the offender has demonstrated motivation for treatment, then transfers him/her to treatment in the community. The more common, intermittent sentence is a type of split sentence employed by many courts, including those in Brooklyn, New York. For example, the offender spends an intermittent period in jail (weekends; weekends and nights), while receiving community treatment during the week.

14. CHANGE OF SENTENCE TO ALLOW TREATMENT

After a period of incarceration, the court entertains a defense motion to review and change sentence to suspend the remaining incarceration period to permit entry into a treatment program.^{9/} The basic requirements for this option for a drug offender should be that: (1) the offender is presently in need of treatment; (2) the purpose of custodial sentence would be outweighed by rehabilitation; and (3) there is reasonable probability that the treatment program will be completed and the offender will not again violate the law.

* * * *

Whenever the prosecutor, the defense attorney, or the judge has concluded that the defendant has a drug use problem, based on personal observations, staff assessments, and casework reports, the decision to address the problem with direct provision of drug treatment services is not limited to a simple "yes" or "no" choice. The treatment intervention options described above offer a wide range of possibilities from which to develop a plan for drug treatment integrating criminal justice supervision with full cognizance of the implications of each option.

Several subjective assessments and objective variables help to determine which option is most appropriate for a given defendant. The potential risk of releasing an offender into the community, the type of drug problem and respective treatment needs, available treatment programs, the conditions of the release, the level of supervision, the allocation of responsibilities, and the outcome of successful completion in treatment must all be weighed when deciding which intervention option to use. The early options are characterized by emphasis on prevention and more limited criminal justice supervision. Conversely, the later options stress the need for increased supervision, more intensive treatment efforts, and the impact of specific deterrence. Case-by-case considerations and the distinguishing effects of various operational strategies should influence decision-making and the use of treatment intervention options in the criminal justice process.

^{9/} In the Federal system and most State jurisdictions, rules of criminal procedure permit defendants to seek reconsideration of original sentence by the sentencing court after a brief, specified period. New Jersey Supreme Court Rule 3:21-10, reduction or change of sentence, expands that authority by allowing the sentencing court to retain continuing jurisdiction regarding the length and terms of sentence in alcohol and drug abusing defendant cases.

IV. ROLE OF THE JUDGE

This chapter focuses on the key role of the judge in the criminal justice process and presents some suggestions for his/her consideration.

From the filing of charges through sentencing, the judge plays an active role in the criminal justice process. Court initiative and policy determine whether treatment intervention options will be possible. Also, to a large extent, court decisions and judicial review of specific cases will determine whether a particular defendant may receive treatment. While it is recognized that judges are sensitive to the traditional role of the bench in the judicial process, for the purposes of this monograph, it is important to delineate their special role as it relates to drug abuse treatment. In considering drug-involved cases, the court may be called upon to:

- . Recognize a potential drug dependency problem based on current charges, criminal history, bail interviews, and probation reports
- . Set drug testing or participation in drug treatment as a condition of release, e.g., in lieu of bail, any time prior to trial
- . Establish or approve court-related drug screening procedures
- . Evaluate community treatment capability and authorize use of specific programs
- . Refer defendants to specific screening, diagnosis, and treatment agencies
- . Establish policy as to the use of specific intervention options
- . Stay criminal justice proceedings or accept defense or prosecutor motions to continue the case for assessment of the accused's treatment needs
- . Grant a continuance motion from the defense counsel or prosecutor so the accused can participate in drug treatment
- . Request the prosecutor's advice and consent for defense or court-initiated intervention motions to permit treatment, including formal defense motions
- . Accept a guilty plea from the accused to allow drug treatment as a condition of release
- . Defer judgment or sentencing to await the outcome of treatment
- . Review presentence reports from probation as well as recommendations of defense counsel, the prosecutor, and treatment programs as to treatment needs and progress
- . Make the offender's participation in drug treatment an explicit condition of sentence
- . Modify the conditions imposed on cases returned to court and explicitly require treatment participation as appropriate.

The range of these functions clearly brings into question the court's capability to inform itself of complex defendant situations with a host of confounding variables. In addition, the court should know about the quality and availability of treatment services. Without ancillary support, such as that provided by probation reports and other knowledgeable sources, the court may find itself making critical decisions based on inadequate information with potentially devastating results, or abrogating its own functions by overrelying upon other offices of the court, e.g., the prosecutor, public defender, or probation. In theory, direct judicial control over case-review intervention is traditionally in keeping with the adversary process, but only a well-informed judge, with access to appropriate diagnostic and screening processes and a thorough awareness of the quality and availability of treatment, can hope to discharge effectively all his/her responsible mandates.

A judge facing the complex problems associated with handling the drug abusing offender should weigh the feasibility of the intervention options in chapter III in light of the law, court policy, and community attitude, as well as other operating considerations described in chapter V. In addition, the following suggestions are offered to assist the court as it deals with drug-involved cases.

GENERAL SUGGESTIONS

The following suggestions are intended to assist the court generally, in dealing with drug abusing offender cases:

1. Understand the effects of drug use on behavior, especially in light of possible charges and past criminal activity
2. Establish court policy around specific treatment intervention options and identify any related court requirements for "success" or "failure"
3. Identify treatment programs where effectiveness and positive treatment results are recognized, and where there is a basic understanding of and agreement about the responsibilities, prerogatives, and conditions of the treatment program and the court
4. Work with the probation department or other ancillary service agencies and the prosecutor to develop referral mechanisms for court-referred releases to drug treatment programs
5. Assure the prosecutor that the court will respond to successes and failures in treatment as agreed
6. Stress to the treatment program the importance of reporting client progress to either the referral agency, the court, or the probation department as appropriate; agree upon the frequency, content, and medium for the reporting scheme, if warranted
7. Emphasize to the treatment program the importance of early court notification for unauthorized client absences, violation of probation conditions, or violation of any treatment rules that necessitate client termination
8. Be prepared to act on restrictions on accessibility to confidential treatment information which are applicable to the criminal justice system.

SUGGESTIONS PRIOR TO AND DURING TRIAL

To identify and substantiate the defendant's drug problem during criminal proceedings up to and including trial, the court should:

9. Facilitate screening and treatment plan development by granting or issuing case continuance for further assessments

10. Inform defense counsel of the availability of procedures to assess the drug treatment needs of the accused
11. Be receptive to varied sources of information about the defendant's drug use. These might include input by: the prosecutor and defense attorneys; the defendant; police/arrest reports; jail screener findings; probation department reports; pretrial service agency summaries; bail, diversion, and intervention agency reports; diagnostic and medical work-ups; drug screening board assessments; and treatment program assessments.
12. Review information and recommendations from both criminal justice and other agencies, e.g., probation, court service agencies, treatment programs, referral programs.
13. Weigh all information in light of:
 - Reported treatment needs of the accused
 - Availability of appropriate treatment program services and placements
 - Range of criminal justice options sanctioned and available in the jurisdiction
 - Community safety while the accused is released for drug treatment
 - Return-to-court risk for conditionally released defendants
14. Determine whether a treatment-oriented disposition has been considered by the defense counsel or prosecutor
15. Establish eligibility criteria in court-based intervention programs reflecting the rehabilitative potential of individual defendants
16. Set treatment-related pretrial release conditions which are focused on assuring the individual's appearance in court as scheduled
17. Review with the accused and his/her attorney the ramifications, benefits, and trade-offs of release for drug treatment compared to other possible release or sentencing alternatives. In particular, assure that the defendant understands:
 - The obligations of being released to drug treatment in lieu of bail
 - The treatment conditions of sentencing alternatives, especially the outcomes of successful compliance and failure
 - The implications of consent to the speedy trial waiver
 - The implications of the entry of a guilty plea for further proceedings
 - Release of information agreements (when required) between the treatment program and the referring agencies
 - Dual responsibility to the criminal justice system (e.g., courts and probation) and the treatment program, especially if contracts or agreements are involved
 - Which behavior is indicative to the court of noncompliance with conditions of intervention

This information should reinforce that already made available by the prosecutor and assure the due process and equal protection rights of the defendant.

18. Where the defendant has been told by the prosecutor that a guilty plea could be withdrawn after demonstrated conduct and success in treatment, confirm the court's position
19. Should the defendant be rejected for intervention, provide reasons for this rejection in order to relieve suspicions of arbitrariness and to facilitate potential treatment
20. If the defendant is rearrested during participation in treatment, consider whether it is in the interest of the defendant and the community to require the termination of treatment participation, or to allow treatment to continue
21. Should a defendant fail to comply fully with treatment conditions during the original treatment period, consider whether it is in the interests of the defendant and the community to return the defendant to the criminal process, or to either extend the treatment period or recommend a change in program placement.

SUGGESTIONS FOLLOWING THE TRIAL

The judge's decision-making power beyond trial proceedings permits the court flexibility to employ innovative treatment options at sentencing. In particular, the court should:

22. Be receptive to presentence reports from conventional and nonconventional sources, including but not limited to the probation department, treatment program staff, and intermediating agencies
23. Weigh the testimony of reputable treatment programs which are present in court to report on the defendant's treatment progress and needs
24. View evidence of improvement of the defendant's social adaptability and contribution to society as the primary measures of treatment success, and use medically or clinically defined factors as only secondary success measures
25. If the defendant is terminated from a treatment program or probation status is revoked, provide an opportunity for an administrative hearing, if requested.

JUDICIAL RESPONSIBILITY IN THE COMMUNITY

Finally, as a major influence in the community and to better carry out the judicial function, the judge should gain first-hand awareness of court-sponsored treatment intervention:

26. Learn about existing treatment programs in the community and maintain familiarity with the current reputation of available programs; this can be accomplished with the aid of probation department suggestions, client feedback reports, and conversation with court screeners from individual treatment programs
27. Visit treatment programs for graduation ceremonies, parent/family days, and other events; some programs extend an open invitation to judges to visit any time

28. Serve on drug treatment advisory councils or other coordinating boards that address the problems of the drug abuser in the criminal justice system
29. Use your credibility and influence in the community and among colleagues to foster good relations between the criminal justice and drug treatment systems.

