

Chapter VIII

PROBATION SYSTEM

(A) Drug Court as a Response to the Drug Problem

8.1 Drug courts have been established in a number of countries with a significant drug abuse predicament e.g. the United States, Australia and Canada. They are specialised courts adopting a multi-disciplinary approach to handle cases involving drug abusing offenders through comprehensive supervision, drug testing, treatment and rehabilitation, immediate sanctions and incentives. The judge plays a key and active role in the supervision and rehabilitation of drug abusers. The Task Force has looked into the practices overseas to consider a possible Hong Kong response.

(a) Objectives

8.2 The concept of therapeutic jurisdiction through a drug court is a relatively new concept which emerged only in the mid-1980s in the United States as a result of the unprecedented impact of the emergence of crack cocaine on the nation's criminal justice system. The first drug court was established in Miami in 1989. There are currently over 1 000 drug courts operating in the United States, most of which are targeted at adults. Some new variations have been created, including juvenile drug courts which are set up separately in view of the differences in circumstances, abuse pattern and reason of abuse between adult and juvenile drug abusers. In Canada, the drug court was first established in Toronto in 1998, whereas the drug court of New South Wales in Australia came into operation in 1999.

8.3 Drug courts in different countries share the same objective to address the cyclical relationship between relapse of drug abuse and recidivism, with some differences in eligibility, programme design and expected programme outcomes. They generally aim to reduce or

eliminate offenders' dependence on or propensity to use drugs, to reduce the level of drug-related offending behaviour and to promote the reintegration of offenders into the community.

(b) Example of drug court operation

8.4 After initial screening based on certain eligibility criteria¹, drug offenders are allowed to participate in the drug court programme voluntarily with court-monitored treatment as an alternative to the typical criminal adjudication process. Programmes can last at least one year, and sometimes longer.

8.5 Judges in a drug court are closely and intensively involved throughout the programme. They work with a multi-disciplinary team to design the programme content, and preside over the whole process to monitor and supervise the progress of treatment and rehabilitation of a participant.

8.6 The multi-disciplinary team working under judicial direction may comprise a prosecutor, a defence counsel, a probation officer, a family member of the offender, the offender's teacher, a social worker, an addiction worker, a law enforcement agent and other health care workers. The roles and responsibilities of the team members are defined. They work together on a case management basis and tailor interventions to meet the complex and varied needs of each individual participant, providing him or her access to a continuum of appropriate treatment and rehabilitation services. They also meet regularly to update each other on the progress of the participant with a view to recommending to the judge adjustment of the treatment programme or possible rewards and sanctions for the participant.

8.7 Participants are subject to random or regular drug testing and court appearances. As an immediate response to the participant's progress,

¹ In Australia, to be eligible for the drug court programme, a person must be highly likely to be sentenced to full time imprisonment if convicted; has indicated that he will plead guilty to the offence; be dependent on the use of prohibited drugs; be 18 years old or over; and be willing to participate. A person is not eligible if he is charged with, among other things, an offence involving violent conduct or a sexual offence, or is suffering from a mental condition.

the judge can, having regard to the recommendations made by the multi-disciplinary team, confer rewards on a participant who maintains a satisfactory level of compliance with the conditions of the treatment programme. On the other hand, sanctions may be imposed on the participant for non-compliance. Rewards may include a decrease in the degree of supervision or the frequency of testing, while sanctions may include an increase in the frequency of court appearances, counselling or other treatment.

8.8 Successful completion of the programme may result in dismissal of criminal charges or imposition of a non-custodial sentence. On the contrary, pre-mature termination of the programme by the court may lead to re-sentencing of the offender for the original offence, in which case a custodial sentence will likely be imposed.

(c) Observation

8.9 Although the features of a drug court in different jurisdictions may differ, evaluations to date in general support the value of drug courts in achieving higher treatment retention rate, reducing drug use and associated behaviours². However, note should be taken that the present findings can only be based on a relatively short history of the drug courts.

