

**FINAL REPORT OF THE  
VIRGINIA DEPARTMENT OF CRIMINAL JUSTICE SERVICES**

# **A Study of Virginia's Drug Court Programs**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**SENATE DOCUMENT NO. 6**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2002**



# COMMONWEALTH of VIRGINIA

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**October 16, 2001**

**To: The Honorable James Gilmore, Governor of Virginia,  
The General Assembly of Virginia, and  
The Virginia State Crime Commission**

**Senate Joint Resolution 399, adopted by the 1999 General Assembly, requested the Department of Criminal Justice Services, with the assistance of the Office of the Executive Secretary of the Supreme Court of Virginia, to study structural, funding and service guidelines for Virginia's drug court programs. This study was continued by Item 462 B.3 of the 2000 Appropriations Act.**

**In compliance with this request, and the further direction of the 2000 General Assembly, the Department of Criminal Justice Services has completed a study of these issues. It is my pleasure to submit this study report, Senate Joint Resolution 399: A Study of Virginia's Drug Court Programs: Final Report, for your consideration.**

**Respectfully,**

  
**Joseph B. Benedetti**  
Director

**SENATE JOINT RESOLUTION 399 (2001):  
A STUDY OF VIRGINIA'S DRUG COURT PROGRAMS: FINAL REPORT**

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## **I. Executive Summary**

### **FIRST YEAR OF THE STUDY**

Since the establishment of the first drug court program in Florida in 1989, interest in and support for this program model has increased dramatically, both nationally and within Virginia. Twelve drug court programs are currently operating in Virginia with two more in planning status and seeking implementation funds. An additional twelve jurisdictions are participating in the federally sponsored Drug Court Planning Initiative during FY2000 and FY2001. Because federal planning and implementation grants for drug court programs are made directly to localities and because there has been no clear policy direction from the state to date, the funding and administrative roles of the local, state, and federal governments have remained unclear.

Drug court programs are a collaborative effort of the court, probation, substance abuse treatment providers, and others. The program combines continuous and intense treatment, frequent drug testing, appropriate sanctions, and needed ancillary services to substance abusers brought before the court and selected for program participation. The drug court judge is the leader of the drug court team. The underlying philosophy of drug court programs is that this model will result in higher recovery rates from addiction, in reduced criminal behavior, and in long-term reductions in recidivism.

National evaluations (and the first evaluation of the Twenty-third Judicial Circuit Drug Court) have been most positive in their findings regarding successful program participation and recidivism reduction. When comparison is made between the cost of incarceration and the cost of drug court program participation, the cost effectiveness of effective drug court programming is readily apparent.

SJR 399, directed "the Department of Criminal Justice Services, with the assistance of the Office of the Executive Secretary of the Supreme Court [and to collaborate with certain other specified agencies] to study structural funding and service guidelines for Virginia's drug court programs" and "to develop recommendations..."

Following are the four recommendations resulting from this study:

- **Localities should seek federal funding support for drug court planning and implementation before receiving state Special Funds.**
- **The Commonwealth should continue funding for established drug court programs.**
- **State Special Funds should be made available as match to support new drug court programs that are currently engaged in planning supported by federal grant funding.**

- **The Department of Criminal Justice Services (DCJS) should be directed to provide administrative oversight and funding for locally operated drug court programs for the biennium.**

## SECOND YEAR OF THE STUDY

The Secretary of Public Safety released the report of the first year's findings as an "interim" report, recognizing the action of the General Assembly (Item 462, B.3 of the 2000 Appropriations Act) to continue the study.

Because of the timing of the release of the Interim Report, all of the earlier questions and recommendations, together with much of the discussion, are replicated in this Final Report for purposes of completeness.

Primary among the issues which generated discussion upon release of the "discussion draft" were:

- The interim report had options, but no specific recommendation, on long-term administrative oversight of the Drug Court Treatment Program, for consideration by the General Assembly. The Program had been placed temporarily under the oversight of the Department of Criminal Justice Services for FY 01 and FY 02. Additional consideration was given to which branch of government and agency or entity therein should provide continuing oversight to this program.
- State funding for the Program is currently provided through grants from the IDEA (Intensified Drug Enforcement Assistance) funds. These are state Special Funds, administered by DCJS, with a variety of other purposes. These funds do not currently accumulate quickly enough to provide continuing support for the current drug treatment courts and will certainly not support current courts, new courts, and other funding purposes. How should this program be funded?
- How will future evaluations of this initiative be structured and conducted?
- Drug Court Treatment Programs cannot become operational in all Virginia courts at this time. Is there a problem with a lack of equal access?
- There is no language in the Code enabling or empowering the operation of Drug Treatment Court Programs in the Commonwealth with the exception of Appropriations Act language. Should enabling legislation be enacted?

- Compounding the question of the nature of any enabling legislation are a variety of more discrete concerns voiced after release of the "discussion draft" including such issues as:
  - Should these courts be pre- or post-dispositional?
  - What service guidelines should be established in legislation?
  - Which offenders should be considered eligible for drug court program participation?

The SJR 399 Study Group reinitiated activities in October 2000 and focused on the study of the issues described above through August 2001. The group was restructured to include fewer participants but kept representation of all system components as required by the original resolution.

The continuing study group endorses last year's four recommendations and makes these additional recommendations:

- **Recommendation 5: Administrative oversight for the drug courts should be provided by the Office of the Executive Secretary of the Supreme Court of Virginia.**
- **Recommendation 6: Base funding for drug court treatment programs should be provided by the Commonwealth for operational drug court treatment programs.**
- **Recommendation 7: Localities should seek federal funding for drug court planning and implementation before receiving General Funds. Note: This was the first recommendation of the Interim Report and it has not changed.**
- **Recommendation 8: Drug court treatment program participants are appropriate clients for community supervision by DOC, DJJ, and locally operated (DCJS funded) community corrections programs.**
- **Recommendation 9: Until a single agency is charged with state-wide oversight of the Drug Treatment Court program, the OES and DCJS should continue collaboration on a Management Information System specifically tailored to the tracking and evaluation of the Drug Court Treatment programs. Local program evaluation efforts should continue and be encouraged.**
- **Recommendation 10: Equal access to drug court treatment programming is an ideal that is not possible at this time. As drug courts are evaluated, proven effective, and further accepted, additional funding should be made available for the extension of this treatment model to all courts.**

- **Recommendation 11: With some limited guidance within enabling legislation, within administrative agency guidelines, and from the State Drug Treatment Court Advisory Committee, most decisions regarding pre- or post-dispositional model, local veto authority, participant eligibility, quality assurance, and service guidelines should be left to local decision making.**

## **II. Authority for the Study**

Senate Joint Resolution 399 (SJR 399), sponsored by Senator Kenneth Stolle, was approved by action of the 1999 General Assembly. SJR 399 requested "the Department of Criminal Justice Services, with the assistance of the Office of the Executive Secretary of the Supreme Court, to study structural, funding and service guidelines for Virginia's drug court programs." Further, the Department of Criminal Justice Services (DCJS) was asked, "to develop recommendations regarding such drug court policies, funding and structural guidelines **which provide for maximum local flexibility.**" [emphasis added] DCJS was directed "to collaborate with the judiciary, the Department of Corrections, the Department of Juvenile Justice, the Public Defender Commission, the Commonwealth's Attorneys Association, the staffs of the House Appropriations and the Senate Finance Committees, representatives of pretrial services and local community corrections programs, representatives of local law-enforcement agencies and local community services boards" in developing the recommendations.

The report of that study effort was published as Senate Document No.4 (2001): *Virginia's Drug Court Programs*.

Item 462, B.3 of the 2000 Appropriations Act, Chapter 1073, continues this study.

## **III. Purpose**

Since the establishment of the first drug court in Florida in 1989, interest in and support for this program model has increased dramatically, both within the Commonwealth and throughout the nation. In September 1995, the Twenty-third Judicial Circuit (Roanoke City, Roanoke County, and Salem) established the first drug court in Virginia. Between 1995 and 2000, the Virginia General Assembly provided financial support to establish and maintain five drug court programs at the circuit court level and two drug court programs at the juvenile court level.

Drug courts represent a grass roots effort to reduce substance abuse and related criminal activities in Virginia localities. The existing programs in Virginia have been established as a result of concerted planning and effort by judges, lawyers, criminal justice officials, and treatment providers. However, despite the provision of state funds and, primarily, because there were four or more different state



agencies involved in funding and oversight, there had been no consistent policy direction from the state.

The funding had been an eclectic mix of federal grants directly to localities for planning and implementation, of state general fund and local cash match, of in-kind match, and of state general funds / state special funds for cost assumption of expiring federal grants. There has also been cooperative resource development such as treatment provided through Community Service Boards, supervision provided through state Probation and Parole Offices, capacity allotted in state-funded day reporting centers operated by DOC, and screening and supervision provided through state-funded, locally-operated pretrial and community corrections programs. State funding was provided directly to these programs through the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the Department of Criminal Justice Services (DCJS), and the Office of the Executive Secretary (OES) of the Virginia Supreme Court. As summarized in SJR 399, "the funding mechanisms for drug court programs are not consistent, nor are the funding roles of the local, state, and federal governments clear."

Similarly, each drug court has developed in a distinctive fashion reflective of geographic location, offender demographics, judicial personality, locally available programmatic resources, and the source, amount, and timing of funding. This creates challenges in maintaining accountability and in administering funding. These are not, nor should they be, "cookie-cutter" programs.

DCJS, in its role as the state's criminal justice planning agency, had increasingly recognized these concerns. On numerous occasions, staff at DCJS had been approached with questions and requests concerning grant writing assistance, grant availability (state and/or federal), planning assistance, the propriety and allowability of particular collaborations (e.g., may a pretrial program assist a Circuit Court in screening drug court candidates), etc. DCJS staff knew that other agencies were fielding such questions as well. In fact, while DCJS does have experience and expertise in grant writing, accessing federal funds, program design, treatment programming, and state / local collaborations, no particular expertise had been established on the specific issues of drug court programs. DCJS, therefore, took several specific steps to begin to address this concern:

- Several staff (both Correctional Services and Juvenile Services) were directed to become involved in the work of the National Association of Drug Court Professionals (NADCP) and to pursue formal training and less-formal learning opportunities relating to drug courts;
- DCJS awarded a Byrne grant to allow the establishment of a criminal case management specialist within the Office of the Executive Secretary. The primary role of the specialist is to offer technical assistance to judges and local drug court teams interested in developing drug court programs.

- In January of 1999, DCJS convened an informal study group of persons interested in and knowledgeable about drug courts to begin a thoughtful examination of most of the same issues specified in SJR 399. Many of the same individuals participated in the SJR 399 study (published as Senate Document No. 4 (2001)) and in the continuation of that study.

Building on those efforts, SJR 399 directed DCJS to a more formal study of the issues. The pressures for and urgency of a formal study included several issues which the less formal DCJS approach had not taken into account. The continuing pace at which federal grants were expiring resulted in increased pressure on the General Assembly for cost assumption. The increasing pace of planning for new drug courts forced the General Assembly to look at the potential cost of providing state matching funds for federal grants. And, certainly, the confusion of funding and administration, as well as dissatisfaction with particular circumstances of funding and administration, resulted in local pressure being brought to bear on the legislature to resolve and clarify these issues. The study was intended to initiate this process and, as possible, to make recommendations to resolve such concerns.

The study effort was completed and the study document was provided to the Office of the Secretary of Public Safety for review and approval before being forwarded to the General Assembly for publication and dissemination. The Secretary of Public Safety (as reflected in a letter incorporated in Senate Document No. 4 (2000)) voiced concern that some major issues and concerns remained to be addressed. And, Item 462, B.3, Chapter 1073 of the Appropriations Act (2000) directed DCJS to continue the study. The study document was then published in the Fall of 2000 as an "interim report."

#### **IV. Membership**

In selecting and inviting participation in this continuation study, DCJS carefully followed the direction of the Resolution in targeting representatives from each of the specified agencies and areas. For last year's study group, additional participants were invited at the request of the group - recognizing a need for additional or particular expertise. Also included were several individuals who, by direct contact, indicated their concern that their particular interests or their particular localities might not be well represented by the group as originally designed and constituted. This year's study group was refocused to more closely adhere to the original participant directives and, simply, to reduce size of the workgroup to a more manageable number of participants. Even with the smaller study group, many of last year's participants remained involved through sub-committee work and continued to consult and advise on this year's efforts.

The participants were as follows:

**The Honorable Verbena M. Askew**  
Newport News Circuit Court  
1999-2000

**The Honorable Aundria D. Foster**  
Newport News J&DR Court  
1999-2000

**The Honorable Audrey J. Franks**  
Richmond J&DR District Court  
1999-2001

**The Honorable J. E. Morrison**  
Portsmouth Circuit Court  
1999-2000

**The Honorable Margaret P. Spencer**  
Richmond Circuit Court  
1999-2000

**The Honorable Diane M. Strickland**  
Roanoke County Circuit Court  
1999-2001

**Mr. Walter M. Pulliam, Jr.**  
Chief of Operations  
Department of Corrections  
Community Corrections  
1999-2001

**Mr. Malcolm V. King**  
Substance Abuse Program Coordinator  
Department of Juvenile Justice  
1999-2001

**Mr. Overton P. Pollard**  
Executive Director  
VA Public Defender Commission  
1999-2001

**Mr. Richard C. Goemann**  
Deputy Director  
VA Public Defender Commission  
2000-2001

**The Honorable Dave Chapman**  
Commonwealth's Attorney, City of Charlottesville  
1999-2000

**The Honorable Charles S. Sharp**  
Commonwealth's Attorney, City of Fredericksburg  
1999-2001

**Mr. Richard E. Hickman, Jr.**  
Deputy Staff Director  
Senate Finance Committee  
Virginia Senate  
1999-2001

**Mr. Clyde E. Cristman**  
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**Capt. Richard A. Martin**  
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**Ms. Patricia L. Smith**  
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**Ms. Patty Gilbertson**  
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**Ms. Dana Schrad**  
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**Mr. John W. Jones**  
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**Ms. Kathy Mays**  
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**Dr. Donna Boone**  
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1999-2001

**Staff:**        **Ms. Fran Ecker**  
Section Chief, Juvenile Services  
Department of Criminal Justice Services  
1999-2001

**Mr. Dan Catley**  
Section Chief, Correctional Services  
Department of Criminal Justice Services  
1999-2001

## V. History of Drug Courts

What started as a model project in Dade County, Florida in 1989 has increased to over 1,000 operational or planned drug courts in the United States. In Virginia, the twenty-third judicial circuit (Roanoke City, Roanoke County, and Salem City) was the first circuit to establish a drug court in September 1995. Ten other drug court programs have been implemented in the Charlottesville and Albemarle County Circuit Courts; the Rappahannock Regional (Stafford County, Fredericksburg City, Spotsylvania County, and King George County) Circuit, General District and Juvenile and Domestic Relations District Courts; Richmond Circuit and Juvenile and Domestic Relations District Courts; Norfolk Circuit Court; Virginia Beach General District Court; Chesterfield Circuit Court; and Newport News Circuit Court. Two additional Virginia courts (Newport News Juvenile and Domestic Relations and Portsmouth Circuit Courts) are completing the planning process and will soon implement drug court programs. An additional twelve jurisdictions have received federal funding to plan drug court programs. Table 1 summarizes the types and locations of Virginia's drug court programs.