The court is in a unique position to strongly influence development and use of treatment intervention options. The suggestions offered above are not all-inclusive but offer only some suggestions to address, with greater precision, the problem of the drug abusing offender in the criminal justice system.

V. IMPLEMENTING INTERVENTION OPTIONS

The successful implementation of a broad range of treatment options for drug abusing offenders will require the coordinated effort of diverse agencies within and outside the criminal justice system and, thus, necessitates addressing basic operating considerations. These include:

- . By what means, by whom, and when in the criminal process are drug abusers to be identified?
- . What categories of offenders should be considered eligible for early treatment? What categories of offenders should be excluded from certain intervention options?
- . What factors about an offender should an evaluator take into account in deciding whether and when to recommend treatment? Who should be involved in making a subjective assessment of whether an offender is a "good risk" for treatment?
- . What agency(ies) should provide treatment information and recommendations about an offender to the prosecutor, the presiding judge, and defense counsel?
- . On what bases should a discretionary decision-maker decide to allow treatment at the recommended point in the process, if at all?
- . What types of conditions should be imposed on a drug abusing offender offered the option of treatment?
- . What forms of treatment are to be made available and what forms of treatment are appropriate?
- . What agency should monitor and report on the compliance of an offender with the imposed conditions, and to whom should this information be made routinely available? What should be the scope of this information?
- . What should be the consequences if conditions are not completely met? Who determines whether an offender has been a "success" or "failure," and how is "progress in treatment" to be measured? What types of termination procedures are necessary?
- . What incentives should be offered for completion of conditions? How much discretion should the prosecutor and the presiding judge exercise in determining the measure of "success"?

These operating considerations apply to all treatment intervention options regardless of community or where in the criminal justice process they occur. However, the importance of each consideration will vary, particularly depending on whether the intervention option is designed to direct the drug abuser out of the criminal justice process or to assure a defendant's continuation in the criminal justice process.

This chapter discusses operating considerations based on the collective experience of several communities in dealing with these questions.

1. IDENTIFICATION OF THE DRUG ABUSER

The recognition of indicators of drug abuse is a basic step toward the development of conscious, treatment-oriented responses by the criminal justice system to drug abusing offenders. The term "drug abuse" generally refers to the "nonmedical use of any drug in such a way that it adversely affects some aspect of the user's life; i.e., by inducing or contributing to criminal

behavior, by leading to poor health, economic dependence, or incompetence in discharging family responsibilities, or by creating some other undesirable condition."^{10/} Current offense is probably the most frequently used cue to drug abuse. However, although possession of a controlled substance represents a common offense among drug abusers, it is neither the only form of drug-related criminal behavior nor the only common indicator of drug abuse. Therefore, current offense should be relied upon as the primary indicator of drug abuse.

(1) Drug Abuse Indicators

Drug abuse indicators are collected not only through inference from current charges and past criminal record, but also by means of interviews, chemical testing, medical examinations, and direct visual and other observations. Specific sources for collection of drug abuse information about a defendant commonly include:

- . Routine comments made by the arresting officer and read at the initial hearing
- . Urinalysis screening performed in detention by drug treatment programs, pretrial services agencies, or probation offices
- . Medical examinations by jail health care personnel
- . Interviews conducted in detention by drug treatment programs, referral agencies, pretrial services agencies, jail counselors or correctional officers, either routinely or on request of the prosecutor, court, or defense counsel
- . Prearrest intake interviews conducted in court by pretrial services or probation
- . Requests for information from family and community resources
- . Self-admission either within or outside the court's confines, either directly or through defense counsel, at any point during or after the criminal process
- . Presentence investigation or actual supervision by probation.

With the exception of the presentence investigation, which is not routinely begun until after the court has entered judgment, each of these information sources may contribute to the decision to: impose treatment conditions on a defendant released pending trial, sentencing, or appeal; abbreviate the criminal process in favor of case intervention and referral to treatment; or continue with the criminal process and take treatment needs into consideration at disposition or sentencing. It is important, however, to recognize that even with data which should suggest a drug abuse problem the prosecutor's office or the court may not be equipped to recognize those data or their implications for determining the need for treatment.

(2) The Use Of Drug Abuse Indicators

The temporal relationship between identification of a drug abuser and initiation of screening for both objective eligibility and subjective "rehabilitation potential" can be easily illustrated by example. In jurisdictions where special mechanisms for screening drug abusers have been developed, the identification of cues to drug abuse triggers this assessment process.

In Washington, D.C., for example, a roster of probable drug abusers is developed daily from bail agency and drug treatment program interviews, urine testing, current charges, and criminal records. This information is used broadly to determine which defendants should be

^{10/} White Paper on Drug Abuse, A Report to the President from the Domestic Council on Drug Abuse Task Force, Washington, D.C., USGPO, Sept. 1975, p. 11. Drug abuse may also be defined in terms of usage patterns: (1) experimental drug use; (2) social or recreational drug use; (3) circumstantial drug use; (4) intensified drug use; and (5) compulsive drug use. For further discussion of this definition, please see: Drug Use In America: Problem In Perspective, Second Report of the National Commission on Marihuana and Drug Abuse, Washington, D.C., USGPO, March 1973, p. 94.

required to undergo further drug testing or drug treatment as a condition of pretrial release. It is also transmitted to the Narcotics Diversion Program within the Superior Court. The diversion program then eliminates defendants who are obviously ineligible for case intervention, informs defendants released after arraignment of their eligibility, submits the names of interested defendants to the prosecutor's office for an official determination of eligibility, and, finally, assesses the motivation and treatment potential of eligible defendants.

In Genessee County, Michigan, the identification of a drug abuser precedes referral to the Drug Diversion Authority and is based on the recognition of cues either during prior screening by the County's general diversion program (The Citizen's Probation Authority), or through observations made by the arresting officer during a prearraignment conference with the prosecutor. However, recognition of drug abuse cues not only triggers a screening process in the few jurisdictions with intervention programs exclusively for drug or substance abusers, but can often influence the determination of pretrial release eligibility and, more importantly, the comparative assessment of a defendant's suitability for several treatment options. Most TASC programs and the CASE (Centralized Addiction Screening and Evaluation) projects formerly operating in Massachusetts have initiated assessment of identified drug abusers' treatment needs at multiple points in the criminal process.

In Middlesex County, Massachusetts--where drug abusers are identified by self-admission, or intake screening by probation prior to arraignment, or direct observation by the court--a drug violation offender must be granted examination to determine drug dependency and treatment potential upon request; the nondrug violator may also be granted an examination at the court's discretion. Where the Massachusetts courts have used the services of CASE projects, such examination has resulted in a thorough assessment and a set of treatment recommendations which sometimes lead to an abbreviation of criminal proceedings, but, in all cases, the assessment must, by statute, be considered at final case disposition.

Recognition of drug abuse cues does not occur in the majority of jurisdictions until after a general process of assessing a defendant's service needs has begun. Normally, this occurs during a subjective "needs assessment" conducted by probation, a court services agency treatment program, or other similar agency.

In New Jersey, all offenders regardless of offense are permitted to apply for pretrial intervention in conformance with Court Rule 3:28.^{11/} Under the court rule, applicants are screened and, where rehabilitation appears to be possible and can be presumed to result in reduced criminal activity, may be conditionally diverted.^{12/} Often, not until the process of assessing an offender's "rehabilitation potential" has started do drug abuse indicators become evident, and are drug treatment counselors asked to assist in making the assessment. Often, such assessment processes lead to recommendations to proceed with the criminal process and to provide treatment later: before entry of judgment, before sentencing, or as a condition of sentence. In programs which rely partially on prosecutor's referrals, a preliminary determination of objective eligibility for drug treatment may precede the assessment process which then reveals specific drug treatment needs.

Lastly, in programs like that formerly operating within the Court of Common Pleas in Philadelphia, defendants are determined to be objectively eligible for diversion regardless of drug abuse, then any abusers are identified from this pool of eligibles. These individuals are subsequently screened for motivational fitness by the presiding judge and, after the diversion decision, submitted to a drug referral process.

^{11/} This rule was adopted by the New Jersey Supreme Court in October, 1970, to authorize vocational-service pretrial intervention programs. It was amended in 1973 to make clear its application to drug and alcohol detoxification programs.

^{12/} The "Guidelines for Operation of Pretrial Intervention in New Jersey," signed September 8, 1976, lists as the first purpose of pretrial intervention, "to provide defendants with opportunities to avoid ordinary prosecution by receiving rehabilitative services, when such services can reasonably be expected to deter further criminal behavior by the defendant, and when there is an apparent causal connection between the offense charged and the rehabilitative need, without which cause both the alleged offense and the need to prosecute might not have occurred."

Particular methods to identify drug abusers and the most appropriate screening process sequence is, in part, determined by resources available. Some general principles, however, should guide the development of an assessment process. First, because drug abuse patterns shift rapidly and because some indicators are insensitive to nonopiate drug abuse, it is often important that several indicators of drug abuse exist. These should be reviewed periodically to ensure validity. Second, a defendant is shielded from compulsory interviews and urinalysis by constitutional protections against both unreasonable search and seizure and self-incrimination, as well as guarantees of both due process and access to counsel to those accused of a crime.^{13/} It is important both to inform a defendant that he/she need not submit to either interviews or chemical testing, and to obtain consent from a defendant before such procedures are begun. Urinalysis procedures could be subject to application of the right to counsel, to ensure both the reliability of the test and the voluntariness of any waiver given by the defendant. In addition to constitutional guarantees, drug abuser defendant disclosures are also protected by Federal alcohol and drug abuse confidentiality regulations. These complex regulations are discussed later in this chapter.

2. DETERMINATION OF ELIGIBILITY

Eligibility criteria are objective standards against which the suitability of a defendant for one or several treatment intervention options may be decided. Clearly, articulated eligibility standards ensure fairness and uniformity of consideration from case to case. They also provide a better basis for communication between the drug abuse treatment and criminal justice systems. The absence of such standards makes a practice more vulnerable to claims of "discrimination" and denial of "equal protection of the laws." The number and stringency of eligibility criteria vary depending upon the treatment intervention option(s).