8.10 The concept of drug courts is premised on the belief that increased and harsher penalties will not necessarily prevent or reduce drug abuse behaviour. The traditional court process, which may focus attention on incarceration, does not address well the drug abusers' addiction problem.

8.11 Under a drug court programme, judicial supervision on treatment combined with immediate sanctions for non-compliance and rewards for reduced drug use are the cornerstone of its approach. Instead

² See (a) "Drug Courts: A National Phenomenon" at US National Drug Courts Institute's website; (b) a study commissioned by Scottish Executive "The Glasgow Drug Courts in Action: the First Six Months" (2002); and (c) a research paper by Karen Freeman "Evaluating Australia's First Drug Court: Research Challenges" (2003).

of immediately putting a drug offender in jail when there has been a relapse, the emphasis is on correcting behaviour to stop the offender from abusing drugs. Through accepting responsibility for his own actions, a participant will learn that he can indeed stop or at least reduce his drug abuse. Awareness by the offender that immediate consequences will flow from a contravention of the rules of the court acts as a powerful incentive in ensuring compliance and a reduction in illegal drug use. In addition, apart from engaging the family as a valued partner, drug courts have been able to gather available professional resources in the community to address the individual needs of the participants in a collaborative manner.

(B) Probation System in Hong Kong

(a) A sentencing option

8.12 In relation to the drug court concept, the Task Force has looked into the current options for sentencing young drug offenders aged below 21 in our own criminal justice system. In passing a sentence, the court may take into account various factors including the gravity of the offences, criminal history, family and social background of offenders, mitigation reasons, rehabilitation prognosis, etc. Generally speaking, first-time offenders committing drug offences of a less serious nature may be fined. For repeated and serious offenders, the court may consider other more severe sentencing options as appropriate. For reference, the court sentences among 2 227 young drug offenders from 2005 to 2007 are as follows -

- 801 (36%) fined;
- 685 (31%) on Probation Order;
- 657 (29%) on custodial sentences administered by the Correctional Services Department, including detention in Drug Addiction Treatment Centres (DATCs), Rehabilitation Centres, Detention Centres and Training Centres and incarceration in young prisons; and
- 84 (4%) on other sentences such as Community Service Orders, suspended sentence, bound-over, etc.

8.13 It can be seen that the Probation Order is a significant sentencing option, providing for intervention measures for drug offenders in lieu of a custodial sentence, as in an overseas drug court programme. Underpinned by the Probation of Offenders Ordinance (Cap. 298) (the Ordinance), probation supervision has been well established in Hong Kong for over 50 years. It is administered by officers of SWD under judicial oversight.

(b) Operation

8.14 Pursuant to the Ordinance, the court will first require a Probation Officer (PO) to submit a pre-sentence social enquiry report with recommendation on the suitability of an offender for probation supervision. The PO will gather information about the offender's personal background, developmental history as well as his circumstances and attitudes regarding the offence and rehabilitation prospects. Home visits and collateral contacts with the significant others of the offender will also be conducted by the PO in the course of social enquiry.

8.15 Before placing an offender on Probation Order, the court will explain to him the effects of the Order and the consequences if he fails to comply with the Order or re-offends. For an offender aged 14 or over, the court will not make the Order unless he expresses willingness to comply with the probation requirements. Such consent is not required to make the Order for an offender aged under 14. For an offender who does not give consent, the court may impose other options including a custodial sentence such as compulsory drug abstinence treatment in a DATC where circumstances so warrant.

8.16 Following the sentence to place an offender on probation, the PO shall render statutory supervision to the offender (i.e. the probationer) pursuant to the conditions stipulated in the Probation Order. The Order shall last for a period of not less than one year or more than three years. On rehabilitation, the PO shall provide counselling and group activities to the probationer, and meet his individual needs with special programmes run by other professionals and NGOs including detoxification, psychological service, urine tests and other support services.