**Table 1: Types and Locations of Virginia's Drug Court Programs**

<u>Locality</u>	<u>Court</u>	<u>Drug Court Type</u>	<u>Development Stage</u>
1) Roanoke City, Salem, Roanoke County	Circuit	Adult felony	Operational since 1995
2) Charlottesville, Albemarle Co.	Circuit J&DR	Adult felony Family	Operational since 1997 Planning 2000-2001
3) Fredericksburg, Spotsylvania Co., King George Co.	Circuit J&DR Gen. Dist.	Adult felony Juvenile DUI	Operational since 1998 Operational since 1998 Operational since 1999
4) Richmond City	Circuit J&DR J&DR	Adult felony Juvenile Family	Operational since 1997 Operational since 1999 Planning 2000-2001
5) Norfolk	Circuit J&DR	Adult felony Family	Operational since 1998 Planning 2000-2001
6) Newport News	Circuit J&DR	Adult felony Juvenile	Operational since 1998 Planning 1999-2000 Operational 2001**
7) Virginia Beach	Gen. Dist.	DUI	Operational since 1997

**Table 1 (cont.): Types and Locations of Virginia's Drug Court Programs**

<u>Locality</u>	<u>Court</u>	<u>Drug Court Type</u>	<u>Development Stage</u>
8) Portsmouth	Circuit	Adult felony	Planning 1999-2000 Operational 2001
9) Chesterfield Co. Colonial Heights	Circuit	Adult felony	Operational since 2000
10) Danville, Pittsylvania Co.	J&DR	Juvenile	Planning 2000-2001
11) Hanover Co.	J&DR	Juvenile	Planning 2000-2001
12) Radford, Pulaski Co., Montgomery Co.	Circuit	Adult felony	Planning 2000-2001
13) Hopewell Prince George Co.	Circuit	Adult felony	Planning 2000-2001
14) Chesapeake	Circuit	Adult felony	Planning 2000-2001
15) Petersburg	Circuit	Adult felony	Planning 2000-2001
16) Henrico Co.	Circuit	Adult felony	Planning 2000-2001
17) Suffolk	J&DR	Juvenile	Planning 2000-2001
18) Hampton	Circuit	Adult felony	Planning 2000-2001

Note: In July 2001, the Chesterfield Circuit, Portsmouth Circuit, and the Newport News Juvenile Drug Treatment Courts were awarded federal "implementation funds" which require a state or local match. Chesterfield and Portsmouth have received some state funding support which will be adjusted to reflect the federal funding match requirements. Efforts will be made, within existing appropriations, to extend support to the Newport News Juvenile Drug Treatment Court.

## **VI. The Need for Drug Court Programs in Virginia**

*Insanity is doing the same thing over and over again and expecting different results.* Virginia, like other states, has handled drug offenders in the same way over and over again, perhaps expecting different results. Drug offenders are arrested, convicted, incarcerated, and released. The cycle begins again soon after release with relapse into further drug use. Some Virginia judges were frustrated when loss of freedom or other forms of judicial punishment did little to correct addiction and criminal behavior. This frustration grew as the volume of drug offenders increased.

The Virginia Department of Criminal Justice Services Research Center conducted a study of Virginia offenders in 1997. The findings indicated that 32% of all convicted felons are drug offenders. In 1988, only 22% of convicted felons were drug offenders. This represents a 45% rise in the percentage of convicted drug offenders in the last decade. Half (50%) of all convicted felons had evidence of prior drug abuse. In 1988, 34% of convicted felons had evidence of drug abuse - a rise of 47%. Almost a third (31%) of convicted felons had alcohol abuse in their background in 1997, up from 28% alcohol abusers in 1988. Over a fourth (27%) admitted heavy drug use in 1997, whereas 23% admitted heavy drug use a decade ago.

A 1992 survey of Virginia's offender populations indicated that 67% of probationers used illicit drugs. A total of 69% of local jail inmates were said to be in need of substance abuse treatment. Currently, there are 291 juveniles in juvenile correctional centers who are receiving substance abuse services. An additional 142 juveniles remain on waiting lists. Between 1990 and 1997, drug arrests rose 66% in Virginia (17,606 to 29,302). National statistics mirrored Virginia's problems with drug case management. The National Center for State Courts reported that 31% of the 870,000 felony convictions in state trial courts in 1994 were for drug (possession or trafficking) offenses. Within the last few years, drug arrests have risen sharply. Keeping up with increasing drug caseloads presents a sizable challenge for Virginia's trial courts. Drug courts present one option for timely, efficient, and effective processing of rising drug caseloads.

While the volume of adult and juvenile drug use and drug-related offenses is grievous, perhaps the most tragic statistic is the number of substance exposed newborns born in the Commonwealth. A study conducted by the Virginia Department of Social Services indicated that 7,892 substance-exposed infants were born between July 1998 and March 1999. This number exceeds the national average of 10-11% of live births being substance-exposed infants. Of the 7,892 substance exposed infants, 975 were exposed to illegal drugs and an additional 422 were exposed to alcohol.

Drug court programs offer a way to treat the causes of crime and family dysfunction. In drug courts, non-violent substance abusers are held publicly



accountable both for their offenses and their recovery. These programs combine intense substance abuse treatment and probation supervision with the court's authority to mandate responsibility and compliance. Drug court programs seek to address the chronic behavioral patterns of drug offenders. As an alternative to traditional court processing, drug courts have proven successful in deterring addicts from future criminal acts. Recidivism rates of drug court graduates are approximately half or less than half of the re-arrest rates of comparable non-drug court graduates.

### **Table 2: Virginia's Substance Abuse Statistics**

- 32% of all convicted felons are drug offenders
- 45% rise in the percentage of drug offenders in the last decade
- 50% of all convicted felons have evidence of prior drug abuse
- 47% rise in last decade in percentage of felons with evidence of prior drug abuse
- 31% of all convicted felons have evidence of alcohol abuse
- 11% rise in last decade in percentage of felons with evidence of alcohol abuse
- 27% of convicted felons admitted heavy drug use
- 17% rise in last decade in percentage of felons admitting heavy drug use
- 67% of probationers use illicit drugs
- 69% of jail inmates in need of substance abuse treatment
- 66% rise in drug arrests between 1990 and 1997 (17,606 to 29,302)
- 7,892 substance exposed infants born between July 1998 and March 1999
- 975 of substance exposed infants had evidence of illegal drugs
- 422 of substance exposed infants had evidence of alcohol
- measures of incarcerated adolescents in Virginia from 1993 to 1998 showed an increase in marijuana use from 40% to 58%, an increase in "severe degree of substance abuse" from 25.3% to 33.3%, an increase in "designated substance abuse need" from 29.2% to 64.3%, alcohol use rates above 50% and cocaine use rates as high as 17%
- 291 juveniles in juvenile correctional centers are receiving substance abuse services; 142 juveniles are on waiting lists

### **VII. Programmatic Components of Drug Court Programs**

Drug court programs require a cooperative alliance between the court, probation, and substance abuse treatment agencies. Probation offers frequent urine testing and strict, face-to-face supervision. Substance abuse clinicians provide intensive drug treatment, mental health assessment, and addiction screening. Judges require participants to report frequently (as often as once a week) to court and report their treatment progress. The power of the court is used to impose sanctions for relapse and program non-compliance. Intensive probation and

strenuous clinical treatment have been used with drug addicts in the past. The new element that makes drug court a different approach is the introduction of judicial monitoring. Drug court participants say that regular appearances before the judge make the difference in this approach working to break their addiction cycle.

Undergirding drug court programs is the philosophy that more effective handling of drug treatment for addicts will result in not only higher recovery rates, but also in reduced criminal behavior. But why involve the courts in addiction recovery? First, the courts are already involved with addicts brought before them on drug and drug-related criminal charges. Therefore, they have a legitimate interest in dispositions that "fit the crime" and best protect public safety. Second, arrest often presents a "teachable moment" for the addict. This crisis often jars the addict's denial of his/her disease and prompts him/her to seek treatment. A disposition that takes advantage of this teachable moment by applying appropriate and immediate sanctions may prove more effective than sanctions applied long after the shock of arrest has dulled. Third, no other treatment program has the power of the court to issue immediate sanctions such as jail time or community service when an addict relapses or when he/she does not adhere to treatment rules. Ongoing judicial interaction and supervision increases the likelihood of participant sobriety. There is simply more inducement to take drug treatment seriously when the power of the court is involved.

Drug court programs have the following dimensions that define their structure and function:

- A drug court combines continuous and intense treatment, mandatory periodic or random drug testing, use of appropriate sanctions, and access to needed ancillary services to substance abusers brought before the court on drug or drug-related offenses.
- Drug courts are developed through multidisciplinary and interagency efforts between judges, Commonwealth's Attorneys, defense attorneys, treatment professionals, local law enforcement, and jail staff, the Departments of Corrections / Juvenile Justice / Criminal Justice Services' local community corrections personnel, and private service providers. This coalition of public and private organizations is committed to addressing drug-addicted offenders with the effect of fostering public confidence in the criminal justice system.
- A drug court integrates criminal case processing, treatment service, and offender accountability under the leadership of the court. There is a high level of cooperation and collaboration among drug court team members. The drug court team confers regularly about the best course of action to take for each drug court participant. The drug court judge is the court authority and leader of the drug court team.

- Drug court is a special court docket where nonviolent substance abusing offenders are held publicly accountable before a supervising judge.
- Drug court is an alternative to traditional adjudication and/or sentencing options.
- Drug court programs give access to a continuum of treatment and rehabilitative services, which enhances recovery.

### **VIII. Processes and Procedures in Virginia's Drug Court Programs**

Among Virginia's drug courts, there are differences regarding eligibility requirements, sanctions and rewards, treatment options, and whether the model is pre- or post-sentence. Local drug court planning teams make structural and operational decisions that best fit the locality. Yet, there are commonalities among all Virginia drug courts including these basic components: a) judicial supervision of structured community-based treatment; b) timely identification of defendants in need of treatment and referral to treatment as soon as possible after arrest; c) regular status hearings before the judge to monitor treatment progress and program compliance; d) increased defendant accountability through a series of graduated sanctions and rewards; e) mandatory periodic and random drug testing; and, f) adherence to the federal Drug Court Model based on the "10 Key Components of a Drug Court."

In all established Drug Treatment Courts in the Commonwealth, drug offenders must first plead guilty to their pending charge. Some drug courts defer sentencing while others impose a suspended sentence pending completion of the drug court program. The judge, after an investigation to determine if the offender meets necessary program guidelines, then offers the defendant a chance to enter the drug court program rather than face possible sentencing options including fines, jail time, or prison time.

Drug courts often are seen as the most rigorous judicial response for drug offenders. Although the court may offer incentives such as reduced or dismissed sentences for voluntary drug court participation, many offenders choose incarceration or probation instead. If they fail to adhere to program requirements or if they relapse, the drug offender is sanctioned and may serve jail time and have their drug court time lengthened. Program non-compliance, new charges, and/or multiple and reoccurring relapses may result in removal from the program.

While all Virginia drug court programs have graduated program phases, local drug courts vary in their requirements during each treatment phase. Generally, drug court participants move through three program phases that decrease in intensity and required involvement. When drug court participants first enter the program, they are in Phase One, the most intense part of the drug court program.

Drug testing occurs three to five times a week; group and individual outpatient therapy is conducted three to four times per week; regular weekly probation reporting is required; attendance at Narcotics Anonymous or Alcoholics Anonymous is required; and, the participant must make a weekly court appearance before the drug court judge. Drug court programs also require the participant to acquire and maintain full-time employment or be enrolled in a full-time educational program. Some drug court programs also require participants to save a percentage of their earnings each month.

After participants have maintained sobriety approximately a month or more, they are promoted to Phase Two, which lasts approximately four to six months. Phase Two requirements include treatment group attendance two days a week, random drug testing about twice a week, intensive probation supervision, attendance at Narcotics Anonymous or Alcoholics Anonymous meetings, and bi-monthly attendance in court. During this phase, participants are expected to establish a personal relapse prevention plan and be alcohol and drug free.

Promotion to Phase Three generally requires at least six months of sobriety. Therapy sessions are reduced to once a week, drug testing is on a random schedule, and probation supervision decreases in frequency. Regular attendance at Narcotics Anonymous or Alcoholics Anonymous is still expected. The participant appears in drug court once each month.

Graduation from the drug court program usually occurs within twelve to eighteen months after entering the program. Drug court graduates recognize that drug and alcohol recovery is a lifelong process. Graduation does not represent an end but rather the continuation of ingrained habits learned during their drug court program that lead them toward a healthy and productive future.

## **IX. Differences Between Traditional Adjudication and Drug Court Adjudication**

Traditional court adjudication of drug offenders has the following characteristics:

- Adversarial proceedings through which defendants are found guilty or innocent of criminal charges;
- Court has limited supervision or knowledge of defendant's progress after adjudication and disposition;
- Separate entities (probation and parole offices, local treatment programs, etc.) attempt to reduce crime and treat drug abuse;
- Punishment is a primary tool for deterring future crimes;
- Treatment varies in availability, cost, intensity, and quality;
- Relapse is treated as a new crime or a probation violation.

Drug court programs handle drug cases by:

- Members of a collaborative multidisciplinary drug court team (including judge, Commonwealth's Attorney, defense attorney, public defender, probation officers, and treatment professionals) work together to reduce crime and increase defendant's sobriety;
- Treatment is seen as an effective tool for reducing the need for drugs and for restoring defendants to productive and lawful lives;
- The court is active in monitoring the defendant's progress and applies immediate sanctions when necessary;
- While treatment is individualized, the program is uniform in structure, quality, and intensity;
- Relapse results in graduated sanctions.