In practice, the typical "prime candidate" for treatment intervention before sentencing, exclusive of pretrial release, has the following characteristics: a first or second offender; charged with a nonviolent misdemeanor or minor felony, normally a drug offense other than trafficking, or a common drug-related property offense, such as larceny; no prior convictions for a more serious crime or a crime involving violence; no, or very limited, history of prior drug treatment; and apparent treatment needs met with existing community resources.

For any treatment intervention option, the essential eligibility requirement is that an individual be a drug abuser involved with the criminal justice system. Beyond this requirement, other eligibility criteria may be determined by the criminal justice and drug abuse treatment systems, or by the legislature. In setting eligibility criteria, it is necessary to include treatment considerations such as nature of drug dependency, as well as legal considerations such as establishment of probable cause to arrest. Many communities use exclusionary criteria to qualify eligibility. Of these, there are four which have special impact on the drug abuser population: inappropriate drug use patterns; nondrug offenses; repeated or serious offenses; and lack of demonstrable motivation. Each of these exclusionary guidelines reflects the importance of being sensitive to "community risk" and making effective use of scarce treatment resources; however, it should be noted that only the fourth criterion, lack of motivation, focuses on the individual's rehabilitation potential.

(1) Exclusion Based On Inappropriate Drug Use Patterns

The target drug abuser population for a particular treatment option may be defined in terms of the drugs which eligibles have used. Such eligibility criteria based on the drug(s) used may include: any drug other than addictive narcotics or opiates, addictive narcotics or opiates only, marihuana only, any drug other than addictive narcotics and opiates and marihuana, any drug. The rationale for exclusion of a defendant because he/she seemingly "abuses the wrong drugs" depends on the drug of abuse. Users of heroin and other opiates are sometimes excluded from short-term pretrial programs on two assumptions: first, the requisite period of treatment would extend beyond the period of an established intervention program; second, heroin abusers commonly need closer supervision and the present threat of

^{13/} For an incisive and complete analysis of many of these issues, see Pretrial Intervention Services Center, Pretrial Intervention Legal Issues (Washington, D.C.: American Bar Association, 1977).

criminal sanctions. Defendants addicted to heroin or other opiates are, therefore, more likely to be placed on probation with treatment as a possible condition. Marijuana users are often considered ineligible because the treatment needs of marijuana users are regarded as minimum, and because a causal relationship between marijuana use and crime has little support: the limited number of treatment slots should be reserved for those most in need. Similarly, users of "other drugs"--such as amphetamines, barbiturates, and cocaine--are often excluded on the assumptions that their treatment needs are more difficult to establish; their drug activity is harder to link to crime; and other forms of drug abuse more clearly warrant treatment. Exclusion can also be based on the frequency of drug use, where infrequent or "recreational" users are excluded as eligibles.

Because of the lack of definitive answers about either the links between use of any given drug and criminal behavior and because most effective treatment depends on the needs of the individual, no defendant should be excluded from treatment solely on the basis of drugs used. Instead, referral agencies working with treatment programs should be requested to determine the treatment needs of individual defendants and to match these needs against available resources. The result of this assessment and matching should be a central factor in considering any treatment intervention option.

(2) Exclusion Based On Non-drug Offenses

Many diversion mechanisms, especially those mandated by statute, provide treatment options exclusively, or primarily, for defendants charged with drug offenses. However, many drug abusers become involved with the criminal justice system for non-drug offenses, such as shoplifting, forgery, burglary, and prostitution. A major consideration in determining if non-drug offenders should be excluded is whether "the time and circumstances of...arrest for a crime prompted by...drug dependency are, in most instances, entirely fortuitous."^{14/} Differentiation for purposes of eligibility between drug offenses and drug-related crimes ignores the integral relationship between many forms of drug abuse and both types of crime. Therefore, the primary emphasis should be on individual motivational screening of a wide population, rather than on arbitrary criteria.^{15/}

(3) Exclusion Based On Repeated Or Serious Offenses

Several jurisdictions, including Dade County, Florida, Genesee County, Michigan, and Nassau County, New York, focus on diversion of felony cases. Even these jurisdictions, however, tend to exclude repeated or serious offenders. This reflects a fundamental concern of all communities about "community risk" and "rehabilitation potential" in the case of repeated or serious offenses. The exclusion of such defendants is based on the assumptions that they are less susceptible to short-term rehabilitation and are more dangerous and, thus, should be incarcerated for the protection of society. Still another argument for exclusion of repeated offenders is that, if the purpose of intervention is to reduce stigma, individuals who are already stigmatized have little to gain by abbreviation of the criminal process.^{16/}

^{14/} Bellasai, J. F., and Segal, P. N. *Addict diversion: An alternative approach for the criminal justice system*, *Georgetown Law Journal*, 1972, 60, 667-710, at 703.

^{15/} *The New Jersey Supreme Court in three cases collectively known as State vs Leonardis (Leonardis I)*, 71 N.J. 85 (1976) at 102, analogously stated that, "because rehabilitation is dependent on an individual's propensity for correction, conditioning (a defendant's) admission solely on the nature of his offense may be both arbitrary and illogical. Greater emphasis should be placed on the offender than the offense."

^{16/} In *Marshall vs United States*, 41 U.S. 417, 94 S. Ct. 700 (1974), the Supreme Court refused to strike down an exclusion from drug treatment for two prior felony convictions, as provided for in Title II of NARA. This decision has often been viewed as legitimization for similar eligibility exclusions in related programs. However, as noted earlier, the first *Leonardis* decision noted that exclusionary criteria should be viewed as guidelines, and that "because there is little data...all defendants, irrespective generally of charges or record, should be afforded the opportunity to prove their motivation to succeed in the program," 71 N.J. 84 (1976) at 90.

Conversely, it may be argued that traditional penal distinctions have no relationship to the susceptibility of a multiple or serious offender to "early and relevant rehabilitation." In the case of drug abusers, the number of offenses may not indicate the need to generate income to support a drug habit. Preliminary evidence also suggests that use of certain drugs--such as cocaine, solvents, and some nonbarbiturate sedatives--can, in itself, lead to violent actions, which may contribute to criminal behavior.^{17/} Therefore, exclusions based on either repeated or serious offenses may need reconsideration, not only in light of community risk, but also in the light of the drug abuse history and current treatment needs of the individual defendant. This conclusion underscores the necessity for individualized assessment of the defendant or offender, but does not preclude the appropriateness of institutional drug treatment for individuals whose criminal activity makes assignment to community treatment programs unrealistic or unpalatable.

(4) Exclusion Based On Lack Of Demonstrable Motivation

Restriction of eligibility based on the absence of demonstrated motivation for treatment reflects the attitude or "motivational fitness" of the individual offender. An approach formerly used in Washington, D.C., calls for a test period in treatment before a decision to divert is reached. By exclusion of defendants who violate the conditions of their pretrial release to treatment, this process "ensures fairness, since the defendant disqualifies himself by demonstrating noncooperation with treatment."^{18/} In addition, when the defendant is offered diversion to treatment after the release decision has been made, his/her enrollment decision is not motivated by avoidance of detention and is, therefore, made more freely. One reason for abandoning the motivational screening approach in Washington, D.C., was that it became administratively burdensome. This procedure would be unrealistic in many jurisdictions because of the time periods involved; that is, by the time a report on the defendant's initial adjustment to treatment is available, it will already be time for trial. Widespread use of such self-screening mechanisms occurs in many jurisdictions on both informal and formal bases before sentencing.

In summary, clearly articulated eligibility standards are important to ensure fairness and uniformity of consideration from case to case, and to provide a better basis for communication between drug treatment and criminal justice systems. Certain eligibility criteria will primarily reflect community decisions about how resources are to be used. A community might choose to focus on youth rather than adults; residents of one geographical area rather than another; or the unemployed rather than the fully employed. Should it be necessary to make general exclusions based on certain offender characteristics, it is important that these are not arbitrary, but consistent with community's objectives, and reflect the abilities of the criminal justice and drug abuse treatment systems to meet the needs of drug abusing offenders.^{19/}

^{17/} Eckerman, W. C., Bates, J. D., Rachal, J. V., and Poole, W. K. Drug Usage and Arrest Charges (NTIS No. PB251965). Washington, D.C.: Drug Enforcement Administration, 1971. For a more complete analysis of the relationship between drug use and violent crime, see National Institute on Drug Abuse, Drug Use and Crime: Report of the Panel on Drug Use and Criminal Behavior, Rockville, Maryland: National Institute on Drug Abuse, 1976.

^{18/} English, M. J., Bellassai, J. P., Kantor, M., Biehl, C. W., and Dexter, S. The Case for the Pretrial Diversion of Heroin Addicts from the Criminal Justice System. Washington, D.C.: American Bar Association Special Committee on Crime Prevention and Control, 1972. See also Bellassai, *op. cit.* at 700.

^{19/} Exclusions based on age, geographical area, nature of charge, etc., may lead to legal challenge on the basis of the guarantee of equal protection of the laws. See Pretrial Intervention Service Center, *op. cit.*, at 3-10.

3. NEEDS ASSESSMENT AND TREATMENT PLAN DEVELOPMENT

A needs assessment of the individual drug abusing offender should be performed as the basis for treatment plan development. A subjective assessment of the offender's "rehabilitation potential" commonly complements the objective determination of eligibility and occasionally may be used to identify persons otherwise considered not eligible based on objective criteria. There are at least six purposes for conducting this assessment: (1) to corroborate drug dependency and determine the dimensions of the offender's drug abuse problem, (2) to determine the offender's "motivational fitness" for entering drug treatment, (3) to estimate the relationship between the offender's drug use and criminal behavior, (4) to determine the offender's drug treatment and other service needs, (5) to match the offender's needs against available drug treatment and other community resources, and (6) to formulate and submit recommendations to a discretionary decision-maker.