8.17 The PO is required to report the probationer's progress at regular intervals as directed by the court, or may initiate progress reports on the probationer's unsatisfactory performance and bring the probationer to the court in dealing with a breach of the Order. In these reports, the PO may make recommendations to the court on the probationer's suitability for continuous supervision and the feasibility to modify probation requirements after taking account of factors like the probationer's response to statutory supervision, his or her motivation and capacity to change as well as requirement for extra support services in the community.

8.18 The PO or probationer may make an application to the court for discharge of the Probation Order, while the court shall not amend the Order by reducing the probation period, or by extending that period longer than three years. If the probationer is found to be no longer suitable for probation supervision due to a breach of the Order or commission of further offence(s), the court may discharge the Order and re-sentence the probationer for the original offence.

(C) Pilot Project on Enhanced Probation Service

8.19 The Task Force notes that the way drug courts are administered overseas is very different from conventional courts in our criminal justice system. In particular, our Judicial Officers are not expected or used to playing a leading, coordinating and administrative role in the rehabilitation of offenders, and it would be difficult for them to do so in the absence of appropriate legislation or constitutional framework for a drug court model.

8.20 The setting up of a drug court would also entail significant resource implications, as our Judicial Officers currently have limited time to provide individualised attention to each case, ongoing judicial supervision and direct interaction with the offenders.

8.21 The same goes for the establishment and operation of a multi-disciplinary team for each individual case, if the team is to meet regularly on pre-sentence preparations, draw up a rehabilitation programme

and monitor the participant's progress. Time is also required to gain trust and consensus among the members in the team who may have their own ideas and competing priorities.

8.22 In view of the above, the Task Force does not consider the idea of a wholesale transplant of the drug court model to Hong Kong justified at the moment. In the Hong Kong context, consistent with the spirit of drug court programmes overseas, the current system of probation service seeks to provide for suitable intervention of drug offenders through treatment, supervision, and judicial oversight, prior to a possible custodial sentence. Within the existing legislative framework, the Task Force considers that there may be room to make better use of this platform to enhance results, by borrowing some key features of the drug courts overseas.

8.23 The Task Force believes it will be useful to try out an intensified rehabilitation system with closer cooperation between POs and the Judiciary in the form of a carefully designed pilot project. POs can step up their coordinating and supervisory role to strengthen case assessment, treatment planning and progress monitoring in close consultation with concerned parties and professionals. Judicial Officers may play an enhanced sanctioning role in the rehabilitative process. More detailed proposals are set out in the following paragraphs.

Recommendation 6.10

The Task Force recommends a two-year pilot project on an enhanced probation service to provide more focused, structured and intensive treatment programmes for young drug offenders pursuant to the Probation of Offenders Ordinance (Cap. 298), having regard to overseas drug court practices (cf. paragraph 6.26 of Chapter VI).

(a) Target clientele and designated courts

8.24 Subject to discussion with the Judiciary, it is proposed that the pilot project may be launched at one or two designated Magistracies to deal with new drug-related probation cases.

8.25 The target clientele is young offenders aged below 21 convicted of drug-related offences, subject to assessment of their suitability for probation and their consent if they are aged 14 or above. While sentencing is a matter for the court, the project may benefit those who would be subject to probation in the normal course as well as provide an alternative to imposing a fine.