## **X. Evaluation of Drug Court Effectiveness**

Cost Effectiveness: According to the National Center for State Courts, most defendants (69%) convicted of felony drug charges receive a period of incarceration rather than probation. Nationally, prison incarceration of drug offenders has increased from less than 10% of the total prison population in the early 1980s to about one-third of all new prison commitments between 1989 and 1995. According to the Virginia Department of Corrections the approximate cost to house a prison inmate for a year is \$22,500. The Virginia Department of Juvenile Justice estimates the cost for incarcerating juveniles at approximately \$58,092 per year. These costs do not include capital expenses for construction and maintenance but do include operating costs and educational expenses (Department of Correctional Education). The average cost of drug court treatment per participant for a year is approximately \$3,000. This figure does not include one-time start-up and administrative costs. A more realistic cost estimate, including start-up and administrative costs, would range between \$4000 and \$7000 per client, per year depending on the size of the program. Community based drug court programs offer effective treatment and the ability to treat many more drug offenders for the price now spent on other sentencing alternatives.

Retention and Recidivism Rates: According to the National Office of Justice Programs, more than 90,000 people have enrolled in U.S. drug courts with 70% either graduating or currently enrolled in the programs. Re-arrest rates of drug court participants and graduates are consistently lower than re-arrest rates of drug offenders in traditional probation or parole programs. According to the National Drug Court Institute, drug court impact studies indicate that graduates of various drug court programs throughout the U.S. have recidivism rates averaging between 5% and 19%. Drug offenders who were not referred to drug court or those who were removed from the program due to non-compliance have recidivism rates averaging between 24% and 66%. Lower recidivism rates correlate with longer periods of drug court treatment. A national study conducted

by the National Center on Addiction and Substance Abuse at Columbia University found that approximately 60% of those entering drug courts remain successfully involved after a year. Other drug treatment alternatives such as residential therapeutic communities and community-based treatment have retention rates averaging 10 - 30%.

A study conducted by the Virginia Criminal Sentencing Commission (July 1999) examined the subsequent offense histories of 962 Virginia offenders released from prison in 1993. Recidivism for this population was tracked for a period of three years. The report states that 50% of those offenders who were originally incarcerated for a drug offense had a new arrest within three years. Of that number, 38% were for felony offenses. They also reported that 59% of offenders incarcerated for drug offenses are re-arrested for the same type of offense.

Roanoke Circuit's drug treatment court has existed long enough to have evaluative data on a sizable number of graduates. A study completed by Virginia Polytechnic Institute and State University in October 1999 indicated that drug court participants had more successful treatment outcomes when compared with drug offenders on regular probation. Nearly sixty percent (59.8%) graduated from drug court treatment, whereas only 40.1% of those on probation completed their assigned treatment programs. Only four drug court graduates (3.2%) were convicted of a felony after completing the program. Eleven (8.8%) were convicted of non-drug related misdemeanors. This is a substantial reduction from the 50% recidivism rate for Virginia drug offenders released from jail or prison.

**Table 3: Evaluation Measures of Drug Courts**

- Cost Effectiveness: approximately \$3,000 per year to treat an offender in drug court (not including administrative or start-up costs)
- Approximately \$22,500 (operating, but not capital, expenses) per year to incarcerate an adult offender in prison
- Approximately \$58,092 (operating and educational expenses) per year to incarcerate a juvenile offender in youth correctional facility
- 59.8% of referred drug offenders graduated from Roanoke's drug court program
- 40.1% of drug offenders on probation in Roanoke completed treatment
- 60% national retention rate for drug court participants
- 10%-30% national retention rate for drug offenders in other treatment programs
- 3.2% of Roanoke's drug court graduates were subsequently convicted of a felony
- 50% of Virginia's drug offenders are rearrested within 3 years after jail/prison release
- 59% of Virginia's released drug offenders are rearrested for another drug offense
- 38% of Virginia's released drug offenders commit felony offenses
- 24%- 66% national recidivism rate for drug offenders

- 5%-19% national recidivism rate for drug court participants

## **XI. National Survey of Drug Courts**

In August 1999, a national survey was mailed to a drug court representative or to the state court administrator in each state. The national survey included questions about which agencies took the initiative in planning and establishing drug court programs, which agencies were primarily responsible for administering drug court programs, and funding sources for drug court programs. The types and numbers of drug courts and their general approaches were queried. Questions about programmatic decisions including eligibility requirements, primary gatekeepers, and treatment and supervision service contractors were included. The initial rate of return was 46%. After a telephone follow-up in September and October, the rate of return increased to 100%. All fifty states and the District of Columbia participated in the survey. The primary intent of this survey was to examine the current administrative status of drug court programs in the United States. This information should serve to expand our awareness of various possibilities for Virginia's decisions about drug court funding, administrative placement, and program service guidelines. The results of this survey are summarized on the following pages.

The terms "drug court" and "drug court (treatment) program" are used interchangeably. Drug courts are not a separate court, but rather a specialized docket within existing court structures that targets drug and drug-related offenses. Survey results indicated that planning and initiation of drug court programs were spearheaded by the following entities, either solely or in conjunction with other agencies: Administrative Offices of the Courts in 26 states (52%); local courts in 32 states (64%); state Substance Abuse Agencies in 11 states (22%); Departments of Corrections (distinguished from Departments of Community Corrections, Departments of Public Safety, and Probation and Parole Departments) in 6 states (12%); Community Corrections and Probation/Pre-trial Services (generally falling under the court umbrella) in 9 states (18%); and local government in 7 states (14%). To a lesser degree, other entities such as the state departments of mental health (3 states), criminal justice planning agencies (2 states), and law enforcement (1 state) helped plan and establish drug courts.

Affiliation of local drug courts with a state or local administrative support/oversight agency was surveyed. There was shared administrative responsibility between the Administrative Office of the Courts and the local courts in thirteen states (26%); Administrative Office of the Courts has sole administrative responsibility in 11 states (22%); and local courts had sole responsibility in 13 states (25%). Forty-eight percent of local courts with drug court programs have established and/or maintained administrative alliances with Administrative Offices of the Courts. Other agencies providing administrative oversight and support (in conjunction with local courts) include the Department of

Corrections in 3 states (6%); the state Substance Abuse agency in 3 states (6%); and local governmental entities in 3 states (6%). Five states have established steering committees or special commissions for drug court administration (9.8%).

**Table 4: Administrative Oversight of Drug Court Programs**

	Number of States
Administrative Office of the Courts (AOC)	11
AOC and local courts	13
Local courts	13
Department of Corrections	3
State Substance Abuse Agency	3
Local Government Agency	3
Drug Court Commission	5

An open-ended question examined the rationale behind administrative placement of drug courts. Response analysis revealed a clear dichotomy between state versus local administrative expectations. When drug courts were unified under a statewide administrative structure, the respondents expected the oversight agency to assume the following responsibilities:

- Alerting localities of funding opportunities.
- Providing training in grant writing and administration.
- Providing access to statistical information.
- Giving technical assistance to drug court programs.
- Providing fiscal services related to grant and program accountability.
- Educating the public about drug court programs.
- Providing on-going training opportunities for drug court staff.
- Providing vehicles for sharing information (newsletters, conferences, and meetings).
- Establishing models of effective program evaluation.
- Providing program management expertise.
- Establishing basic elements and guidelines of quality drug court programs.
- Seeking legislative support of drug court programs.
- Coordinating the services and resources of state agencies involved in drug court programs.
- Allowing for centralized accounting and equitable, rather than competitive, distribution of resources.

Whether administrative oversight was provided by a state agency or the local court retained administrative responsibility, the following decisions and responsibilities were handled at the local level:



- Deciding the types of drug courts needed in the community (adult felony, adult misdemeanor, juvenile, family, abuse and neglect, DWI/DUI, re-entry, domestic violence).
- Defining the general approach(es) of local drug court programs (pre-dispositional, diversion; post-dispositional, pre-sentence; standard first offender, probation revocation alternative, etc).
- Determining the eligibility requirements for drug court participants.
- Deciding the primary gatekeepers of eligibility and admissions to drug court programs.
- Contracting with treatment providers, establishing treatment guidelines, and conducting qualitative evaluations of treatment services.
- Contracting with supervision providers, establishing supervision guidelines, and conducting qualitative evaluation of supervision services.
- Contracting with qualified drug testing (urinalysis) service providers.
- Establishing sanctions and rewards of the drug court program.
- Searching for various funding sources for drug court programs.
- Hiring drug court staff.
- Providing periodic programmatic, fiscal, and progress reporting.
- Forming partnerships with drug court stakeholders and maintaining the vigor of those partnerships.
- Informing the community about their drug court programs.
- Conducting evaluations on the impact of their program.

It is important to emphasize that administrative placement and state support did not preclude or restrain local responsibility for decisions affecting the daily operations or policies of local drug court programs. Nationally, drug courts more closely follow the adaptation model of program implementation (adjustment to meet local needs and interests) rather than the adoption model (one size fits all). This process of adapting drug court programs to local needs and interests calls for continued local jurisdiction in major drug court decisions. Drug court professionals say that drug court programs are "home grown" because intense local involvement by all involved criminal justice stakeholders (judges, probation officers, treatment professionals, prosecutors, public defenders, defense attorneys, police, local government officials, criminal justice planners, and others) is necessary to the success of the program. Drug court programs must be tailored to the unique social climate and attitudes of the community. National indicators show that decisions about the basic design of drug court programs, while conforming to broad federal guidelines, continue to be the locality's responsibility.

In unified state court systems, most drug court programs fell under the administrative supervision of the Administrative Office of the Courts. When drug court programs were initiated by a state agency other than the Superior (Supreme) Court or the Administrative Office of the Courts, that agency generally maintained administrative oversight (i.e. the state Substance Abuse Agency in Washington State and the Oklahoma Criminal Justice Resource Center). States

demographic differences when program structure decisions are made on the local level.

The number and types of drug courts have spread rapidly in the decade since drug courts were first introduced. There are presently 298 adult felony drug courts operating in the U.S. with another 91 adult felony drug courts in the planning stages. There are 29 adult misdemeanor drug courts with eight more of these drug court programs in the planning stages. Juvenile drug courts, while similar to adult drug court programs, are more comprehensive and involve the youth's family and school officials. There are 78 operational juvenile drug courts with 37 more in the planning stages [1999 statistics].

**Table 5: Number and Types of Drug Courts in the United States**

Type	Operational	Planned
Adult felony	471	259
Juvenile	172	127
Family	29	68

Drug courts differ in their plea requirements and rewards for voluntary admission. Some view drug court as a diversionary alternative. For purposes of this survey, this legal approach is labeled pre-dispositional / diversionary. Most first offender alternatives fall under the pre-dispositional / diversionary label. Other courts require a guilty plea, but defer adjudication of the plea until the completion of the drug court program. Those courts requiring a guilty plea may defer sentencing until the participant's conclusion in the program. Thereupon, the original charge is dismissed. Still others require the guilty plea and impose a suspended sentence. Upon completion of the drug court program, the sentence is dismissed or reduced. This second approach is labeled post-dispositional/pre-sentence. Still other courts use drug courts as a sentencing alternative with probation revocation. While pre-dispositional drug courts are more numerous, most states have both pre-dispositional and post-dispositional drug courts.

Eligibility requirements generally include a record of non-violent current and prior offenses. However, some states allow prior violent offenses if charges are old and the nature of the violence is not egregious. Thirty (30) states have drug court treatment programs that allow drug sales or distribution charges if the amount of drugs involved is small and if the offender is an addict selling small amounts to support his/her habit. Drug-related offenses (i.e., petty larceny to support an addiction) are generally eligible for drug court. Across the country, prosecutors and judges maintain primary veto power over drug court admission, although eligibility may be a joint decision of drug court team members.

## **XII. Virginia Drug Courts: Current and Future**

In Virginia, there are ten operational adult drug court programs. An additional six circuit court teams are participating in federally sponsored drug court training sessions during 2000 and 2001. There are two operational juvenile drug courts and one juvenile drug court that will soon be implemented. An additional six juvenile courts are participating in federally sponsored drug court training sessions during 2000 and 2001. Of these six, three family drug court programs are planned.

## **XIII. Juvenile Drug Courts**

The drug court components described in the preceding paragraphs are generic to all types of drug courts found at different judicial levels. The prototype for drug courts was developed to address the needs of adult defendants in adult courts a little over a decade ago. Only after adult drug courts had been in operation for several years was the drug court model applied to juvenile defendants. It included the critical elements of mandated substance abuse treatment for criminal defendants under the supervision of probation officers and required regular reporting to the court before a judge. The close involvement of a judge in intervention designed to effect behavioral change among juveniles was familiar to juvenile courts and judges. On the surface, it appeared that the adult drug court model could be readily adapted to a juvenile court. There are several very significant ways, however, in which the adult model as it has evolved, must be revised to address the needs of participants in a juvenile drug court.

Inherent differences between minors and adults make simple replication of the adult drug court model inadequate for juvenile populations. Juveniles are more impulsive and have less experience grounding themselves in logical consequences of their behavior. Magical thinking ("nothing can happen to me") tempts them into dangerous activities. Accountability and responsibility to their families is maybe at odds with adolescent rebellion. Unlike adults, juveniles have not yet experienced "hitting bottom." Because of these and other developmental differences, juvenile drug courts must offer adolescents creative incentives to commit to their recovery.

Juvenile drug courts also encompass significant others such as parents, siblings, and system professionals, such as school officials, within the drug court program format. Juveniles do not appear in court as solitary individuals but as juveniles in the custody of a parent or guardian. Juveniles require the involvement and participation of a responsible adult in their adjudication and supervision by a court. The parent or guardian is required to comply with certain rules or requirements of the drug court judge, in addition to those rules imposed on the juvenile. For example, the parent must come to court with the child and follow behavioral rules in court, s/he must report on the child's out-of-court compliance

with rules established by the court and the community and often must participate in substance abuse testing themselves and/or services imposed by the court. The child's compliance with the court's orders is impacted by the parent's compliance. Parents or guardians must be supportive of the juvenile's recovery and cannot be active addicts themselves. Juvenile drug courts often conduct supervision and treatment in the juvenile's home, thus involving the whole family system. The dependence of minor children makes the juvenile drug court format more complicated and requires more family, school and community involvement.