A typical informal needs assessment process will often, in addition to general inquiries about educational background, work history, etc., include questions like these:

- . Do you use drugs? What do you use? How often? How much do you use? How much does it cost?
- . How long have you been using drugs?
- . What is, or has been, the level of drug abuse among your associates? In your family?
- . How long have you been involved in criminal activity? To what do you attribute your criminal activity?
- . Were you criminally involved before you started using drugs?
- . What do you think is the relationship between your criminal activity and drug use?
- . Have you ever been enrolled in drug treatment? What type of treatment? Were there any changes in you after treatment?
- . Are you interested in receiving treatment?

Results of this assessment may be used to develop pre-filing, post-filing, and sentencing treatment intervention recommendations. However, it should be noted that many judicial officers rarely have access to mechanisms to acquire information needed to make informed decisions as to pretrial release. In contrast, particularly when the assessment process occurs immediately before sentencing, it is often paralleled by the development of other sets of recommendations--by probation, the prosecutor, defense counsel, local treatment programs in which the defendant is active, and others. In result, more information is available to determine the appropriateness of treatment intervention.

The needs assessment may be a simple or elaborate process, depending on several factors:

- . Whether drug abuse is corroborated through medical examination, by follow up field investigation, or merely by the coherence of a defendant's responses
- . Whether the duration and nature of drug treatment are predetermined, or need to be negotiated
- . Whether one or several alternate dispositions are under consideration
- . Whether drug abuse cues are recognized before the needs assessment begins and, if not, whether "in-house" resources are available to assess the needs of drug or substance abusers
- . Whether central drug treatment intake procedures are uniformly utilized in the jurisdiction

- Whether counselors from local drug treatment programs are brought into the process
- Whether criminal justice system representatives participate actively in either the assessment or the development of recommendations.

The diversity of approaches to the assessment process can be illustrated best by example. In Middlesex County, Massachusetts, a defendant receives a psychiatric examination to corroborate drug dependence, takes a battery of tests administered by a psychologist, and finally meets with the drug screening board--composed of drug treatment, community agency, drug referral, and probation representatives, and often a psychiatrist. The screening board reads the reports of the psychiatrist and psychologist, questions the defendant to determine needs and motivation, matches the defendant's needs to a particular drug program, and submits recommendations for treatment and case disposition through probation to the court.

In Dade County, Florida, defendants determined to be probable drug abusers during an initial pretrial intervention interview are reinterviewed by an in-house drug abuse counselor, and are then referred to the central drug treatment intake and evaluation unit servicing the county for a "work-up:" interviews, case review by the staff psychologist, a medical examination, and a match of the defendant's needs to available drug treatment resources.

Less elaborate needs assessment approaches are also used. For example, in rural Kennebec County, Maine, a psychologist from the Community Justice Project assesses all service needs of a defendant and submits recommendations to the appropriate discretionary decision-maker. In Minneapolis, Minnesota, screeners attend the initial hearing and with the prosecutor identify prospective candidates for treatment. An in-house chemical-dependency counselor then formulates a recommendation to the prosecutor, following an interview with the defendant and corroboration of dependency with family and friends. In Washington, D.C., the needs assessment also constitutes the Diversion Hearing at which a Narcotics Diversion Program representative, the defendant, defense counsel, and a prosecutor are all present. The prosecutor and diversion program representative collaborate in learning from the defendant the dimensions of his/her drug abuse problem and his/her motivation to enter treatment, and immediately determine the appropriateness of diversion to treatment in the case.

In selecting from the possible needs assessment approaches, it is important to reflect the needs and resources of the criminal justice, screening, and treatment agencies. Wherever possible, it is urged that appropriate community service agencies take part in the process of matching the individual's needs with available community services.

In general, at the conclusion of the assessment process, the evaluators formulate treatment recommendations for consideration in the criminal process. The specificity of these recommendations may vary from general indication of the need for treatment to specific recommendations for program conditions, time period, and even case disposition. Where the appropriate discretionary decision-maker takes an active part in, or is regularly informed during the assessment process, a recommendation is often tantamount to a decision.

4. TRANSMITTAL OF TREATMENT RECOMMENDATIONS

Where an appropriate discretionary decision-maker is not actively involved in the assessment process, the agency responsible for the conduct of the assessment submits its recommendations through established channels. Should the defendant have been directly referred for assessment by defense counsel, the consent of counsel is normally obtained before recommendations are submitted to the prosecutor or the court. In result, negative recommendations that may prove damaging to the defendant's case are not submitted. Should a defendant have been referred other than by defense counsel, recommendations are normally submitted to the referring agent, the appropriate discretionary decision-makers, defense counsel, and, in some jurisdictions, the arresting officer. In the situation of alcohol and drug abuse defendants, Federal alcohol and drug confidentiality regulations, considered in detail later in this chapter, govern procedures for transmittal of these data.^{20/}

^{20/} See also Weissman, J. C. "The Criminal Justice Practitioner's Guide to the Federal Alcohol and Drug Abuse Confidentiality Regulations," Federal Probation, 1976, 40, at 11-20.

5. DETERMINATION OF LEGAL ACTION

Should a discretionary decision-maker not take an active part in the assessment process, the acceptance of treatment recommendations may still be nearly automatic, especially where confidence in the evaluator is high or where control over eligibility has earlier been exercised. In any case, before a determination of legal action, defendant characteristics and community input should be weighed by the prosecutor or the court. The defendant's awareness of the implications of his/her acceptance of the treatment option, including its impact on certain constitutional rights, should also be determined. If a defendant is rejected for a particular treatment intervention option, he/she should be given the reasons for rejection and, in many cases, considered for other intervention options.

(1) Weighing Factors Before the Decisior.

The decision to use a particular treatment intervention option requires the prosecutor or court to balance the needs of the offender against the needs and sensitivities of the community. The prosecutor and court often weigh such factors as:

- . The level of physical dependence, as indicated in the report of a court-appointed physician
- . Past criminal record
- . The nature of the current charge, especially whether the charge reflects drug trafficking
- . The reputation of a given treatment program, if one has been recommended
- . The availability of an appropriate drug treatment program, or a drug referral agency, if a program has not been recommended
- . The length of the treatment period and the intensity of involvement needed by a defendant
- . If the defendant is already enrolled in a treatment program, the reported progress in treatment
- . The concurrence among recommendations from multiple sources
- . The sentiments of the victim and the arresting officer.

The sentiments of the victim and arresting officer may be crucial in cases where risk to the community might otherwise appear high. The Dade County, Florida, pretrial intervention program, for example, accepts an offender charged with a violent crime only when recommended by not only the prosecutor, but also the arresting officer and the victim. The practice among prosecutors in some jurisdictions of uniformly granting a veto power to either the arresting officer or victim, however, raises problems, because it makes the fate of an otherwise eligible defendant dependent on the discretion of individuals who have no constitutional authority to act in a governmental capacity.

(2) Familiarizing The Offender With Implications Of The Option

The defendant should be apprised of the implications of the treatment intervention option(s) being considered before a decision is made. It is essential that, where appropriate, the defendant be made fully aware that he/she is waiving certain rights which may include right to a speedy trial, trial by jury, confrontation of witnesses, forcing the State to prove its case beyond a reasonable doubt, to remain silent and not incriminate himself/herself, and so on. Such waiver should be obtained knowingly, voluntarily, and with advice of counsel. In addition, the specific conditions of the defendant's participation need to be explained, including the measures of success for completion of conditions, as well as the implications of noncompletion, including possible extension of the treatment period's duration.

(3) Affording Information To Rejected Offenders

In the event the defendant is rejected for a given intervention option, the basis for this decision should be routinely explained in writing to reduce complaints of arbitrariness and to provide the defendant with the motivation to seek needed treatment services.^{21/} In some jurisdictions, it may also be possible to afford the defendant an opportunity to contest the decision.^{22/}

(4) Considering The Rejected Offender For Other Options

A defendant rejected as unsuitable for one treatment intervention option should be considered for other options, either on the initiative of counsel, or referred by the prosecutor, the court, or probation. Failing to qualify for pretrial release does not mean that a defendant should not be diverted; a defendant not granted deferred prosecution may be a prime candidate for post-trial intervention; alternatively, if substantial time is required to work with a defendant's severe drug abuse problem, probation may be the most appropriate point for treatment. Galvin et al. describe how a defendant rejected for one intervention option in Dade County, Florida, may still obtain treatment.^{23/}

In some cases, because of nature of charge or objections from arresting officer or victim, prosecution is not deferred. If the candidate is otherwise qualified and wishes to take part, he may still be taken into the program. Subsequently the prosecutor may be led to change his mind and arrange for dismissal of the charge through a nolle prosequi motion. Or the defendant may be tried and convicted or plead guilty. If he has met program requirements the pretrial intervention agency then recommends that the court suspend judgment and place the defendant on probation, frequently unsupervised and of brief duration.

Diversion, probation, and incarceration may, in this context, be viewed as alternate intervention points along the continuum of the criminal justice process.

6. IMPOSITION OF CONDITIONS

In addition to the primary condition of avoiding further criminality, other conditions may be imposed on a defendant released to the community for treatment. These conditions can include:

- . Maintaining employment or attending school
- . Attendance at a drug treatment facility
- . Remaining at a residential treatment center

^{21/} In *State v Strychniewicz*, 71 N.J. 85 (1976) at 119, the New Jersey Supreme Court found that prosecutors must provide defendants considered under Court Rule 3:28, but rejected for diversion, with written reasons stating the grounds for rejection.

^{22/} The reader is referred to the National Association of Pretrial Services Agencies Project on Standards and Goals for Pretrial Release and Diversion, performed under a grant from the Law Enforcement Assistance Administration. The draft NAPSA standards and goals for pretrial diversion recommend that, although a trial-type proceeding is not necessary, defendants should be accorded an informal hearing before the designated judge for a county at every stage of association with a pretrial intervention project at which admission, rejection, or continuation is put in question.