(b) Treatment and rehabilitation programme

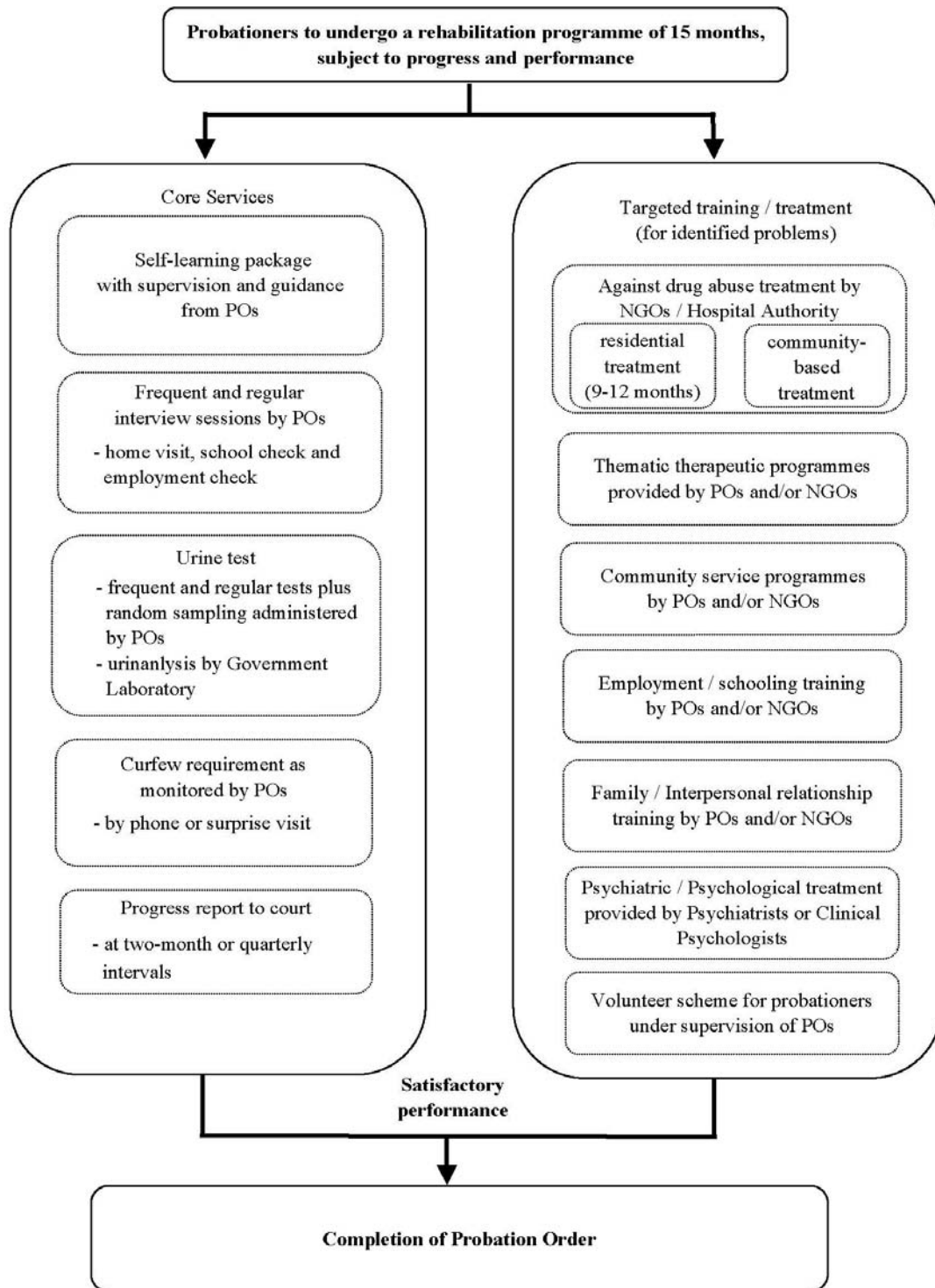
8.26 Probationers under the pilot project shall normally undergo a 15-month intensive rehabilitation programme. The actual length may vary from 12 months to 18 months subject to the performance and progress of the probationer. As an incentive, probationers with good progress may be allowed to complete the whole rehabilitation programme in 12 months. POs will apply to the court for earlier discharge of the Orders. The rehabilitation programme under the pilot project shall include two major components –

- Core modules – involving the POs supervising and monitoring the probationers (e.g. reporting sessions, urine tests, curfew requirement and progress reports to the court); and
- Targeted training and treatment programmes – involving the POs addressing the risks and needs of the probationers beneath their offending and drug abuse behaviour (e.g. psychological problem, inadequate problem solving skills, poor interpersonal relationships, etc).