There are many requirements imposed by law on juveniles, simply based on their juvenile status, which are not imposed on adults. Mandatory school attendance, local curfews, prohibition of the possession of tobacco, legal incapacity to enter into contracts or consent to medical treatment and restrictions on types and hours of employment are only a few of the ways in which our laws treat juveniles differently from adults. Juveniles cannot leave or run away from their homes or custodians without risking legal action and possible detention.

The existence of these differences mean that a court cannot impose precisely the same requirements on a juvenile defendant as it can on an adult. A juvenile cannot be ordered to remove himself from a parent's home when that home is located in a drug-infested area or includes a substance abusing relative. Instead, the court must address the problems created by the behavior of adults in the home and may conclude that specific orders to the adults are necessary in order to effect changes in the juvenile. In effect, the court has before it at least two parties (juvenile and parent) for each juvenile case on the docket.

A juvenile can be ordered to attend school, as a condition of drug court participation, but confirming compliance with the order requires the close cooperation of the local school system. Monitoring juvenile defendants routinely necessitates close and consistent collaboration with independent community institutions such as schools. Without this collaboration, the court cannot exercise effective authority over the juvenile. Thus, juvenile drug courts differ from adult drug courts in scope and complexity.

The mission of Juvenile Drug Courts is to provide intensive, individualized, judicially-enforced treatment to substance-involved juvenile offenders. The goals of the juvenile drug court include elimination of drug and alcohol use, curbing criminal behavior, and reducing recidivism and the need to incarcerate the target population. Each locality determines its own target population based on findings of a "needs assessment" conducted during the drug court's planning stages.

The juvenile voluntarily enters the drug court program after being found guilty or acknowledging that the evidence would support such a finding of a qualifying, non-violent misdemeanor or felony offense. Existing statutory authority provides the J&DR Court with jurisdiction to accomplish the mission and goals of the juvenile drug court.

Each drug court must decide how drug court cases will be processed through the juvenile justice system. This decision is incorporated by design into the chosen operational structure. Ideally, cases will receive a gateway eligibility screening at Intake or as early in the process as practicable. If the case is deemed appropriate for further consideration, the designated Commonwealth's Attorney and the defense attorney are notified regarding the potential drug court candidate. After completion of a full assessment of the juvenile's appropriateness for drug court and with the willingness of the juvenile to participate, the case is assigned to the drug court docket.

Drug court participants must comply with their treatment plan, which will include frequent random urinalyses, group or individual therapy, regular school attendance, and monitoring of behavior at home and in the community. Additionally, other services are usually needed to address problems within the home. These may include in-home services and parenting skills training or parent support groups. Unfortunately, often a parent also has substance abuse issues and needs treatment. In order to treat the child, the juvenile drug court must also treat and rehabilitate the parent.

The treatment model of the juvenile drug court must provide a continuum of care that is individualized and gender-specific. Treatment services and support systems must be strength-based in approach and delivered by culturally competent providers.

The probation officer serves as case manager, coordinating and managing the juveniles participation and movement through the treatment process as well as monitoring his behavior. Mental and physical health, education, social needs, transportation, employment, mentors, and other needs may be assessed and met by the treatment providers. Linkages with community resources will facilitate provision of these services.

The juvenile and at least one parent appear regularly before the judge for reviews. In the initial stages, cases are reviewed weekly. Case staffing may occur just before court review sessions with the drug court team in attendance. The juvenile's progress is discussed with input from team members acting in non-adversarial roles to encourage, support, and attempt to motivate the juvenile. Rewards and sanctions are chosen based on the juvenile's compliance or non-compliance. Review sessions are held in open court in the presence of family, drug court team, and other juveniles. Successes and failures, difficulties and needs are discussed by the judge with the juvenile and the parent. Juveniles receive praise and rewards from the judge, or when necessary, graduated sanctions are imposed that can include detention. As a result, the juvenile and parent may develop a close relationship with the judge.

Milestone events such as progression from one phase to another, successful accomplishments, and graduations are recognized in special ceremonies with

plaques, gift certificates, and family and peer approval. However, if the structure and treatment provided by the drug court are not sufficient to keep a juvenile clean, sober, and crime free, the juvenile is terminated from drug court and his case is placed on the court's regular docket for traditional handling. Individuals who graduate from drug court may have their charges dismissed, reduced, or they may avoid a commitment to the Department of Juvenile Justice.

#### **XIV. Family Drug Courts**

Family drug courts target drug-abusing parents who are charged with abuse and neglect and are in danger of losing their children. While not charged with a drug offense, the underlying cause of the family dysfunction is substance abuse. Family drug courts, like juvenile courts, are involved with the entire family system. Effective treatment of substance abusing parents is proving a most effective solution for keeping families together and avoiding the high costs of incarceration and foster placement. While no Family Drug Courts are yet operational in Virginia, there are at least three localities involved in a planning process with the intention to start such a court.

#### **XV. Research Questions 2000**

The first year's study group identified a variety of issues, questions and concerns requiring examination. These items were defined as fourteen "research questions." Following are the questions, organized into three broad categories:

##### **STRUCTURAL / ADMINISTRATIVE ISSUES**

- What are the basic components of a drug court program?
- Should there be minimum requirements for the establishment and operation of a drug court program?
- What are the basic administrative requirements of any state agency (entity) charged with oversight of local drug court programs?
- What state entity should be responsible for the oversight and operation of drug court programs?
- What would be the impact of enabling legislation for drug court programs in Virginia?

##### **FUNDING ISSUES**

- What are the current assumptions regarding drug court funding in Virginia?
- What state or federal funding streams are currently in place for drug court planning, technical assistance, and operation?
- What state or federal funding is currently available to address the needs of the substance abusing population in Virginia?
- What supplemental funding or resources are currently provided to drug court participants through DOC, DJJ, DMHMRSAS, or local community

corrections programs? What funding streams are available for like populations?

## SERVICE ISSUES

Is there equal access to drug court programs within the state, within the circuit / district, and within individual courts?

How does any lack of access impact the defendant, the court, and the Justice System?

What defines the success of a drug court program?

What defines quality programming?

Is there a need for a drug court program model that includes policies and program elements?

In the time available, and given the complexity of the issues, not all of these questions were fully addressed. Recognizing an immediate need for some direction to the General Assembly, in the face of increasing requests for funding and some local and judicial dissatisfaction with current perceptions about administrative oversight, the focus of attention was directed to those two broad issues - funding and oversight.

Service issues were seen as significantly less critical at that time and were left for further study, legislative definition, or resolution by the administrative oversight body, with input from an advisory / steering group.

The following two sections of this report address the concerns and opinions, and highlight the recommendations of the 1999 - 2000 workgroup with regard to funding and oversight during the next biennium. These interim recommendations did serve to inform the actions of the General Assembly during the 2000 Session and remain valid.

## XVI. Recommendations for Funding

- **Recommendation 1: Localities should seek federal funding for drug court planning and implementation before receiving General Funds.**

One legislative expectation has been made clear by past practice and by communication from the Appropriations and Finance Committees - that localities should apply for available federal drug court funding before requesting state General Fund support. Federal funds have been and remain available for drug court planning and, then, implementation. Use of federal funds saves state general funds. Also, federal funding brings with it a wealth of technical assistance and an established network of operational drug courts of diverse models serving a wide variety of courts, localities, and offenders / drug abusers. The opportunity to examine a wide variety of

models lends potential strength to the eventual design of a local Virginia drug court program.

No clear policy exists if a locality applies for a federal grant but is denied. In any event, any locality considering a drug court program should adhere to a process consistent with the federal planning process. If a well-written grant application were denied due to limited federal funds or a shift in federal priorities, then due consideration should be given to state General Fund support. Whether federal or state funding is requested, technical assistance and application review should be sought from the State Court Administrator's Office prior to submission.

- **Recommendation 2: The Commonwealth should continue funding for established drug court programs.**

The drug court model is increasingly accepted on both national and state levels. Evaluation findings have been consistently positive regarding impact on changing addictive behaviors, on cost savings over more traditional incarcerative practices, and, more tentatively, on long term recidivism reduction. In fact, SJR 399 asserts both the model as "an effective judicial tool for sanctioning certain offenders" and as having "a demonstrated positive effect on reducing recidivism." Only the Roanoke drug court has been established long enough for meaningful impact evaluation. In this light, the established drug court programs within the Commonwealth should be viewed as valuable pilot programs and potential models for replication.

Established programs should receive continuation support at current levels. Some annual adjustments should be made for reasonable cost of living increases and for inflation in other program costs (e.g., drug testing; treatment fees). With the implementation of mandatory drug screening and assessment requirements (January 1, 2000), additional data will become available on the population of offenders appropriate for drug court involvement. This will serve to validate or refute the need for drug court expansion and give some direction to the extent of potential expansion. Implementation and measurement of the screening and assessment outcomes should also make available better information on the levels at which offender self-pay can be factored in to reduce state expenditures.

- **Recommendation 3: State General Funds should be made available as match to support new drug court programs that are currently engaged in planning supported by federal grant funding.**

Localities compete for federal drug court planning grants. They lay the necessary groundwork, build the required coalitions, establish collaborative agreements, and secure local support and the required local matching funds - all with a good faith expectation that they would be



accorded the same state support provided to the established drug courts. These localities believe that this approach to the problem of chronic addiction will best serve their localities and the Commonwealth.

These programs should be allowed to plan for both state match support and eventual cost assumption. Certain restrictions should apply to state commitment to these efforts:

Match funds should be limited to the amounts required by the federal grant guidelines.

Match funds should be made contingent upon the approval of the federal grant application.

## **XVII. Recommendation for Administrative Oversight 2000**

- **Recommendation 4: The Department of Criminal Justice Services should be directed to provide administrative oversight and funding for locally operated drug court programs for the biennium.**

Administration by a "single state executive branch agency" was considered acceptable by the workgroup. This model would allow a broad oversight of the development of drug court programs in all three levels of Virginia's courts. A single source of funding, technical assistance, standards and guidelines, fiscal services, training, and evaluation is considered among the best possible models for administration. Such an organizational structure would encourage equitable, rather than competitive, development and distribution of resources. Specific consideration was given to the Department of Criminal Justice Services in this regard on the basis of DCJS' experience in administering local grant programs.

## **XVIII. SECOND YEAR OF THE STUDY**

The Secretary of Public Safety released the report of the first year's findings as an "interim" report, recognizing the action of the General Assembly (Item 462, B.3 of the 2000 Appropriations Act) to continue the study.

Primary among the issues which generated discussion upon release of the "discussion draft" were:

- The interim report had options, but no specific recommendation, on long-term administrative oversight of the Drug Court Treatment Program, for consideration by the General Assembly. The Program had been placed temporarily under the oversight of the Department of

Criminal Justice Services for FY 01 and FY 02. Which agency should provide continuing oversight to this Program?

- State funding for the Program is currently provided through grants from the IDEA (Intensified Drug Enforcement Assistance) funds. These are Special Funds with a variety of other purposes. These funds do not currently accumulate quickly enough to provide continuing support for the current drug treatment courts and will certainly not support current courts, new courts, and other funding purposes. How should this program be funded?
- What level of supervision / case management is appropriate for drug court participants? How is supervision provided?
- How should Drug Court Treatment Programs be evaluated? What should be considered in the evaluation of drug court effectiveness?
- There is no language in the Code enabling or empowering the operation of Drug Treatment Court Programs in the Commonwealth with the exception of Appropriations Act language.
- Compounding the question of the nature of any enabling legislation are a variety of more discrete concerns voiced after release of the "discussion draft" including such issues as:

Should these courts be pre- or post-dispositional?

Should there be a single, state approved "model" for a drug court treatment program?

What service guidelines should be established in legislation?

Which offenders should be considered eligible for drug court program participation?

The SJR 399 Study Group reinitiated activities in October of 2000 and focused on the study of the issues described above through August of 2001. The group was restructured to include fewer participants but kept representation of all system components as required by the original resolution.

The continuing study group endorses last year's four recommendations and makes these additional recommendations:

- **Recommendation 5: Administrative oversight for the drug courts should be provided by the Office of the Executive Secretary of the Supreme Court of Virginia.**

- **Recommendation 6: Base funding for drug court treatment programs should be provided by the Commonwealth for operational drug court treatment programs.**
- **Recommendation 7: Localities should seek federal funding for drug court planning and implementation before receiving General Funds. This was the first recommendation of the Interim Report and it has not changed.**
- **Recommendation 8: Drug court treatment program participants are appropriate clients for community supervision by DOC, DJJ, and locally operated (DCJS funded) community corrections programs.**
- **Recommendation 9: Until a single agency is charged with state-wide oversight of the Drug Treatment Court program, the OES and DCJS should continue collaboration on a Management Information System specifically tailored to the tracking and evaluation of the Drug Court Treatment programs. Local program evaluation efforts should continue and be encouraged.**
- **Recommendation 10: Equal access to drug court treatment programming is an ideal that is not possible at this time. As drug courts are evaluated, proven effective, and further accepted, additional funding should be made available for the extension of this treatment model to all courts.**
- **Recommendation 11: With some limited guidance within enabling legislation, within administrative agency guidelines, and from the State Drug Treatment Court Advisory Committee, most decisions regarding pre- or post-dispositional model, local veto authority, participant eligibility, quality assurance, and service guidelines should be left to local decision making.**

## **XIX. Research Questions 2001**

This year's study group worked primarily to address those questions and concerns which surfaced upon release of the "discussion draft." Some required study of prior questions in greater depth; others were newly defined questions. These items, defined as additional "research questions," are discussed in the following pages:

- What state entity should be responsible for the oversight and operation of drug court programs? What are the basic administrative requirements of any state agency (entity) charged with oversight of local drug court programs?

- How should this program be funded?
- What are the current assumptions regarding drug court funding in Virginia?
- What form should enabling legislation for drug court programs take in Virginia?
- How should supervision be provided for Drug Court participants and what is the level of supervision intensity required?
- How should Drug Court Treatment Programs be evaluated? What should be considered in the evaluation of drug court effectiveness?
- Is there equal access to drug court programs within the state, within the circuit / district, and within individual courts? How does any lack of access impact the defendant, the court, and the Justice System?