^{23/} Galvin, J. J., Busher, W. H., Greene-Quijano, W. G., Kemp, G., Harlow, N., and Hoffman, K. *Instead of Jail: Pre- and Post-Trial Alternatives to Jail Incarceration*. Washington, D.C.: Law Enforcement Assistance Administration, 1977, at 66.

- . Progress in reduction of drug abuse or abstinence from drug use
- . Participation in other services, such as counseling, education, therapy, vocational training
- . Submission to extended monitoring of performance, possibly including urinalysis
- . Restricted associations
- . Community service or restitution.

Because the purposes for releasing a defendant at different points in the criminal process vary, and the incentives for completion of conditions are also diverse, the conditions imposed for some forms of release to community treatment must be more restrictive than for others. For example, the only treatment-related condition of supervised pretrial release might be urinalysis screening for narcotics use, with provision for follow up treatment if urinalysis results are positive. Alternatively, as a condition of probation, restrictions may be more stringent, including: residence, working, counseling, and reporting requirements.

The conditions imposed on a defendant by the prosecutor or the court may or may not spell out the duration or type of treatment but, if prescribed, should provide flexibility in readjusting either of these.

(1) Duration Of Treatment

Several approaches have been taken to determining the duration of the treatment period. These include: setting a flat period for all defendants, ranging from three months in one program to three years in another; setting an inflexible term, but calculating it on the basis of the individual defendant's needs, available services, maximum sentence, etc.; setting a short, flat term, with the expectation of incremental extensions if progress is being made but all conditions have not been met; setting an indeterminate term, with a maximum duration, and provision for periodic review to see if continued treatment is warranted; setting a flat term, with the defendant's option to request early discharge.

It is preferable from the standpoint both of effective use of treatment sources and the service needs of a given defendant or offender to allow for the treatment period to be flexible, to reflect both the original assessment of rehabilitation potential and subsequent progress in treatment. An inflexible term imposed on all defendants could be challenged as unreasonable and does not reflect individual treatment needs.

(2) Type Of Treatment

The range of treatment modalities offered should be as wide as that available to free drug abusers. If free drug abusers have the option of methadone treatment, defendants should not uniformly be required to participate in drug-free programs, and vice versa. However, saying that the criminal justice system should avail itself of the full range of available treatment modalities does not deny the presence of practical limitations. Certain treatment programs may be unsuitable due to a lack of trust for and understanding of criminal justice system requirements or because their credibility has been eroded. Furthermore, a broad range of treatment modalities may not be available in a specific locale. In particular, it may be impractical to provide a full range of treatment modalities for abusers who are ordered into institutional treatment programs.

In many cases, it will be appropriate for the drug treatment facility's administrator to be delegated authority to shift the offender from in- to outpatient status and, if necessary, back again. The drug abuser should, at the same time, not be irrevocably bound to a single program or treatment approach. Should the offender and a particular treatment program turn out to be a bad match, the offender should be given a reasonable opportunity to participate in other programs, if they are available, without being presumed to have "failed." There should be well-defined rules about how much leeway for experimentation with treatment programs will be permitted.

(3) Agreement To Conditions

Neither the treatment program nor the duration of participation are necessarily determined at the time of the decision that treatment is appropriate. Consequently, the defendant may be obliged to cooperate with probation, a drug referral program, or a diversion program in selecting a treatment program and determining the duration of treatment. Thus, the prosecutor and the court may delegate certain decisions to responsible agents within or outside the criminal justice system. The offender may be asked to enter into as many as three agreements: with the prosecutor or court; with the agency responsible for monitoring treatment performance and reporting to the prosecutor or court; and with the treatment facility.

Regardless of the duration and type of treatment or how and when the conditions must be met, the treatment plan must be flexible enough to meet the changing needs of the offender. In addition, the perception of the treatment plan as a process rather than as a rigid blueprint is important to avoid the impression of trapping the offender.^{24/}

7. MONITORING AND REPORTING

The responsibility for controlling surveillance or tracking of the progress of an offender in treatment can fall on one of several agencies, or may be shared. For the criminal justice system, the agency ultimately responsible is usually pretrial services, a diversion program, or probation. This responsibility may be partially delegated to either a drug referral agency, a treatment facility, or both. Where responsibility is shared, it is important to recognize potential problems of privileged communication and confidentiality requirements, and simply that of having too many "players." Occasionally, the sharing of tracking responsibilities may lead to an administratively difficult situation. For example, a Connecticut statute for suspended prosecution of drug-dependent persons places supervisory responsibilities on probation, while effectively giving the same responsibility to the Department of Mental Health. Whether the tracking function is centered on one agency or is shared, responsibilities should be clearly defined and periodically reviewed.

It is important to clearly delineate specific information to be reported by drug abuse treatment programs to the criminal justice agency responsible for follow-up, and from that agency to the prosecutor and court and obtain consent for release of that information from the defendant. These reporting agreements must recognize that Section 408 of the Drug Abuse Office and Treatment Act of 1972 (as amended, 21 USC 1175) protect confidential communications by drug and alcohol abusers made during the course of service delivery and bar release of such information by treatment programs to outside parties, except as authorized by statute and interpretive regulations. These regulations are contained in Title 42, Part 2, of the Code of Federal Regulations, published in the Federal Register, July 1, 1975. Section 2.39 of the regulations, Criminal Justice Referral, is especially important, and states that the individual's written consent authorizing release of information and communication must be obtained where release from confinement, the disposition of criminal proceedings, or the suspension or execution of sentence are conditional upon treatment. The regulations permit consent to unrestricted communication between the treatment program and certain criminal justice agencies; these parties may also consent to a more restricted disclosure of treatment information. The regulations require adherence to specified procedures in defining the extent and duration of the disclosure of information.^{25/}

In practice, brief written progress reports should be limited to the minimum information and frequency required to meet criminal justice monitoring needs. These should be submitted by treatment programs to the agency responsible for monitoring performance, and passed on to the court or prosecutor. Reports should also be submitted when the offender's treatment status changes because of: early discharge as a "success," completion of the treatment period, shift from in- to outpatient status or from one treatment modality to another, noncompliance with treatment program or other conditions, or "splitting," i.e., unauthorized absence from the treatment facility.

^{24/} *The establishment and modification of intervention conditions is analyzed in pretrial service center, op. cit., p. 33-38.*

^{25/} *See Weissman, op. cit.*

An innovative approach to reporting has been adopted by the Drug Diversion Authority in Genessee County, Michigan, which requires monthly written progress reports from both the treatment program and the divertee. These are transmitted to both the arresting officer and the referring prosecutor. In other jurisdictions, however, the practice of periodic individualized progress reports has given way to quarterly caseload reports summarizing intake and activity for the program during the period.

In summary, monitoring responsibility should be clearly articulated, information to be obtained should be clearly defined and limited to that which is necessary for the relevant agencies to determine whether conditions of intervention are being met, and confidentiality regulations should be strictly followed.

8. OUTCOMES OF NONCOMPLETION OF CONDITIONS

Treatment-related decisions are normally delegated by a discretionary decision-maker to other agents. However, when a case is to be terminated early or on time, for splitting or completion of the program, or for various other reasons, a discretionary decision-maker imposes a judgment about "success." Sometimes the basis for this judgment is clear cut. In some cases, where the defendant's progress demonstrates unqualified "success," there may be strong reason to grant probation, consider success in sentencing, or whatever incentive had been agreed upon at the outset of intervention. In contrast, where the individual's performance was an unqualified "failure," he/she might be placed under other bond conditions, have release revoked, or be otherwise returned to the criminal justice process.

Often, the bargain struck between the prosecutor or the court and the offender is unclear. Questions may arise "in defining the basis of the bargain--does he have to remain in the treatment program or does he have to be successfully cured? Is arrest for another offense a violation? Is evidence of further drug use sufficient to terminate?"^{26/}

There are many possible measures of "success," as suggested in the earlier discussion of conditions: adequate attendance in a treatment program; staying on the treatment program's rolls throughout the duration; cooperation with the program administrator; reduction of drug use; total abstinence from illicit or other problem drugs; completion of specified auxiliary goals, such as employment continuity or living with family; "progress in treatment," as subjectively measured by the defendant, treatment program, referral agency, criminal justice agency, etc.; and cessation of criminal activity. Therefore, it is recommended that each offender who is offered treatment be provided with a list of factors that could constitute "noncompletion" of conditions. This practice may avoid a common occurrence in which an apparent completion is considered a qualified failure, and an apparent noncompletion a qualified success. In this context, it is important to delineate clearly the grounds for termination.

(1) Grounds For Termination

Two areas in which grounds for termination require focused consideration are treatment "failure" and criminal behavior while in treatment. The courts, prosecutors, and probation often view noncompletion of treatment conditions as a failure to "seize the opportunity," and, consequently, respond to a drug abuser who has not completed treatment more harshly when remanded to court. However, it may be "unrealistic and, perhaps, counterproductive to expect a complete alteration of behavior immediately after being referred to treatment."^{27/} One approach is to suggest that stabilization and normalization in the community, absence of arrest, and substantial treatment progress should be the measure of "success," rather than unfaltering abstinence.

^{26/} Perlman, H. S., and Jaszi, P. A. Legal Issues in Addict Diversion, Washington, D.C.: Drug Abuse Council, Inc., 1975, at 121.

^{27/} Ibid., at 125.

There may be problems, however, even with conditions about "avoidance of further criminality." The absence of arrest, rather than absence of conviction, may be an unreasonable expectation.^{28/} Clearly, the basis for a new arrest needs to be considered. Presumably, a defendant charged with drug trafficking or a violent crime should be considered for termination before an offender charged with marihuana possession or, for that matter, loitering and other minor offenses. Moreover, even if the new arrest leads to conviction, it may be more to the benefit of both the defendant and the community to allow continuation in treatment, especially where progress is being made. This may often be accomplished by extending the period in treatment or by placing the offender on probation.