A set of proposed protocol of the pilot project is given at Chart 1.

Chart 1

Proposed Protocol of Pilot Project on Enhancement of Probation Service for Young Drug Offenders



8.27 In contrast with the existing practice where POs supervise various kinds of offenders committing different types of offences, a pool of designated POs would be appointed to provide focused, intensive and specific services for young drug offenders in this pilot project.

8.28 These POs should implement the rehabilitation process by working closely with NGOs such as the Counselling Centres for Psychotropic Substance Abusers (CCPSAs) and Drug Treatment and Rehabilitation Centres (DTRCs) in tailor-making programmes specifically for individual drug offenders. The pilot project, as compared to the existing practice of probation service, should bring more targeted services as follows –

Items	Existing Probation System	Pilot Project
Goals and tasks	Determined by POs on an individual case basis	Clear specific objectives
Statutory supervision	Reporting session at least once a month	Closer monitoring, more frequent reporting sessions and urine tests
Training and treatment	Relevant NGOs are engaged for the provision of programmes	Programmes are specially designed to meet the specific needs and risks of the probationer, including self-learning packages for understanding the detrimental consequences of drug abuse and availability of therapeutic groups
Measuring performance and progress	Based on the POs' professional assessment	More objective indicators to facilitate the POs' professional assessment
Incentives and sanctions	Probationers have to complete the whole supervision period. They will be brought before the court for warning or extension of probation order in case of unsatisfactory performance	More incentives and sanctions, in terms of frequency of supervision sessions and urine tests, and curfew requirement. Subject to the court's directive, earlier discharge of the probation order for rewarding good performance

Items	Existing Probation System	Pilot Project
Judicial monitoring	Progress reports are made following the court's directives or on recommendation by POs on an individual case basis	More involvement of the court in the rehabilitation process, including the court seeking more progress reports on the probationer's performance and giving directions as appropriate
Community involvement	POs as case managers to tap community resources for the rehabilitation of the probationers	POs will continue to serve as case managers and will develop closer partnership with service providers and stakeholders in the community to tailor-make programmes for individual probationers

(c) Stakeholders' collaboration

8.29 The implementation and success of the pilot project shall hinge on the collaboration of key stakeholders through multi-disciplinary efforts.

8.30 Magistrates of the designated court shall play an important sentencing role in putting appropriate drug offenders under the pilot project. They also need to consider more frequent progress reports and preside over more frequent hearings to monitor closely the probationers' performance.

8.31 Closer and more effective monitoring of the drug abuse problems of the young offenders would require more frequent urine tests and early availability of the results. The Government Chemist will be relied on to provide more urinalysis services and produce the results within a shorter timeframe.

8.32 Last but not the least, POs should work in closer collaboration with service providers such as CCPSAs, SACs and DTRCs which provide community-based counselling, medical intervention and residential drug treatment and rehabilitation programmes respectively.

(d) Evaluation

8.33 Performance measurements should be drawn up to compare the cases involving young drug offenders placed under the pilot project and cases under the existing PO programme in other Magistracies.

8.34 Performance measurements may include the successful completion rate of the Probation Orders, the reconviction rate of cases within the probation period and one year after completion of the Probation Orders, surveys to gauge the behavioural, attitudinal and cognitive change of probationers from the perspectives of the POs, probationers and their significant others, and surveys to collect the feedback of probationers and their family members towards the programmes under the pilot project.

8.35 Subject to satisfactory outcome of the pilot project and availability of resources, the Administration may, in consultation with the Judiciary, consider continuation of the enhanced probation service with necessary fine-tuning and possible expansion of coverage in future.

(e) Implementation timetable

8.36 Taking into account the lead time required for the preparatory work, such as setting up the office for the designated PO team and developing treatment programmes and training packages, the pilot project may be launched in the latter half of 2009-10 financial year.