## **XX. Drug Court Administrative Structure and Oversight**

**Recommendation 5: Administrative oversight for the drug courts should be provided by the Office of the Executive Secretary of the Supreme Court of Virginia.**

Since the mid-1990's, specialized drug case management programs, including drug courts, have received considerable attention by Virginia judges interested in more efficient and effective handling of drug addiction and related criminal caseloads. The number of Virginia judges interested in establishing specialized drug court dockets continues to grow. The drug court docket requires judicial leadership and monitoring. Members of the SJR No. 399 Subcommittee perceived that judges are more willing to assume the additional responsibilities of drug treatment court programs when the administrative hierarchy of the judicial branch is supportive of their efforts. Placement of drug treatment court programs under the OES is consistent with drug court placement in the majority of states. The judicial branch is responsible for adjudicating all criminal (felony and misdemeanor) and civil cases for both adults and juvenile populations. Therefore, judges already are having appear before them for court adjudication all potential drug court populations. There is a perception that affiliation with the OES would enhance the drug treatment court program image. There is high support and dedication to these programs among judges currently involved with drug treatment court programs.

The OES has the existing organizational structure necessary for fiscal and administrative support of drug court programs. The Office has the capability of assessing judicial and clerks' office workloads and recommending additional judicial resources when and if necessary. There is a perception by drug court

officials that local authority would be respected by OES. The OES is fully supportive of the development and expansion of drug court programs. The need for judicial leadership and involvement in the planning, establishment and operation of drug court programs is not questioned by the OES. Over the past three years, using DCJS grant funding, the OES has provided and continues to provide substantial technical assistance to judges interested in establishing and maintaining successful drug court programs.

However, it must be noted that the OES has significant concerns about this recommendation. The Constitution of Virginia provides for three separate and distinct branches of government so that none exercise the powers properly belonging to the others. There is a strong sense that the judicial branch of government should not assume administrative oversight for the funding and operation of "treatment" programs. The longstanding public policy observed by both the legislative and judicial branches prescribes that the judiciary adjudicates all disputes appropriately brought before the courts and that the executive branch provides correctional, treatment, or rehabilitation services. In order to exercise the adjudicatory function, the judiciary must be independent and free from bias. As a result, the judiciary historically has remained clear from involvement in administering or providing "treatment" programs for criminal offenders. In Virginia and many other states, agencies of the Executive Branch provide such correctional, treatment or rehabilitation services.

Because of its mission as an independent branch of government with jurisdiction extending only to courts, none of the policy bodies of the judiciary, the Supreme Court, the Judicial Council of Virginia, and the Committee on District Court have members other than judges of all courts and citizen lawyers. District court clerks and chief magistrates serve only in an advisory capacity on the Committee on District Courts. Neither do the Judicial Conference of Virginia or the Judicial Conference of Virginia for District Courts have members other than judges. Thus, there is no precedence and no judicial branch policy body experience at the state level in working out interagency agreements.

The OES believes that this recommendation represents a major public policy shift that should not be undertaken before an extensive review of this issue can be made jointly by the legislature and policy bodies within the judicial branch. This is a particular concern in light of the fact that the OES is being asked, by judges and other interested parties, for technical assistance in the consideration and development of a variety of other, similar, "therapeutic" or "problem-solving" courts.

The need for judicial leadership and involvement in the planning, establishment and operation of drug treatment court programs is without question. The issue is whether or not the judicial branch of government should or must assume administrative oversight for the funding and operation all such programs.

Until these policy issues can be addressed in a context broader than just the issue of drug courts, the OES is opposed to shifting administrative responsibility for drug court treatment programs to the judicial branch.

### General Considerations for Drug Court Management Structure

Drug treatment court programs cannot function without a panoply of services provided by state and local executive branch agencies and private treatment providers. At present, drug court participants are supervised by probation officers from the Department of Corrections, Department of Juvenile Justice, or local Community Corrections programs. Local Community Services Boards and private treatment providers provide substance abuse treatment services ranging from outpatient group therapy to intensive inpatient residential services. The successful implementation and operation of drug treatment court programs are dependent upon these services being provided to participants. Therefore, it is essential to maintain and strengthen collaborative agreements between drug court programs and executive branch agencies providing treatment and supervision services.

Both executive branch criminal justice agencies and the judicial branch operate in environments of competing demands and scarce resources. In addition, historically the courts and criminal justice agencies function under significantly different statutory mandates. Because of this fact, the types of alliances crucial to drug court programs are not commonplace in state government. Thus, a structure to facilitate the establishment of cooperative agreements is recommended. As envisioned, this structure would operate on three levels, involving individual drug treatment court program teams, an interagency committee of local criminal justice officials and judges, and a state level team of criminal justice agency heads and judicial branch representatives.

A single state agency should be assigned responsibility for the legislative support, fiscal management and oversight, equitable distribution of resources, development of a management information system, and technical assistance to Virginia's Drug Courts.

### State Drug Treatment Court Advisory Committee

At the state level, a Drug Treatment Court Advisory Committee should be created. The Committee should include among its members the agency heads or designees from the Departments of Criminal Justice Services, Corrections, Juvenile Justice, and Mental Health, Mental Retardation and Substance Abuse Services. In addition, the Executive Secretary of the Supreme Court of Virginia, the Executive Director of the Public Defender Commission, the president of the Commonwealth's Attorneys' Services Council and two representatives designated by the Virginia Drug Court Association should be members of the Advisory Committee.

This Committee should track and model the collaborative alliances at the state level that should be set forth for the successful drug treatment court operation on the local level. The Committee would facilitate interagency service development and implementation, communication and cooperation required by drug treatment court programs. It should meet quarterly, at a minimum, to oversee the administration of drug treatment court programs and make such decisions as may be necessary to support drug treatment court programs. The Committee would perform the following functions: (1) provide for the establishment of interagency programmatic and fiscal policies by the promulgation of regulations or by administrative action, as appropriate; (2) oversee the administration of state policies governing the use, distribution and monitoring of moneys used to establish and maintain drug treatment court programs; (3) provide for the administration of necessary functions which support drug treatment court programs; (4) review and take appropriate action on issues brought before it by local drug treatment court advisory groups or council members; (5) develop standards for the planning and implementation of drug treatment courts; (6) oversee the development and implementation of a mandatory and uniform system of data collection standards; (7) oversee the development of uniform guidelines for screening, assessment, eligibility criteria, service monitoring and program management; and (8) provide for statewide outcome evaluations of all operational programs and report evaluation results to the General Assembly.

#### Local Drug Treatment Court Committee

At the local level, each jurisdiction or combination of jurisdictions with operational drug treatment courts would form a local Drug Treatment Court Committee. When a jurisdiction has multiple drug treatment courts in operation (i.e. adult felony, juvenile, adult misdemeanor-DUI), it should be decided whether to have one joint local drug court committee or separate local committees. The local Drug Treatment Court Committee would advise the state Drug Treatment Court Advisory Committee on the following: (1) state policies which promote and support cooperation and collaboration in the provision of drug court treatment services; (2) interagency fiscal policies that promote and support cooperation and collaboration in the provision of services to drug treatment court participants; (3) training and technical assistance necessary for the provision of efficient and effective services to drug treatment court participants; and (4) impact of proposed policies, regulations and guidelines on local drug treatment court programs.

The local Drug Treatment Court Committee should include, but not be limited to the following people or their designees: (1) a judge(s) involved in the operation of the drug treatment court program; (2) the Commonwealth's Attorney; (3) the Public Defender or a member of the local defense bar in jurisdictions in which there is no Public Defender; (4) a representative of the Virginia Department of Corrections, local Community Corrections/Pretrial Services, and/or the Department of Juvenile Justice from the local office which serves the jurisdiction or combination of jurisdictions; (5) a local law enforcement officer; (6) a

representative of the Department of Mental Health, Mental Retardation, and Substance Abuse Services or a local drug treatment provider; (7) the local Drug Court Administrator(s); (8) a County Administrator or City Manager; (9) representatives from each local drug court team and, (9) two persons selected by the local Drug Treatment Court Committee.

The local Drug Treatment Court Committee would establish policies and procedures that would facilitate attainment of the following goals: (1) effective integration of drug and alcohol treatment services with criminal justice system case processing; (2) enhanced public safety through intensive offender supervision and drug treatment; (3) prompt identification and placement of eligible participants; (4) efficient access to a continuum of alcohol, drug, and related treatment and rehabilitation services; (5) verified participant abstinence through frequent alcohol and other drug testing; (6) prompt response to participants' noncompliance with program requirements through a coordinated strategy; (7) ongoing judicial interaction with each drug court participant; (8) ongoing monitoring and evaluation of program effectiveness and efficiency; (9) ongoing interdisciplinary education and training in support of program effectiveness and efficiency; and, (10) ongoing collaboration among drug treatment courts, public agencies, and community-based organizations to enhance program effectiveness and efficiency.

In addition to serving as a liaison between the local drug court team and the state Drug Treatment Court Advisory Committee, the local Drug Treatment Court Committee would have responsibility for the following:

- Deciding the types of drug courts needed in the community (adult felony, adult misdemeanor, juvenile, family, abuse and neglect, DWI/DUI, re-entry, domestic violence).
- Defining the general approach(es) of local drug court programs (pre-dispositional, diversion; post-dispositional, pre-sentence; standard first offender, probation revocation alternative, etc).
- Determining the eligibility requirements for drug court participants.
- Deciding the primary gatekeepers of eligibility and admissions to drug court programs.
- Establishing treatment guidelines and conducting qualitative evaluations of treatment services.
- Establishing supervision guidelines, and conducting qualitative evaluation of supervision services.
- Establishing guidelines for sanctions and rewards of the drug court program.
- Searching for various funding sources for drug court programs.
- Forming partnerships with drug court stakeholders and maintaining the vigor of those partnerships.
- Informing the community about their drug court programs.
- Participation in evaluations on the impact of their program.



Local drug court programs will be held accountable for adhering to broad operating and policy guidelines or regulations proposed by the state Drug Treatment Court Advisory Committee. Local drug court treatment programs will also be subject to the same fiscal controls and standards required of any entity receiving state funds. Program standards will be established and monitored by the state administrative oversight agency. Local drug court programs will participate in ongoing evaluations of program outcomes by submitting timely information to the administrative oversight agency. Evaluation information submitted by local drug court program personnel shall include, but not be limited to, the following: (1) demographic information on drug court participants, (2) caseload management information, (3) supervision and treatment information, (4) cost benefit information, and (5) recidivism and retention statistics.

### Local Drug Treatment Court Teams

As a local option, a third level of coordination could be supplied by drug treatment court teams established for each program. These teams would serve as the operational unit responsible for the day-to-day operations of the drug treatment court program. This team consists of the following: (1) a judge; (2) a treatment representative; (3) a probation or surveillance officer; (4) Commonwealth's Attorney; (5) public defender or private counsel; (6) the drug

court administrator; and (7) any other person selected by the drug treatment court team. A member of each drug court team in the jurisdiction could be represented on the local Drug Treatment Court Committee.

### Why have state standards and state oversight?

Nationally, drug courts more closely follow the adaptation model of program implementation (adjustment to meet local needs and interests) rather than the adoption model ("one size fits all"). This process of adapting drug court programs to local needs and interests calls for continued local investment in major drug court decisions. Deciding which model is most appropriate for a community should be left to local criminal justice stakeholders (judges, probation officers, treatment professionals, prosecutors, public defenders, defense attorneys, police, local government officials, criminal justice planners and others) and the drug court team. Local authority to decide this issue is critical to the personal investment necessary for program success. Drug court programs must be tailored to the unique social climate and attitudes of the community.

While programmatic decisions are best left at the local level, these decisions should conform to broad state guidelines for participant eligibility, program standards, and evaluation requirements. In the past, federal guidelines have prohibited drug court admission for violent offenders. A state drug court advisory committee may elect to continue this policy and/or define other offense variables that automatically exclude drug court treatment consideration. Coordinated input

from state-level stakeholders (mental health, corrections, juvenile justice, education and the courts) may direct whether drug court treatment is advisable for dually diagnosed offenders (a substance abuse diagnosis as a primary disorder and another mental illness diagnosis as a secondary disorder). An ultimate goal is to discern which types of offenders are successful in drug court programs and which need an alternative treatment/supervision strategy.

Statewide evaluations of drug court impact are needed to compare offender and program attributes with outcome data. Local evaluation is ill-advised for several reasons: a) there is less objectivity when program personnel are evaluating their own program; b) the cost of independently-conducted evaluations by outside evaluators is prohibitive; c) local evaluations would present a fragmented rather than a holistic, statewide approach to understanding the variables linked with program success; and d) statewide evaluations draw from a larger population of drug court participants and graduates and can be designed for longitudinal measurements of program success.

Likewise, it is advisable to have statewide standards to ensure some degree of uniformity and quality assurance among the local programs. Program standards may consist of factors such as the minimum number of urinalysis screens, face-to-face supervision visits, court appearances, and treatment sessions recommended for drug court participants at different program stages. All statewide standards should be developed in accordance with the recommendations of advisory groups composed of local drug court representatives and state agency officials. While these broadly defined standards would define minimum requirements of drug court programs, it is assumed that current drug court treatment programs already supercede anticipated minimum standards.

#### Duties of a Drug Treatment Court Program Administrative Oversight Agency

In 1999, state drug court representatives throughout the United States were asked to delineate the drug court administrative tasks assumed by the state oversight agencies and those tasks assumed by the localities. The findings of the study indicated that the state oversight agency should provide the following to local drug court programs:

- Legislative support and funding
- Equitable distribution of resources
- Access to an adequate management information system
- Technical assistance
- Fiscal management and oversight
- Continuing professional training
- Public relations and public education about drug courts
- Assistance in conference and meeting planning
- Program management expertise

- Support and encouragement of local flexibility
- Monitoring and assessment of drug court program effectiveness
- Grant writing assistance
- Information about funding opportunities
- Assistance with professional communication (via newsletters, e-mail, etc.)

Administrative Placement of Drug Treatment Court Programs in Other States

Affiliation of local drug courts with a state or local administrative support/oversight agency was surveyed in a 1999 study of drug treatment court administration. There was shared administrative responsibility between the Administrative Office of the Courts (AOC) and the local courts in thirteen states (26%); Administrative Office of the Courts has sole administrative responsibility in 11 states (22%); and local courts had sole responsibility in 13 states (25%). It should be noted that in some states where AOC's provide administrative oversight, the judicial branch also oversees the probation and parole functions for the state. This is significantly at odds with the structure and separation of functions in Virginia, where executive branch agencies, the Departments of Corrections and Juvenile Justice, perform these duties.