It is often argued that the tendency to terminate for a new arrest is too strong, and may be unreasonable, while the tendency to terminate for lack of cooperation and even backsliding in treatment is too weak, and strips programs of their credibility and clout. The assertion that termination occurs more readily for re-arrest than lack of treatment progress is supported by several drug diversion statutes that allow use of discretion in dismissing charges against divertees who have not completed prescribed drug programs, but have avoided rearrest.^{29/} It is important to balance the tendencies to terminate for criminal activity and lack of progress in treatment, and establish policy acceptable to both criminal justice and drug treatment systems.

(2) Termination Procedures

Due process considerations require that an offender be afforded a full revocation hearing before an independent and impartial hearing officer before his/her treatment intervention status as a divertee or probationer is formally revoked.^{30/} In Genessee County, Michigan, a defendant's progress is discussed by the arresting officer, the prosecutor, and the defendant before a termination decision is reached.

Even after termination for failure of specific conditions, progress in treatment should be considered at sentencing. This may suggest that the equivalent of "good time" should be awarded, and either time to be served or the probation term reduced.

In summary, it is important that questions about success measures, grounds for termination, and termination procedures be addressed early and resolved in a manner that everyone understands and supports.

9. REWARDS FOR COMPLETION OF CONDITIONS

As discussed above, the type of information needed to support a recommendation for rewarding positive performance in treatment is often not explicit. The incentives for positive performance in treatment should be made clear, and potentially include: dismissal of charges by the prosecutor, dismissal of the case by the court, reduction of charges, consideration at judgment, consideration at sentencing, entry of guilt without sentencing, and expungement or sealing of records. Even probation may lead to possible expungement, either by statute or other arrangement.

^{28/} However, in the case of Walter L. Green, Jr., v U.S., Opinion No. 11640 (decided *en banc*, September 7, 1977), the D.C. Court of Appeals ruled that the prosecutor need not rely on conviction for a new offense before exercising authority to terminate from diversion, where the terms of diversion stated that re-arrest on probable cause was sufficient grounds for termination. This case departs from traditional probation and parole doctrines, and may be limited to the factual situation presented in the case.

^{29/} See Galvin, *et al.*, *op. cit.*, at 76, for a discussion of such provision in California Penal Code § 1000.

^{30/} In the case of Kramer v Municipal Court, 49 Cal. App. 3rd 418, 422 (June 26, 1975), the California Court of Appeals for the Third District ruled that, although the State drug diversion statute was silent on whether a pre-termination administrative hearing was necessary for compliance with basic due process requirements, a hearing was nevertheless implicitly mandated. This was the first case in which a court applied the due process requirement for a hearing in parole and probation revocation procedures to diversion. For a complete discussion of this issue, see Pretrial Intervention Services Center, *op. cit.*, at 41-45.

Although treatment intervention can lead to any of these rewards, the incentives, where return to the criminal justice process is part of the intervention option, are generally limited to remaining "on the street" and consideration at either judgment or sentencing.

While many successful drug diversion programs offer the possibility of case dismissal, this is not a uniform practice. For example, Operation Mid-way, in Nassau County, New York, and most of the TASC programs, more frequently offer probation or suspended sentence as an alternative to incarceration. In jurisdictions where dismissal is a fairly uniform practice, there may also be provision for expungement of records. In some jurisdictions, particularly where an individual has a prior record, dismissal of current charges often does not lead to expungement. In California, individuals completing a period of drug education under the State's drug diversion statute do not have their records expunged, but may deny their arrest with impunity, and are assured that their arrest may not be used in any way that would deny "employment, benefit, license, or certificate."^{31/} Also, instead of actually destroying records, some jurisdictions seal and retain them only to determine whether future diversion candidates have been prior divertees. Here sealing is viewed as an important means to ensure that successful divertees who are later rearrested do not retain first-offender status indefinitely.

Regardless of the treatment intervention option, to be effective and credible, there must be an incentive to the offender and a reward for success.

^{31/} See Galvin, *et al.*, *op. cit.*, at 76-77.

VI. DEVELOPING INTERVENTION OPTIONS

In selecting and implementing treatment intervention options, it is important to consider potential constraints flowing from the needs of the community, the dimensions of the drug abusing offender problem, the character and capabilities of both the criminal justice and the drug treatment systems, as well as a host of confounding variables such as personalities, interagency and personal relationships, community support, political pressure, funding, and other factors. Two major prerequisites for effective intervention are the availability of community drug abuse treatment resources and a mechanism for screening eligible individuals and referring appropriate individuals to treatment. The capability of a jurisdiction to reckon with these developmental issues depends on an ability to adjust resources and relationships appropriately and, thus, necessitates addressing basic developmental considerations:

- . What statutory provisions in the jurisdiction impact on the availability of treatment intervention? What might be the effects of differences among jurisdictions in capacity for delivering treatment intervention? What influence would shifts in system orientation or legislation have on the availability of treatment interventions?
- . What are the areas of divergence and commonality among different criminal justice agencies for creating intervention options? How can areas of conflict be reduced, and supportive relationships be accomplished?
- . What are the areas of divergence and commonality between drug treatment and criminal justice agencies? How can the efficacy of intersystem relationships be increased? At what points is the structured inter-system response toward drug abusers most vulnerable to deterioration?
- . How can broad-based community support be secured and retained? What are the benefits of community participation? What are the effects of the loss of community support?
- . What approaches may be used to secure permanent funding support? For what activities are short-term funds available?
- . How can changes in the types and quality of available treatment services be monitored? How is the "right treatment program" to be identified?
- . What impact can changes in personalities or political agendas have on treatment intervention?
- . What are the negative and positive effects of formal authorization? What factors influence the effective implementation of formally authorized practices? What other avenues are available when formal authorization is not practical?

1. SALIENT FACTORS LIMITING INTERVENTION OPTIONS

Statutory provisions may limit choices available for establishing intervention options. Among the provisions that may shape a criminal justice system's ability to develop a full network of intervention options are:

- . Availability of alternatives to cash bail
- . Speedy trial legislation
- . State legislation fostering diversion
- . Statutes about deferred entry of judgment and deferred sentencing
- . The maximum duration allowable for diversion
- . The prescribed incentives for compliance with conditions of diversion and deferred judgment and sentencing
- . Expungement statutes
- . Legislation regarding split-sentencing
- . Federal and State confidentiality regulations

Also, there are possible problems emanating from the fact that counties within each State may have considerable differences in the range of available treatment interventions, thus raising the issue of equal protection.^{32/}

In addition, the current movement toward determinate sentencing is an example of how shifts in system orientation or legislation may affect the availability or feasibility of providing treatment intervention.^{33/}

2. RELATIONSHIPS AMONG CRIMINAL JUSTICE AGENCIES

Criminal justice planning should recognize the particular roles and substantial discretion exercised by components of the criminal justice system, including police, prosecutor, judge, defense bar, probation, pretrial services, and corrections. Involving a variety of people in the planning process and allowing enough time for a sound planning process are crucial to clarify turf and minimize clashing agendas. During the planning process, a determination should be made of measures of success, the procedures for continued interagency communication, and the composition of advisory bodies developed to maintain a balance of interests. Periodically, participating agencies should confer to determine whether original expectations are reflected in actual day-to-day operating procedures. Conflict may be resolved or minimized by comparing the differences between expectations of each agency. For example, the assumption of intervention functions by probation that were previously performed by other agencies and the increasing judicial review of prosecutorial diversion decisions may require rethinking and readjustment of roles and expectations, as well as focusing upon alternative intervention points.

3. CRIMINAL JUSTICE/DRUG ABUSE TREATMENT SYSTEM RELATIONSHIPS

Although there are clear differences in the objectives of the criminal justice and the drug abuse treatment systems, the common overlapping population and the interdependence of system needs form the basis for an effective working relationship. For example, the drug abuse treatment system needs appropriate referrals from criminal justice to assure proper utilization of treatment slots. Simultaneously, the criminal justice system needs information

^{32/} See Pretrial Intervention Services Center, *op. cit.*, at 3-10.

^{33/} See Weissman, J. C. "Considerations in Sentencing the Drug Offender," *Journal of Psychedelic Drugs*, 1977, 9(4), at 301-309.

as to the best course of action available for handling the drug abuser along the continuum of the criminal justice process. Judges and prosecutors frequently are in a quandary in attempting to evaluate the efficacy of available treatment, the relative pertinence of specific modalities for accused or convicted offenders exhibiting a wide range of unique characteristics. Unfortunately, the present state of the art does not provide hard and fast criteria for making judgments of this nature. Closer involvement and joint planning activities can go a long way to sensitize protagonists of both systems and to share currently available information for more rational decision-making.

Drug abuse treatment and criminal justice representatives can increase the efficacy of intersystem relationships by serving on advisory boards to justice- and treatment-related activities. More specifically, drug treatment representatives should take part in an advisory board formed by the criminal justice system to maintain a "balance of interests" in the planning of intervention options. Similarly, criminal justice representatives might take the opportunity to become more knowledgeable about treatment programs, by periodic visits to programs, and, possibly, to serve on advisory or policy boards. Periodically, the representatives of both systems should also confer to determine whether present expectations correspond to day-to-day reality and should readjust operations as appropriate.

The emergence of a structured response by the criminal justice system to drug abuse treatment is potentially vulnerable at several points. Despite apparently clear understandings about the mutual responsibilities of the two systems, inconsistencies often arise in the interpretation of either monitoring and reporting requirements or the measures of successful completion of conditions. Also, in an individual case, there can simply be a difference in opinion as to appropriate disposition: treatment or incarceration. More severe intersystem breakdowns may occur when a middleman--a diversion program, pretrial services agency, or drug referral agency--loses funding or credibility, and the communication link that has nourished the relationship between the two systems is removed. Thus, the importance of institutionalizing intersystem relationships is discussed later in this chapter.