Other agencies providing administrative oversight and support (in conjunction with local courts) include the Department of Corrections in 3 states (6%); the state Substance Abuse agency in 3 states (6%); and local governmental entities in 3 states (6%). Five states have established steering committees or special commissions for drug court administration (9.8%).

**Table 6: Administrative Oversight of Drug Court Programs**

	Number of States
Administrative Office of the Courts (AOC)	11
AOC and local courts	13
Local courts	13
Department of Corrections	3
State Substance Abuse Agency	3
Local Government Agency	3
Drug Court Commission	5

Administrative Placement of Drug Treatment Court Programs in Virginia

The 1999 - 2000 SJR No.399 Drug Court Study group initiated discussion of the administrative fit of drug treatment court programs in Executive, Legislative, and Judicial Branch agencies. Although no conclusions were reached, a summary of the pros and cons of each option for administrative placement were articulated by the group. The degree of concordance between the mission, client population

and practices of drug treatment court programs and the philosophy, mission, jurisdiction, culture and values of existing or proposed administrative structure was considered. Cost effectiveness and perceived ability of the agency to support drug treatment court programs were also considered.

Executive branch agencies considered included the Department of Corrections, the Department of Juvenile Justice, the Department of Mental Health, Mental Retardation, and Substance Abuse Services, and the Department of Criminal Justice Services. Within the judicial branch of Virginia's government, the supervision of Drug Treatment Court Programs by the Office of the Executive Secretary was considered as well as establishing a Drug Court Judicial Commission. Within the legislative branch of government, establishing a Legislative Commission or an office to support the state Drug Court Executive Council were alternate options evaluated.

The 2000 - 2001 SJR 399 Drug Court Study Group clearly understood the call for a single recommendation for an agency that should provide oversight to this program. Information developed for the "interim study" was re-examined and extensive discussion and debate followed.

#### Discussion of Administrative Placement Options

As noted above, the SJR 399 Study Group has recommended that the responsibility for administrative oversight be placed with the Office of the Executive Secretary. The Study Group also considered a variety of other agencies and possible constructs. The following discussion addresses the pros and cons listed by group members about these various administrative placement options. In addition, information about the capabilities of each of these entities to provide the expected administrative oversight is also offered. Finally, it should be noted that, in discussing these options, several members of the SJR No. 399 Subcommittee expressed strong preference for an option that would maximize the flexibility of local programs, subject to relevant statutory authority.

##### (1) Department of Corrections/Department of Juvenile Justice:

PROS: Administrative oversight by the Department of Corrections (DOC) was considered for the adult felony drug treatment court programs. Likewise, the Department of Juvenile Justice (DJJ) was considered a possible administrative entity for the juvenile drug court programs. Both of these agencies have longstanding responsibility for administering a variety of treatment and supervision programs for their respective adult or juvenile offender populations. Intrinsic in the mission of both departments is an explicit focus on offender rehabilitation. Several drug treatment court programs on the circuit court level (Roanoke, Norfolk, and Richmond) began as a coordinated effort between the court and the Department of Corrections. Day Reporting Centers have been established in many localities and share physical space with drug treatment court

programs. The infrastructure for providing probation services already is in place. The organizational structure is in place to support the fiscal needs of drug treatment court programs. Access to the resources of these two large agencies reduces the overhead costs of drug court programs.

**CONS:** Those who argue against drug court placement under DOC or DJJ believe there is a contrast in the organizational models of these two agencies and the drug treatment court programs. The perception was that DOC and DJJ have a predominantly hierarchical management model while drug court programs require a collaborative and participatory management model. Some tensions have been experienced in this regard with drug treatment court programs established within the past five years.

These two executive branch departments serve different populations (adult and juvenile). Thus, the management of drug treatment court programs would be split between two different agencies. Those localities that share a drug court coordinator between the juvenile and adult programs would find this cumbersome. Virginia currently has two operating drug courts that serve adult misdemeanor drug offenders and DUI offenders. Also in the planning stages are three family drug court programs. The family drug courts will target substance-abusing parents who are charged with abuse and neglect. DOC and DJJ have not traditionally handled those adult offenders charged with misdemeanors or with civil offenses.

Local drug court professionals perceive that the current emphasis of DOC/DJJ is restraint and punishment. This emphasis is counter to the rehabilitative emphasis of drug treatment court programs. Criminal justice agencies are thought to emphasize the "offender" status over the "addict" status of drug treatment court participants. Those members of the SJR#399 committee who were opposed to DOC/DJJ administration question whether or not the organizational climate of these two departments is conducive to drug treatment court maintenance and expansion. An expressed fear is that the authority of the drug court team as well as the program's objectives and operation would be usurped and/or diminished by the mandates and resource needs that are required to maintain traditional probation and parole program objectives. There also is fear that DOC/DJJ would relegate the fiscal needs of drug court programs to a low priority because of the competing fiscal demands of correctional institutions. Local representatives believed that centralized control by these large agencies might produce less local ownership and accountability. Because drug treatment court programs arose from the "grass roots" level, each program is seen as unique. This pride in ownership results in greater energy and dedication to the local programs. Some committee members expressed a fear that centralized control would dampen local ownership and enthusiasm for drug treatment court programs.

(2) Department of Mental Health, Mental Retardation, and Substance Abuse Services

**PROS:** Drug treatment court programs are placed under state mental health or substance abuse agencies in three states. Arguably the most crucial and time-intensive part of drug court is treatment, thus it is reasonable to believe that drug courts should be supervised by a predominately treatment-oriented agency. If the Virginia Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) were the administrative entity over drug treatment court programs, the emphasis would be on the "addict" rather than the "offender" status of drug court participants. DMHMRSAS has ample history and experience operating and supervising treatment programs. In fact, many of Virginia's drug treatment court programs now employ the treatment services of Community Services Board (CSB) employees. The same advantages enumerated under DOC/DJJ about drug court supervision under a large state agency apply with DMHMRSAS consideration. The infrastructure for providing treatment services is already in place. The organizational structure is in place to support the fiscal needs of drug treatment court programs. Access to the resources of a large agency could reduce the overhead costs of drug court programs. DMHMRSAS is in the best position to monitor increasing treatment needs of the drug court population. DMHMRSAS may also be able to access different funding resources such as Medicaid, third-party insurance payments, or federal monies for innovative substance abuse treatment programs.

**CONS:** The target population of DMHMRSAS extends well beyond the offender population. DMHMRSAS has not explicitly embraced treatment of the offender population, nor have treatment professionals traditionally espoused "coerced treatment". However, those CSB professionals now treating drug treatment court referrals overwhelmingly report positive results (even more positive than non-offender addicts do). They report that the court's involvement in drug court cases gives more authority to the therapists' recommendations and assures greater program compliance.

The same potential conflicts between a large state agency and local drug treatment court programs would apply to DMHMRSAS. The fear that local authority would be usurped resulting in institutionalized drug court program structure again surfaces as an issue. There is concern that DMHMRSAS would relegate the fiscal needs of drug court programs to a low priority because of the competing institutional and community-based fiscal demands. Again the concern that centralized control by a large state agency may produce less local control, ownership and accountability surfaces.

### (3) Department of Criminal Justice Services:

**PROS:** The Department of Criminal Justice Services is the statutorily designated policy making and coordination agency for numerous criminal justice system programs. Its 27 member Board includes the agency heads of all criminal justice agencies. The Chief Justice and Executive Secretary of the Supreme Court of Virginia also sit on its Board. In addition, there are numerous representatives of local law enforcement and citizens. The Department is designated as the planning and coordinating agency responsible for the implementation and administration of federal grant programs such as the Omnibus Crime Control and Safe Streets Act.

Due to these roles and because the agency already oversees both the Pre-Trial Services and Community Based Probation programs, local-state alliances already are established and in place. Because of these local-state alliances, there may be less fear of a usurping of local drug treatment court program autonomy. The Department of Criminal Justice Services (DCJS) has a history of supporting innovative programs and creative approaches to criminal justice. Oversight of drug treatment court programs is viewed as similar to oversight of community corrections programs. DCJS has established a network of support services for community corrections programs that may be beneficial to the developing drug court programs. Also, DCJS currently administers the CASA (Court Appointed Special Advocate) Program – a program similar to Drug Courts in that it is closely related to the courts. DCJS also has knowledge of funding sources that may be helpful in the development and maintenance of drug court programs.

DCJS also has the ability of other large state agencies to provide the administrative and fiscal support needed by drug treatment court programs. This may result in decreased overhead costs for local programs. DCJS has established a protocol of local fiscal accountability for community corrections programs that could easily be adapted to drug court programs. It is only through grant funds from the Department that the Office of the Executive Secretary of the Supreme Court of Virginia was able to secure resources to establish a position to provide technical assistance to local drug treatment court programs. In addition, DCJS is cooperating with the Office of the Executive Secretary in developing a drug court management information system linked to their Pretrial and Community Corrections management information system. This system, when operational, will provide the means for case management tracking and access to the information essential for evaluating drug treatment court program effectiveness.

Unlike any other option for administrative supervision, the governing Criminal Justice Services Board already provides and, in fact, for years has served as an effective interagency, inter-branch mechanism for development, implementation and oversight of state and local criminal justice agency programs. All of the

factors above were considerations for the SJR No. 399 Subcommittee in recommending that, for the FY 2000-2002 biennium, administrative responsibility of drug treatment court programs be placed with the Department.

CONS: Even though the Department of Criminal Justice Services manages a number of programs, including the community corrections programs, it defines itself primarily as a planning agency. The Community Based Probation Programs now handle an offender population (jailable misdemeanants and Class 5 & Class 6 jailable felons) that is not as diverse as those served by drug court programs (all classes of felons and misdemeanants, juveniles, parents charged with abuse and neglect). As with other options for administrative placement, the Criminal Justice Services Board presently is not empowered to mandate the necessary collaborations between the various agencies (Corrections, Juvenile Justice, Mental Health, Courts) to maintain operation of drug court programs.

#### (4) Drug Court Legislative Commission:

PROS: Similar to the Virginia Alcohol Safety Action Program (VASAP) model, this proposed administrative entity would serve to coordinate and consolidate overlapping services to the offender/addict population that is now served by several different agencies and support services. It would have the advantage of preserving the balance between the Executive and Judicial Branch agencies now involved in drug court programs. Its position in the legislative branch would facilitate the political mixture and lend a non-partisan climate considered important to drug court maintenance and expansion. All drug court programs (juvenile, adult felons, adult misdemeanants, and civil cases in a family drug court) would be united under one agency. It is believed that a legislative commission would be empowered to mandate the collaboration necessary between the various agencies (Corrections, Juvenile Justice, Mental Health, Courts) to maintain operation of drug court programs. Direct legislative support may greatly enable and enhance drug court program growth. There is also a perception that local authority would be respected if administrative oversight was provided by a legislative commission. Promotion of local accountability and authority may result in tighter control and lower costs. The Legislative Branch functions as a bridge between the Judicial (appoints judges) and Executive (program funding) branches. Likewise, drug treatment court programs bridge the Judicial and Executive branches and may need legislative power to negotiate cooperative alliances necessary for their success and expansion.

CONS: A comparative study of the costs for establishing and maintaining a legislative commission office versus a drug court administrative office under an Executive Branch or Judicial Branch agency has not been conducted. However, the assumption is that the expense of establishing this type of administrative entity would be greater and there would be additional needs for fiscal and administrative support. Current legislative commissions appear to be primarily



study or research-oriented rather than operational in nature. Also, the mission of the Legislative branch to decide public policy is not aligned with the operational and administrative needs of drug court programs.

(5) Drug Court Executive Council Office:

PROS: Similar to the Office of Comprehensive Services for At-Risk Youth and Families, this office would provide administrative support to the proposed state Drug Court Executive Council. The primary purpose would be to coordinate and integrate the multi-agency functions needed by local drug courts. The fear of competing interests found in all other state agency administrative models would be avoided. This model preserves the delicate balance between agencies that provide treatment, probation, and judicial supervision of drug court participants. The mission of The Drug Court Executive Council would mirror the drug court program mission. Such an office would offer a total focus and undivided support for drug treatment court programs. The Drug Court Executive Council's primary task would be to closely monitor the increasing needs for drug court resources (judicial, treatment, and supervision), thus helping to maintain the internal balance needed within each drug court program. Because this office would be directly linked to the multi-agency state Drug Court Executive Council, it would be indirectly empowered to mandate the collaboration necessary between the various agencies (Corrections, Juvenile Justice, Mental Health, Courts). The perception exists that local authority would be respected by an office directly linked to the multi-agency Drug Court Executive Council. Promotion of local accountability and authority may result in tighter control and lower costs.

CONS: As with the previously mentioned Legislative Commission, there has been no comparative study of the costs for establishing and maintaining an Office of the Drug Court Executive Council. There is an assumption that the expense of establishing this type of administrative entity would be greater than the expense of delegating administrative functions to an existing state agency.

(6) Drug Court Judicial Commission:

PROS: Similar to the proposed Legislative Commission model, this proposed administrative entity would serve to coordinate and consolidate overlapping services to the offender/addict population now served by several different agencies. All drug court programs (juvenile, adult felons, adult misdemeanants, and civil cases in a family drug court) would be united under one agency. The mission of the Drug Court Judicial Commission would mirror the mission of drug treatment court programs. There is a perception that local authority would be respected if administrative oversight was provided by a judicial commission. Promotion of local accountability and authority may result in tighter control and lower costs. A Judicial Commission would have the same advantages

enumerated under administrative oversight by the Office of the Executive Secretary. These include the perception of judicial branch support for establishing and maintaining drug treatment court programs, an explicit charge to handle all drug court populations (adult felons, adult misdemeanants, juvenile offenders, and parents charged with abuse and neglect), and the perception that affiliation with the judicial branch would enhance the drug treatment court program image.

**CONS:** The same issues on separation of powers and concerns about the affects on the independence of the judiciary are applicable to such a Commission. In addition, the establishment and operation of a judicial commission office would be more costly than setting up a drug court administrative entity under an existing agency. If a Judicial Commission were able to access the resources of the Office of the Executive Secretary, the fiscal and administrative needs of drug treatment court programs might be able to be met without additional support/personnel resources. Further, there is no existing structure to link such a Commission with local programs or local governments.