4. COMMUNITY SUPPORT

A willingness to work with local priorities and remain sensitive to community needs often leads to the early involvement and support of community representatives. During the planning process, political figures, as well as representatives of funding agencies, business organizations, the media, service delivery programs, and religious and educational groups, might all be asked to take part in an active or an advisory capacity. Such broad-based community participation helps maintain a balance of interests, generates community commitment, and opens up resources that might otherwise remain unavailable.

The role of key figures in the criminal justice system, judges, prosecutors, police officials, and leading attorneys is critical in the ongoing process of initiating and maintaining community support. A perception that "drug use isn't the problem that it was before" and that "the problem is taking care of itself" potentially jeopardizes both funding and broad-based community support of treatment intervention options. An erosion in the priority level given by the community to drug abuse treatment may best be prevented by timely and accurate public education campaigns.

In result, a community's sophistication in differentiating among types of drug use and types of drug-related crime will shape its definition of community drug problems, as well as determine its level of support. The involvement of respected criminal justice representatives with high status and credibility in educating and providing leadership to the community may be pivotal in obtaining needed support and understanding.

5. FUNDS AND RESOURCES

In the recent past, public and private funding has been available on a relatively short-term basis for the initial development of treatment intervention. Funds have supported activities such as the identification of drug abusers, assessment of needs and the matching of needs with available treatment, progress monitoring, and the purchase of treatment services.

- . Availability of alternatives to cash bail
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Too often, the assumption that these are permanent funding sources has led to the early demise of successful programs. Existing funding for specialized services must be viewed as short-term in nature, and an immediate and coordinated planning effort must begin to secure more permanent funding support.

One approach is to attempt to integrate these intervention services within established agencies, such as probation or pretrial services agencies.

Another approach for maintaining treatment-oriented intervention options involves "piggy-backing" onto existing services, by making increased use of central intake or referral agencies. The better organized and developed the referral mechanism is, the greater the sense of accountability from treatment providers. The neutrality of the referring agency--its middleman status--not directly tied to either criminal justice or drug abuse treatment, enhances its credibility and capability in the responsible supervision of offenders in treatment. Also, resources for intervention options can be expanded by allowing drug abuse treatment programs to assume more responsibility in the screening process and persuading other programs present in the community to expand their eligibility criteria to include drug abusers. The need for funds with which to purchase treatment services is often reduced by increased use of NIDA- and State-funded treatment slots, available at no cost to the referring criminal justice agency.

A third approach is to lobby for legislation to provide funding or compete for existing funding for treatment intervention options. These approaches, of course, depend upon availability of funds as well as the receptivity of legislators, other selected officials, and public administrators. In this regard, community support and the pressure that can be brought to bear by prestigious and powerful members of the criminal justice system may be the dominant factor.

6. DRUG ABUSE TREATMENT SERVICES

The number of treatment slots available in a community and the types and quality of services offered vary from locale to locale; they are not constant over time and need to be scrutinized in developing treatment intervention options. Because of changing perceptions of community drug problems and changes in the level of cooperation between criminal justice and drug treatment systems, it is often perceived that available drug treatment resources are being depleted. Although it is important, usually in nonmetropolitan areas, that prosecutors, judges, and defense attorneys recognize the actual limits on available treatment resources, more often the constraining factor is not resources but, rather, an inability to identify "the right treatment program." By keeping track of frequently used programs and using some of the assessment processes discussed in chapter V, such as use of drug screening boards, concerns about finding "the right program" may be reduced.

7. PERSONALITIES AND ATTITUDES

The effective use of treatment-oriented intervention options may be adversely affected by the departure of key actors or their replacement by others less amenable to treatment intervention. The perception among certain key actors that anticipated intervention benefits or outcomes have not been forthcoming or that personal authority or goals are jeopardized may impact on how treatment intervention is implemented.

Anticipation, for example, that prefiling intervention may reduce the administrative workload may backfire, due to the increase in monitoring or tracking responsibilities.

In some prosecutors' offices, their funding may be directly tied to caseload counts, which may inhibit these prosecutors from fully utilizing prefiling intervention practices. Furthermore, elected prosecutors must directly take into account shifting community attitudes toward handling the drug abusing offender--especially before election.

These practical considerations must be factored into any assessment of the feasibility of treatment intervention. In recognition of the impact of personal and political agendas, several avenues short of formal authorization are available:

- . Maintain monitoring and evaluation activities to develop evidence of the effectiveness of treatment intervention
- . Stress the cost benefit advantage of community-based treatment versus incarceration
- . Use treatment "open houses" and workshops to sell treatment to both the public and recalcitrant key individuals
- . Focus publicly on the readiness to use 24-hour residential treatment for certain cases
- . Accept that treatment intervention may temporarily be in eclipse
- . Develop and maintain a sustained campaign to obtain community support.

8. FORMAL AUTHORIZATION

Many drug diversion and release options originally started on the basis of informal agreements and, gradually--under impetus of issues such as equal protection of the laws, rehabilitative intent of certain practices, and expanded social control--evolved into more formal processes, including court rules and legislation. Although formal authorization holds the potential for producing operational encumbrances, it also legitimizes activities in the eye of the criminal justice system and may increase the likelihood that confidentiality regulations and expungement incentives will be honored. Several States have passed legislation permitting diversion of drug abusers, including California, Colorado, Connecticut, Illinois, Massachusetts, and New Jersey. Because many intervention statutes are written only around the charge, the system is not asked to identify the drug abuser by focusing on the individual. Statutory authorization has mandated development of drug diversion programs in several States. California Penal Code 1000, for example, set forth screening procedures, selection criteria, and other program elements in detail. In New Jersey, a pretrial intervention program created through the court's rule-making powers remains open to drug abusers, as well as to other offenders. The reader is referred to Authorization Techniques for Pretrial Intervention Programs: A Survival Kit^{34/} for further discussion of authorization alternatives.

The adoption of formal authorization for treatment intervention options does not necessarily guarantee effective implementation. The degree to which formal authorization affects practice depends partially on:

- . Whether it builds on and recognizes the potentials of previously existing effective practices
- . How the courts interpret the intent of the legislation or order
- . Whether significantly less restrictive alternatives are available
- . Whether either existing services can support the mandate or additional support services need to be procured.

It seems clear that formal authorization will only partially impact upon the implementation of treatment options. Reliance upon development of cordial relationships among systems and individuals, as well as development of broad-based community support, is a necessary precursor to effective intervention.

^{34/} Pretrial Intervention Service Center, Authorization Techniques for Pretrial Intervention Programs, Washington, D.C.: American Bar Association, 1977.

APPENDIX A

RESOURCES

American Bar Association
1800 M Street, N.W.
Washington, D.C. 20036
(202) 331-2200

American Bar Foundation
1155 East 60th Street
Chicago, Illinois 60637
(312) 667-4700

Drug Abuse Council, Inc.
1828 L Street, N.W.
Washington, D.C. 20036
(202) 785-5200

National Association of State Drug Abuse
Planning Coordinators
1612 K Street, Suite 900
Washington, D.C. 20006
(202) 659-7632

National Center for State Courts
300 Newport Avenue
Williamsburg, Virginia 23185
(804) 253-0211

National Clearinghouse for Drug Abuse
Information
5600 Fishers Lane
Rockville, Maryland 20857
(301) 443-6500

National Conference of State Criminal
Justice Planning Administrators
444 N. Capitol Street, N.W., Room 305
Washington, D.C. 20001
(202) 862-2900

National Council on Crime and Delinquency
Continental Plaza
411 Hackensack Avenue
Hackensack, N.J. 07601
(201) 488-0400

National Criminal Justice Reference Service
1015 20th Street, N.W., Room 400
Washington, D.C. 20036
(202) 862-2900

National Institute on Drug Abuse
Division of Resource Development
Criminal Justice Branch, Room 10A20
Carl Hampton, Branch Chief
5600 Fishers Lane
Rockville, Maryland 20857
(301) 443-2010

National Pretrial Intervention Service Center
National Offender Services Coordination
Program of the ABA
1800 M Street, N.W.
Washington, D.C. 20036
(202) 331-2200

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402
(202) 783-3238

Project CONNECTION
Macro Systems, Inc.
8630 Fenton Street, Suite 300
Silver Spring, Maryland 20910
(800) 638-2054
In Maryland, (301) 588-5484

APPENDIX B

SINGLE STATE AGENCIES FOR DRUG ABUSE PREVENTION

Alabama

Division of Alcoholism & Drug Abuse
135 South Union Street, Room 186
Montgomery 36104
(205) 265-2301 (Ext. 224)

Alaska

Department of Health & Social Services
Office of Drug Abuse
Pouch H-01D Juneau 99811
(907) 586-3585/3556

Arizona

Community Programs
2500 East Van Buren
Phoenix 85008
(602) 271-3009, 255-1226/1235

Arkansas

Arkansas Office on Drug Abuse Prevention
1515 W. 7th Avenue, Suite 300
Little Rock 72205

California

Department of Health, Division of Substance
Abuse
714 P Street, Room 1050
Sacramento 95814
(916) 322 5090

Colorado

Alcohol and Drug Abuse Division
Department of Health
4210 East 11th Avenue
Denver 80220
(303) 388-6111 (Ext. 227)

Connecticut

Connecticut Drug Council
Department of Mental Health
90 Washington Street, Room 312
Hartford 06115
(203) 566-4145

Delaware

Bureau of Substance Abuse
Governor Bacon Health Center
Delaware City 19706
(302) 834-8850/8851

Florida

Drug Abuse Program
1309 Winewood Boulevard
Building 6
Tallahassee 32301
(904) 488-0900

Georgia

Alcohol & Drug Section
Division of Mental Health and Mental
Retardation
Georgia Department of Human Resources
618 Ponce de Leon Avenue, N.E.
Atlanta 30308
(404) 894-4785

Hawaii

Substance Abuse Agency
1270 Queen Emma Street, Room 404
Honolulu 96813
(808) 548-7655

Idaho

Bureau of Substance Abuse
Department of Health and Welfare
700 West State, Basement
Boise 83720
(208) 384-3920

Illinois

Illinois Dangerous Drugs Commission
300 North State Street, Suite 1500
Chicago 60610
(312) 822-9860

Indiana

Division of Addiction Services
Department of Mental Health
5 Indiana Square
Indianapolis 46204
(317) 633-4477

Iowa

Iowa Drug Abuse Authority, Suite 230
Liberty Building
418 Sixth Avenue
Des Moines 50319
(515) 281-4633

Kansas

Alcoholism and Drug Abuse Section
2700 West Sixth Street
Biddle Building
Topeka 66606
(913) 296-3925

Kentucky

Drug Abuse Section
275 East Main Street
Frankfort 40601
(502) 564-7610

Louisiana

Bureau of Substance Abuse
Office of Hospitals, Department of Health
and Human Resources
200 Lafayette Street
Baton Rouge 70801
(504) 389-2534

Maine

Office of Alcoholism and Drug Abuse
Prevention
Bureau of Rehabilitation
32 Winthrop Street
Augusta 04330
(207) 289-2781

Maryland

Maryland State Drug Abuse Administration
201 West Preston Street
Baltimore 21201
(301) 383-3959

Massachusetts

Division of Drug Rehabilitation
Department of Mental Health
190 Portland Street
Boston 02114
(617) 727-5890

Michigan

Office of Substance Abuse Services
3500 North Logan Street
Lansing 48909
(517) 373-8600

Minnesota

Alcohol and Drug Abuse Section
Department of Public Welfare
4th Floor Centennial Building
658 Cedar
St. Paul 55155
(612) 296-4610

Mississippi

Division of Alcohol and Drug Abuse
Department of Mental Health
Lee State Office Building
Jackson 39201
(601) 354-7640

Missouri

Division of Alcoholism and Drug Abuse
2002 Missouri Boulevard
Jefferson City 65101
(314) 751-4942

Montana

Addictive Diseases Unit
Capitol Station
Helena 59601
(406) 449-2827

Nebraska

Nebraska Commission on Drugs
P.O. Box 94726
Nebraska State Office Building
Lincoln 68509
(402) 471-2691

Nevada

Bureau of Alcohol and Drug Abuse
Department of Human Resources
505 East King Street
Carson City 89710
(702) 885-4790

New Hampshire

Drug Abuse Coordinator
Office of the Governor
3 Capitol Street, Room 405
Concord 03301
(603) 271-2754

New Jersey

Division of Narcotic and Drug Abuse Control
P.O. Box 1540
Trenton 08608
(609) 292-5760

New Mexico

Drug Abuse Division, Department of Hospitals
and Institutions
113 Washington Avenue
Santa Fe 87501
(505) 988-8951

New York

New York State Office of Drug Abuse Services
Executive Park South, Box 8200
Albany 12203
(518) 457-2061

North Carolina

North Carolina Drug Commission
P.O. Box 19324
Raleigh 27609
(919) 733-4555

North Dakota

Mental Health/Mental Retardation Services
Division of Alcoholism and Drug Abuse
State Department of Health
909 Basin Avenue
Bismarck 58505
(701) 224-2767

Ohio

Bureau of Drug Abuse
30 East Broad Street
State Office Tower, Room 1352
Columbus 43215
(614) 466-7604

Oklahoma

Drug Abuse Services
State Department of Mental Health
P.O. Box 53277
Capitol Station
Oklahoma City 73105
(405) 521-2811

Oregon

Mental Health Division
2575 Bittern Street, N.E.
Salem 97310
(503) 378-2163

Pennsylvania

Governor's Council on Drug and Alcohol Abuse
Riverside Office, Building #1, Suite N
2101 North Front Street
Harrisburg 17120
(717) 787-9857

Rhode Island

Department of Mental Health, Retardation and Hospitals
Aime Forand Building
600 New London Avenue
Cranston 02920
(401) 464-2397

South Carolina

South Carolina Commission on Alcohol and Drug Abuse
3700 Forest Drive
Columbia 29204
(803) 758-2521/2183

South Dakota

Division of Drugs and Substances Control
Department of Health
Foss Building
Pierre 57501
(605) 224-3123

Tennessee

Alcohol and Drug Abuse Services Section
Tennessee Department of Mental Health and Mental Retardation
501 Union Street
Nashville 37219
(615) 741-1921

Texas

Texas Department of Community Affairs
Drug Abuse Prevention Division
P.O. Box 13166
Austin 78711
(512) 475-6351

Utah

Division of Alcoholism and Drugs
150 West North Temple, Suite 350
P.O. Box 2500
Salt Lake City 84110
(801) 533-6532

Vermont

Alcohol and Drug Abuse Division
Department of Social and Rehabilitative Services
State Office Building
Montpelier 05602
(802) 828-2721

Virginia

Division of Substance Abuse
State Department of Mental Health and Mental Retardation
P.O. Box 1797
109 Governor Street
Richmond 23214
(804) 786-5313

Washington

Office of Drug Abuse Prevention
Department of Social and Health Services
Office Building 43E
Olympia 98504
(206) 753-3073

West Virginia

Division of Alcohol and Drug Abuse
State Capitol
Charleston 25305
(304) 348-3616

Wisconsin

State Bureau of Alcohol and Other Drug
Abuse
One West Wilson Street, Room 523
Madison 53702
(608) 266-3442

Wyoming

Drug Abuse Programs
Mental Health and Mental Retardation
Services
Hathaway Building
Cheyenne 82002
(307) 777-7351

Washington, D.C.

Director for SSA Affairs
1329 E Street, N.W.
Suite 1023
Washington, D.C. 20004
(202) 347-3512

Puerto Rico

Department of Addiction Services
P.O. Box B-Y
Piedras Station
Rio Piedras 00928
(809) 764-8189

Virgin Islands

Division of Mental Health
Christiansted
St. Croix 00820
(809) 773-2821/5766

Guam

Guam Memorial Hospital
Box AX
Agana 96910

American Samoa

Department of Medical Services
Pago Pago
American Samoa 96799

Marianas Islands

Health Services
HICOMHDQTRS
Saipan 96950

APPENDIX C

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APPENDIX D

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APPENDIX E

GLOSSARY

Accused--The defendant; an individual who is facing a criminal proceeding based on charges brought against him

Adjudication--The process of and events of reaching judgment in criminal court cases

Arraignment--The first step in the criminal process when the accused is formally charged with an offense

Bail--That money or other security which is posted to ensure the appearance of the defendant throughout court proceedings

Charge--That offense for which the defendant is accused or indicted

Community-based (drug) treatment--Inpatient or outpatient treatment and counseling services that are provided in a community setting for the drug abuser

Condition--A legally binding requirement attached to or made part of a grant or privilege requisite or requirement

Continuance--Postponement until a later date of an action that is pending in a court

Criminal Justice Process--The movement of the accused or convicted offender, from arrest, through court proceedings, sentencing, and parole; a course of events during which the individual is responsible to an agency of the criminal justice system

Criminal Justice System--The composite of all criminal justice agencies such as law enforcement agencies, the prosecutor, the courts and judges, probation and parole departments, the parole board, and the department of corrections. All federal, state, and local agencies are part of the criminal justice system, as are state and regional planning and administrative offices

Defendant--The accused

Detention--The state of being detained or held in custody to ensure future court appearances; usually jail

Discretion--"The reasonable exercise of a power or right to act in an official capacity; involves the idea of choice, of an exercise of the will, so that abuse of discretion involves more than a difference in judicial opinion between the trial and appellate courts, and in order to constitute an "abuse" of discretion, the judgment must demonstrate a perversity of will, a defiance of good judgment, or bias" (Law Dictionary, p. 61)

Discretionary Decision-maker--The prosecutor and/or the judge during criminal proceedings

Diversion--The act of conditionally referring the accused out of the criminal justice system instead of prosecuting him on the arrest charges; generally, cases are dismissed if the conditions of diversion are met

Drug Abuse--"...non-medical use of any drug in such a way that it adversely affects some aspect of the user's life; i.e., by inducing or contributing to criminal behavior, by leading to poor health, economic dependence, or incompetence in discharging family responsibilities, or by creating some other undesirable condition." (Domestic Council on Drug Abuse. White Paper on Drug Abuse, p. 11)

Drug Abuse Treatment System--The array of community service agencies that provide treatment and counseling to voluntary clients

Finding--Court decision based on issue of fact

Graduation--Successful completion of the conditions set by a treatment program, marked by a graduation-like ceremony

Intervention (Options)--Those points in the criminal justice process where the defense attorney, the prosecutor, or the court initiate actions to turn the accused/defendant/offender away from the traditional course of events, to non-criminal justice alternatives

Judgment--The court's determination or final word in a judicial controversy

Motion--"An application to the court requesting an order or rule in favor of the applicant. Motions are generally made in reference to a pending action and may be addressed to a matter within the discretion of the judge..." (Law Dictionary, p. 134)

Offender--The individual convicted of committing an offense

Performance--The measure of fulfillment of contractual agreement or the obligations of a conditionally granted privilege

Probation--A court release without imprisonment, subject to compliance with court imposed conditions

Pretrial Release--Release on bail or in lieu of bail, subject to specified conditions, between court appearances as an alternative to pretrial detention. Either money bail or conditions are to be no more severe than is necessary to ensure the accused's appearance in court

Sentence--The custodial or non-custodial punishment ordered by a court

Split Sentence--A sentence served partly in jail and partly on probation

Suspended Sentence--The withholding of imposition or execution of a sentence, usually subject to compliance with court-ordered conditions

Success (in treatment)--Compliance with and completion of the conditions of a treatment program, often celebrated by graduation

Termination--Prematurely ended treatment, usually due to the individual's failure to comply with program rules and conditions

Treatment Modalities--Different programmatic responses to a drug problem; currently in use are inpatient and outpatient programs ranging from hospital detoxification and residential or therapeutic community settings to methadone detoxification, methadone maintenance, and walk-in counseling centers

Urinalysis--Chemical testing of a sample of the individual's urine that reveals current usage of heroin (up to 24 hours) and can be used to test for other recent drug usage

END