## **XXI. Drug Court Funding**

**Recommendation 6: Base funding for drug court treatment programs should be provided by the Commonwealth for operational drug court treatment programs.**

These programs do appear to be a less expensive and more effective strategy for addressing the addictive behaviors of the target population than does incarceration. Match funding should continue to be made available to localities in support of federal grant awards. Localities should continue to pursue federal drug court resources before seeking state funding. The General Assembly must develop a long-term funding strategy in support of this continuing and expanding initiative; IDEA funds cannot sustain this program. Local contributions should be required. Some drug court programs require participant fees, most often on a sliding scale based on income.

DOC, DJJ, and DCJS (CCCA/PSA) should be directed to provide client supervision to drug treatment court clients in accord with their agency standards for intensive supervision. There are some increased costs related to increased levels of supervision and drug testing but strategies should be developed by the agencies for the funding and provision of this service. No drug court resources should be directed to obtain supervision of clients who would be otherwise eligible for supervision by these agencies. This may require some difficult choices in re-directing existing resources.

## Discussion of Drug Treatment Court Costs

Using IDEA funds as appropriated by action of the 2000 General Assembly, DCJS formula-funded eleven operational drug courts. Nine were given base funding of \$175,000 dollars. This assumed an active drug court caseload of up to 25 adults or 20 juveniles. For each court operating with higher caseloads, an additional \$75,000 was awarded for caseloads from 26 to 50, 51 to 75, and 75 to 100 adults and for juvenile caseloads between 21 and 40. This is significantly less funding than provided by the federal Drug Court Program Office as implementation grants. Two courts (Chesterfield Circuit and Portsmouth Circuit), which were anticipating federal funding, were awarded \$125,000 as match to any federal award.

This year (FY 02), DCJS has again formula-funded the operational drug courts. To accommodate the two courts that had not been fully funded the preceding year, each award required a 5% cash or in-kind match. This revision to the formula allowed for equitable funding of all eleven operational drug courts. Additional adjustments will be required as Chesterfield and Portsmouth and a new court, Newport News Juvenile, have received federal implementation funds.

Basic staff, office space, and program operation costs are presumed in the \$175,000 base award and to include treatment for up to 25 adults or 20 juveniles. With each caseload increment an additional \$75,000 is provided for treatment, testing, and supervision costs. Drug Court Treatment Program costs can be reduced to the extent that treatment, testing, and supervision is provided by collaborating agencies.

There is general agreement that client supervision services currently provided to offenders on probation should be provided by the state or local agencies that currently have this responsibility. The Departments of Corrections, Juvenile Justice and Criminal Justice Services (local community corrections programs) should continue to provide supervision to drug court clients as they would other offenders directed to them by the court. In consideration of the special needs of these clients, service provision should be viewed as similar in nature to that provided to an intensive supervision population. Caseloads for this population are smaller than those seen in traditional probation caseloads.

## Department of Corrections Cost Estimates

The Department of Corrections provides supervision to those adult offenders handled in the Circuit Courts. DOC's staffing formula for intensive caseloads recommends no more than 30 cases to each probation officer. Current cost estimates from the Department include one senior probation officer, one surveillance officer and additional costs for treatment and monitoring services to supervise 40 drug treatment court participants.

DOC's preferred offender supervision model is based on their Intensive Supervision Program (ISP). In this model, a Probation Officer Senior (SPO) would be paired with a Surveillance Officer (SO) to provide the intensive supervision services, attend the frequent court appearance and participate in treatment team and pre-court meetings. This model helps to insure staff safety in making home visits, to provide adequate coverage for the absent team member in the event of illness or vacancy, and to cover more hours in a day and more days in the week as both staff are non-exempt from the Fair Labor Standards Act (FLSA).

Additionally, staff must be recruited, selected, trained, reviewed for quality control, and evaluated for performance. They must have purchase requests and payments for travel, supplies, equipment and repairs processed in accordance with applicable state requirements. All of these activities are indirect costs to the supervising agency. The current "indirect cost rate" approved by the federal government for Community Corrections is 8.55%.

For each 40 "Drug Court Program participants" on active supervision, the Department of Corrections would require a Senior Probation Officer with additional specialized substance abuse training and a Senior Program Support Technician (Surveillance Officer). The Department estimates, for these two positions, salary and fringe benefits at \$83,568, non-personal services (mileage, cellular phone, supplies) at \$9230, an initial equipment purchase (office, computer, communications) at \$29,000, and indirect costs at \$10,414 (calculated at 8.55%). This would be a total first year personnel cost of \$132,212.

Basic treatment and monitoring services would cost just over \$3000 per drug treatment court participant. Random urinalysis (4 drug panels on site X 10 monthly) would cost \$792 per year and outpatient substance abuse treatment (50 sessions @ \$46.80) would cost \$2,340.

Optional treatment and monitoring services are used sparingly but can be necessary. Inpatient treatment is estimated at \$1680 for 28 days at \$60 /day; emergency food, clothing, and shelter is estimated at \$1,500 for 30 days at \$50 /day; Adult Residential Center placement is estimated at \$3060 utilizing a DOC contract for 90 days at \$34 /day; and, Home Electronic Monitoring would cost \$216 for 90 days at \$2.40 /day.

#### Department of Juvenile Justice Cost Estimates

The Department of Juvenile Justice provides probation supervision to juveniles under the supervision of the Juvenile and Domestic Relations District Courts. It is generally acknowledged that juveniles are a more costly population to serve than are adults. They bring not only their problems as individuals to court, but those of their sometimes significantly dysfunctional families as well. For this reason, caseloads of juvenile probation officers are somewhat lower than those of a

comparable adult population. Current standards in grant guidelines set by DCJS recommend a 20-to-1 caseload standard for juveniles in drug court programs.

For supervision services for each twenty (20) Juvenile Drug Treatment Court participants, DJJ would require two Senior Probation Officers with salary and fringe benefits estimated at \$90,792, a maintenance and operational cost (telecommunications, mileage, office supplies, training, and participant transportation) of \$14,000. Supervision of these twenty juveniles would cost \$104,792.

For basic treatment services to twenty juveniles, costs are estimated at \$4680 for drug screening urinalysis test kits (20 participants x three tests per week @ \$1.50 per test x 52 weeks); drug test supplies (specimen cups and gloves) at \$47.50; and, treatment services to be provided in accordance with treatment plan (early Intervention, substance abuse education, intensive outpatient treatment) at \$2600 per juvenile (\$52,000 for 20 participants). These expenses, for basic treatment for twenty juveniles total just less than \$57,000.

Annualized estimates for optional treatment services include aftercare programming (leisure activities, self-esteem building curricula, and life skills activities) at \$5,000, mentoring and in-home services at \$11,000, and residential treatment services at \$5000.

These estimates do not include administrative staff, funds for office space, and other ancillary services (indirect costs).

#### Local Community Corrections and Pretrial Services Programs Cost Estimates

The local community corrections programs (Comprehensive Corrections Act for Local Responsible Offenders and the Pretrial Services Act), administered by the Department of Criminal Justice Services, serve local-responsible offenders in the Circuit, General District and Juvenile and Domestic Relations District Courts. In some localities these programs have been designated to provide supervision services to drug court clients. DCJS has set minimum caseload standards of 25-to-1 for pretrial supervision and 50-to-1 for community corrections supervision. Because of the intensive nature of drug court treatment intervention, DCJS would support the concept of intensive caseloads of 25-to-1. Current appropriations would not support this standard. Most current caseloads, both pretrial and community corrections, significantly exceed this recommended target. Each caseload of 25 drug court participants would cost Community Corrections programs \$40,000. This is the amount targeted, when available through appropriation, to caseload reduction. Each \$40,000 award is considered to allow for a local full-time position to include \$2500 in the first year for automation and other basic equipment. In subsequent years the \$2500 can be used for cost-of-living increases and increased operational costs.

Drug testing expenses can be significant. Twenty-five clients tested an average of twice a week for one year at a cost per test of \$1.50 equals \$3900. As with any other program, office space and furniture, supplies, equipment, mileage, etc., indirect costs, and cost of living increases must be taken into account. However, DCJS awards newly appropriated funds in a manner that provides a separate category of funding that can accommodate some limited increases in such costs. It is expected that all or most treatment services will be provided by a local treatment agency, thus restraining treatment costs.

## **XXII. Current Assumptions Regarding Drug Court Funding in Virginia**

**Recommendation 7: Localities should seek federal funding for drug court planning and implementation before receiving General Funds. This was the first recommendation of the Interim Report and it has not changed.**

The 1999 SJR#399 Study Group recommended that a prerequisite to state funding be local application for federal funding for planning or implementing a drug court program. Denial of requests for funding drug court planning and/or implementation by federal officials would not necessarily disqualify a locality from seeking state funding. If the quality of the application for federal assistance was acceptable and the locality did not receive funding because of inadequate national funds, the locality could then apply for state funding. Another recommended prerequisite to application for state funding was that the localities participate in a recognized planning process prior to implementing a drug court program. The federal planning process for drug courts is generally accepted and provides both structured guidance and "mentor courts."

A multidisciplinary planning committee consisting of representatives from the judiciary, commonwealth attorneys, defense bar or a Public Defender where such is established, state and local corrections/juvenile justice, community services, treatment providers, clerks, law enforcement and municipal government should oversee the implementation process. Planning committee members should visit existing or mentor drug courts. The committee should address offender eligibility, probation supervision responsibilities including urine screens, court reporting, treatment and related services. Treatment should include substance abuse screening and assessment, residential and outpatient substance abuse treatment by licensed providers. Related services should include vocational training, educational assistance, employment placement, community service placement for those not employed or in school, and counseling services for issues involving family, anger, grief, or sexual/physical abuse.

Prospective drug courts should apply for federal funds before requesting state monies. The planning committee should address what fees should be paid by the participants. All participants should pay their court costs or be approved by the court to perform community service for a cost credit.

A long-term plan for funding the expanding number of drug court treatment programs has not yet been established. Roanoke Circuit Court implemented the first pilot drug treatment court program in 1995. Since then, drug court programs have spread the way other community-based programs multiply in Virginia – local legislators have asked for special appropriations to support these programs. The fact that a long-term plan for the expansion and funding of drug treatment court programs has not yet been established is not unusual. Few, if any, criminal justice programs have been expanded by way of an established long-term plan. In reviewing the history of programs such as pretrial services, day reporting centers, and many community corrections programs, most were initiated as pilot programs. Word of the programs' reported success spread to the criminal justice community in other areas of the state. Judges and criminal justice system officials advocated for similar programs to be established in their areas. In many instances, specific authority for the establishment of such programs statewide then was added by statute.

Under any arrangement, members of the SJR#399 Study Group recommended that, like the current programs, new drug treatment court programs use existing resources for operational drug courts. It was suggested that the Executive branch agencies be directed by legislation or through the appropriations act to provide needed services to drug court programs. Specifically, the Department of Corrections, Department of Juvenile Justice and Community Corrections would provide probation and surveillance services at a level of intensity required by current drug court program standards. The Department of Mental Health, Mental Retardation and Substance Abuse Services would provide substance abuse treatment services to drug court programs through local Community Services

Boards. It is necessary to establish collaborative agreements between drug court programs and community service boards for the provision of outpatient treatment services and inpatient treatment as needed. The Office of the Executive Secretary would provide technical assistance to court personnel in the development, establishment, and evaluation of drug court treatment programs.

### **XXIII. Client Treatment and Supervision**

**Recommendation 8: Drug court treatment program participants are appropriate clients for community supervision by DOC, DJJ, and locally operated (DCJS funded) community corrections programs.**

There is general agreement that drug court client supervision services currently provided to offenders on probation should be provided by the state or local agencies that currently have this responsibility. DOC, DJJ, and DCJS (CCCA/PSA) should be directed to provide client supervision to drug treatment court clients in accord with their agency standards for intensive supervision.

While some increased costs are related to increased levels of supervision and drug testing, strategies should be developed by the agencies for the funding and provision of this service. No drug court resources should be directed to obtain supervision of clients who would be appropriately subject to supervision by these agencies in any event. In consideration of the special needs of these clients, service provision should be viewed as similar in nature to that provided to an intensive supervision population. Caseloads for this population are smaller than those seen in traditional probation caseloads.

#### Discussion of Drug Court Client Treatment

The selection of substance abuse treatment providers should be based, primarily, on the targeted population to be served by the program. Local Drug Court teams should carefully research the substance abuse treatment resources that exist in the jurisdiction to be served, the services that are available to specific populations (i.e. juveniles vs. adults), and the gaps that exist in locally available services. The local team should take into account the need for a continuum of substance abuse treatment (from outpatient to residential services) to meet the varying levels of offender dysfunction and need for structure. The local team should also identify the size, philosophy, credentials, and special characteristics of each potential substance abuse treatment provider to ensure that there is a good "match" between the provider services and the goals of the local Drug Court Treatment Program.

#### Discussion of Drug Treatment Court Client Supervision

Supervision services are provided primarily by DOC, DJJ, or Community Corrections probation/parole officers.

Appropriate supervision methods should be decided by each locality planning a Drug Court. State Probation and Parole, Local Probation/Community Corrections/Pretrial Services, and/or Juvenile Court Services may provide supervision. Each locality will make the decision based on type of offenders and type of supervision necessary for its Drug Court. Elements important in the supervision include:

- Memorandums of Agreement (MOA's) - At a minimum there should be MOA's between the supervision and treatment components detailing how issues such as positive screens, sanctions etc will be addressed and by who. Other MOA's can be developed as necessary to ensure a smooth flow for participants in the court. Collaborative efforts are the key to the success of this type of court.
- Cross Training - At a minimum there should be cross training between supervision and treatment component staff. In addition cross training should be stressed for police, prosecutors, judges and other departments involved in the Drug Court



- Urine Screens - There must be agreement by the Drug Court Program as to how drug screens will be done (where are they done, are they observed, how often, how they will be paid for, etc.) Specifics should be determined on a local level but a recommendation would include at least twice a week and observed screens.
- Supervision Standards - Standards should be determined by each Drug Court. The recommendation would be that participants should be seen face to face at least once a week at a minimum and should include weekly urine screens. Regular contact with the treatment staff and judge are also recommended.

The Local Drug Treatment Court Committee should make supervision decisions. However the above minimums are the recommendation. Local flexibility is stressed in determining who will provide the supervision, what the standards should be for urine screens and supervision intensity, how treatment and supervision will work in cooperation and cross training for everyone involved.

#### **XXIV. Evaluation of Drug Court Effectiveness 2001**

**Recommendation 9: Until a single agency is charged with state-wide oversight of the Drug Treatment Court program, the OES and DCJS should continue collaboration on a Management Information System specifically tailored to the tracking and evaluation of the Drug Court Treatment programs. Local program evaluation efforts should continue and be encouraged.**

#### Discussion of the Evaluation of Drug Court Treatment Programs

Evaluations of the programs in other states have been positive as to cost effectiveness and outcome results (decreased recidivism, lower substance abuse, higher retention in drug treatment programs).

While the local programs, local governments, local boards, and involved state agencies all have a vested interest in quality programming, the final measure of quality is impact - have these programs changed behavior, helped individuals overcome addictions, reduced relapse and recidivism, and served to enhance public safety. These are questions that cannot be answered in the short term but which must be addressed concurrent with the initiation of any program and measured over time. Many of the drug courts have already begun efforts toward a long-term impact evaluation. In most cases, a university has been engaged to undertake an objective, third-party evaluation of the local program. The Roanoke Drug Court Program, Virginia's longest established, has already completed an evaluation effort but continues its relationship with the evaluator to make sure the program remains on track. Evaluations have been completed on Roanoke Circuit Court's drug treatment court program established in 1995 and Charlottesville

Circuit Court's drug treatment court program established in 1997. Only 3.2% of Roanoke's drug court graduates were subsequently convicted of felonies during the initial study period. Charlottesville reports a recidivism rate of 1.4% for their graduates. Even though drug treatment court evaluations need to be ongoing and more comprehensive, the initial impact of these programs appears positive.

To further this effort and to allow for the possibility of a broader evaluation initiative, the OES applied for and was awarded a grant in support of development of a Management Information System. DCJS has offered collaboration in the form of staff and cost support. With the assistance of the Department of Criminal Justice Services and local drug court representatives, OES will direct the planning process for a comprehensive management information system that will collect offender, outcome, and cost data. Perhaps as importantly, the data system could become an integral part of the DCJS' PTCC data system. The PTCC system is already established in each of the drug court communities and is comprehensive in its collection of client demographics, program process, and program impact measures. The timeframe for planning, developing and implementing the management information system covers the period between October 1, 2000 and September 30, 2002.

Once in operation, the management information system will provide information needed to evaluate the continuing effectiveness of drug court programs. This information will assist policy makers in assessing Virginia's drug court programs and the wisdom of supporting further expansion of these programs.

Both OES and DCJS should have access to statewide information entered into the MIS by local drug court officials. After development and implementation of the drug court program MIS, the state administrative agency should be responsible for gathering input data from local drug court programs, analyzing data, and presenting a yearly report to the Virginia General Assembly summarizing the evaluative results. It is anticipated that the evaluation design will include, but not be limited to the following information:

#### Process Evaluation Information

- number of offenders referred to the local drug court program
- number of offenders admitted into the drug court program
- daily average number of drug court participants
- demographic analysis (age, gender, race, etc.) of drug court participants
- drug court participant arrest and conviction history prior to program entry
- medical and psychiatric information on drug court participants
- drug and alcohol use history on drug court participants
- family and social status information
- employment history including
- employment obtained during drug court participation
- detailed descriptions of drug court therapeutic and ancillary services
- sanctions and rewards conveyed to drug court participants

- aggregate relapse histories of drug court participants
- drug free babies born during drug court program participation
- description of the scope and intensity of drug court program services

### Outcome Evaluation Information

#### Recidivism Evaluation:

- annual number of felony convictions
- annual number of admissions to jails and prisons
- annual number of misdemeanor convictions
- annual number of felony arrests
- annual number of misdemeanor arrests

#### Retention Evaluation:

- drug court participant retention rates per program
- analysis of critical periods for drug court drop-outs

#### Cost Benefit Analysis Information:

- annual cost of drug court program services
- program and court fees paid by drug court participants
- cost analysis measures including the medical, societal, and criminal justice expenses of addicted offenders as compared to cost savings of drug court participants and graduates

Statewide evaluations of drug court impact are needed to compare offender and program attributes with outcome data. Local evaluation is ill-advised for several reasons: a) there is less objectivity when program personnel are evaluating their own program; b) the cost of independently-conducted evaluations by outside evaluators is prohibitive; c) local evaluations would present a fragmented rather than a holistic, statewide approach to understanding the variables linked with program success; and d) statewide evaluations draw from a larger population of drug court participants and graduates and can be designed for longitudinal measurements of program success. Preliminary plans include adding a control number for each drug court participant file that corresponds with the control number assigned by the Virginia Sentencing Commission. This will allow drug court evaluators to access felony arrest recidivism information on drug court participants and graduates in future years.

## **XXV. Access to Drug Court**

**Recommendation 10: Equal access to drug court treatment programming is an ideal that is not possible at this time. As drug courts are evaluated, proven effective, and further accepted, additional funding should be made available for the extension of this treatment model to all courts.**

While it is an expressed hope of many Virginia officials to offer drug court treatment to all eligible addicted offenders who are suitable candidates, current access to this treatment option is available to only approximately a third of the Commonwealth's citizens. Limited access to various treatment and probation options is common throughout the state. The same probation programs offered in Norfolk may not be offered in Roanoke. Population needs and access to service providers differentially impact the availability of other established probation programs and offender treatment services across the state. The drug court treatment program is the latest example of differential access to treatment/probation services.

The ideal of equal access to drug court treatment programs presents additional concerns. An initial barrier to establishing drug court treatment programs was the variance in willingness on the part of community leaders to participate in forming and maintaining these programs. The cooperative partnerships necessary for drug court treatment programs represent a new paradigm for handling addicted offenders. This "new way of doing business" has been resisted in some localities. It takes the commitment and cooperation of a judge, the Commonwealth's Attorney, the local defense bar, local probation and parole, and treatment providers for a drug court program to be established. If any of these primary partners are unwilling or unable to participate, it is impossible to institute a local drug court program.

The established drug court programs in Virginia are now emphasizing evaluation of program effectiveness. If, as expected, outcome evaluations support the further expansion of drug court programs, some of the perceived and actual barriers to establishing these specialized dockets and treatment services throughout the state may evaporate. In the meantime, Virginia may consider adopting a "no right to treatment" clause in any proposed drug court legislation. This provision states that the institution of drug court programs in certain localities does not constitute a right to treatment for those offenders in localities with drug courts or offenders in localities without drug court programs. This provision offers a tentative answer to equal access of all Virginians to drug court treatment programs.

There is no case law in Virginia addressing whether equal protection is implicated when a defendant in one jurisdiction is not given the same probation options as a defendant under identical circumstances in another jurisdiction. Further, there is no case law addressing whether any individual defendant has a right to a particular probation option.

## **XXVI. Issues That Should Be Determined Locally**

**Recommendation 11: With some limited guidance within enabling legislation, within administrative agency guidelines, and from the State Drug Treatment Court Advisory Committee, most decisions regarding pre- or post-dispositional model, local veto authority, participant eligibility, quality assurance, and service guidelines should be left to local decision making.**

Some degree of standardization is desirable. It facilitates administrative oversight, aids in public education, makes possible large-scale evaluations, and makes equitable funding possible. However, it is important to remember that a primary strength of the Drug Court model is that much of the design and decision-making is left at the local level. Such flexibility facilitates collaboration among disparate local players and allows individual programs to be particularly responsive to local needs and mores. And, while the citizens of Virginia deserve assurance that these programs are doing frequent drug testing, providing appropriately intensive supervision and treatment, that public safety is adequately protected, etc., no meaningful state interest exists in requiring three rather than four (or four rather than three) drug tests each week or in describing as a standard that supervision should be required every other day rather than every third day. Such decisions should be left at the local level, determined by community values and relating to specific client needs. Appropriate minimum expectations should be and, in fact, are already a part of the grant guidelines.

### Discussion of Eligibility Criteria

The local Drug Treatment Court Committee should establish criteria for local drug court participation - to exclude violent offenders.

Successful Drug Court programs require teams composed of Commonwealth's Attorneys, Defense Attorneys, treatment professionals, and local law enforcement personnel, with Drug Courts leading and supervising. Defendants in need of treatment should be identified early in the process (as soon as possible following arrest). Eligibility criteria should include no current violent offenses, and should there be any prior violent offenses, the length of time since the offenses occurred must be considered along with the nature of such violence. Violent offenses are those set forth in §19.2-197.1 of the Virginia Code. Drug sales or distribution charges will prevent consideration for Drug Court unless the defendant is an addict selling small amounts to support his/her habit. Other criteria for eligibility may be developed and adopted by the local Drug Court Committees.

### Pre- or Post-Dispositional

Drug court structures include pre-dispositional models, post-dispositional models, and combinations of both. The Local Drug Treatment Court Committee should determine which structure is more appropriate for a locality, after considering the mission of the local drug court program and the recommendation of the Commonwealth's Attorney. In post-disposition courts, all drug court participants have been convicted of an offense, but imposition or execution of sentence is suspended pending completion of the drug court program. Participants in post-disposition courts may be probation violators or convicted offenders who are in compliance with probation conditions. In pre-disposition courts, the participant stipulates to facts sufficient to support a conviction. Proceedings are continued pending completion of the drug court program.

Local Drug Treatment Court Committees should retain the responsibility to determine which drug court model best serves their community. In 1997, 46% of the drug court programs in the nation were pre-dispositional, 12% were post-dispositional, and 42% were a combination of the two types, depending upon the nature of the charge, the defendant's criminal history, and related factors. [1997 Drug Court Survey Report, Drug Court Clearinghouse and Technical Assistance Project, p. 17].

Pre-disposition model: The offender is before the court on a drug charge which is not subject to a deferred disposition or on another charge where drug addiction is a causal factor. The prosecutor requests that the court defer prosecution contingent on the following factors: (1) the defendant pleads guilty to the charge; (2) the judge concludes that there are facts sufficient to justify a finding of guilt; (3) the judge takes the plea under advisement and does not enter a judgment of guilt; and (4) the defendant voluntarily enters the drug court program. If the defendant completes the program, the prosecutor generally asks to "nolle prosequere" the case. If the defendant does not enter the drug court program, or if the defendant does not complete the program, the prosecutor then decides the appropriate course of prosecution.

Post-disposition model: The offender enters into a plea agreement and the following steps ensue: (1) the offender pleads guilty to a drug or drug-related charge or to a probation/parole violation; (2) the judge accepts the guilty plea; (3) the offender is sentenced to probation or to a jail or prison term; (4) a portion or all of the incarceration/probation sentence is suspended upon the offender's voluntary agreement to enter the community-based drug court program; and (5) if the offender completes the drug court program, the conviction remains but the sentence is dismissed or reduced.

Another variation of the post-disposition model is drug court referral as a condition of probation. Drug court participation is a requirement of probation without a concomitant promise of sentence reduction or dismissal.

## How Quality Programming Can Be Assured

A variety of mechanisms are already in place to assure the continuing provision of quality programming and the efficient use of resources.

### **At the Local Level:**

Funds for these programs are awarded to the local unit of government. The locality is responsible for personnel procedures, accounting, and auditing.

Each drug court will have at least one judge and one drug court administrator directly involved in making sure that these specialized dockets work efficiently. These principals have visited "mentor" courts, have attended national training, and remain informed of any new models, innovative ideas, and current research. These are voluntary programs; the choice to establish and operate a drug court treatment program signifies an obvious and inherent investment in quality programming.

Also at the local level, a Drug Treatment Court Committee should be established for each locality receiving funds. Such a committee is required by the Drug Court Grant Guidelines and was foreshadowed by all of the planning committees established either by local option or by federal requirement. Like the local unit of government, the drug court judge, and the drug court coordinator, this committee has a vested interest in critical self-evaluation and the provision of quality, cost-effective (resource efficient services). By grant guidelines, the role of this committee is spelled out as:

- Ensure quality and consistency in drug court program operations
- Promote interagency coordination and cooperation in the treatment and supervision of substance abusing offenders before the Drug Court
- Conduct periodic reviews of drug court operations

### **At the State Level:**

The Department of Criminal Justice Services administers drug court funding as grants. These grants require:

- Certain minimum services (drug treatment; supervision and case management; frequent appearances before the judge; drug testing; screening and assessment; a variety of ancillary services)
- That a local Drug Treatment Court Committee be established and the role of that Committee is spelled out (as described in the preceding paragraph).
- That quarterly programmatic reports be provided to DCJS
- That quarterly fiscal reports be provided to DCJS
- It is anticipated that all drug courts will be required to collect certain minimum information when a data system is made available

Further, as with all DCJS grants, the Department is responsible for monitoring grant-funded activities. This is done with both formal and informal site visits, report review, telephone contact, and upon any request for technical assistance. DCJS pays particular attention to training and technical assistance needs, budget justification and utilization, and compliance issues.

### Service Guidelines

A real baseline of expectations of the drug courts, for both state and local review purposes is the document "Defining Drug Courts: The Key Components." The document lists the 10 key components of any drug court as developed through a cooperative effort between the federal Office of Justice Programs, the federal Drug Court Program Office, and the National Association of Drug Court professionals. All drug courts are aware of this document, understand the principles involved, and have made the 10 components an integral framework for their program operations. The Drug Court Standards Committee of the National Association of Drug Court Professionals has defined the following key components of drug courts:

1. Drug courts integrate alcohol and other drug treatment services with justice system case processing.
2. Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
3. Eligible participants are identified early and promptly placed in the drug court program.
4. Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
5. Abstinence is monitored by frequent alcohol and other drug testing.
6. A coordinated strategy governs drug court responses to participants' compliance.
7. Ongoing judicial interaction with each drug court participant is essential.
8. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
9. Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.
10. Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court effectiveness.

While it is difficult to improve upon these components, the SJR 399 Committee offers the following clarifications as applicable to Virginia Drug Courts. Each court should establish a multidisciplinary Local Drug Court Committee to ensure quality and consistency, promote interagency cooperation and conduct periodic reviews. Each court should have a minimum of two judges responsible for drug court reporting. Supervision of participants should be the responsibility of probation officers, community corrections caseworkers or juvenile justice service units and should include random urine screens. Treatment should be provided by



appropriate public agencies based on formal agreements or by licensed and certified private providers through contracts based upon competitive bids. Both residential and outpatient services should be available.

Through good local leadership and guidance, supportive state oversight, and objective evaluation, quality programming can be maintained.

## **XXVII. Acknowledgements**

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