
REPORTS OF THE COURSE

GROUP 1

EFFECTIVE PREVENTION OF DRUG ABUSE AND ENHANCEMENT OF TREATMENT FOR DRUG ABUSERS IN THE PRE-SENTENCING STAGE

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I. INTRODUCTION

Worldwide, drug abuse is realized to be on the increase. Several reasons may be adduced for this. In the majority of our countries, drug abusers are convicted without much consideration to their treatment. Current research knowledge from some countries namely UK, Canada, Thailand, USA and Australia strongly indicate that pre-sentencing treatment is very successful in reducing recidivism and assuring rehabilitation of the abuser. Pre-sentencing treatment is given before sentencing to all drug abusers who come in contact with the criminal justice system of these countries. It is designed to detoxify, rehabilitate and afford reintegration of drug abusers into society.

The legal position of some participating countries however is that drug abusers are criminals and should only be punished. This position is accepted by the group and will be discussed in our workshop.

II. CURRENT SITUATION OF DRUG ABUSE AND MAJOR PROBLEMS

A. Current Situation of Drug Abuse: Sanctions by the CJS, Major Illicit Drug Trends and High-risk Population

Each country has respective laws against drugs. According to those laws, in almost all countries both self-use and possession of drugs are punished, but in El Salvador self-use of all drugs is unpunished.

The drugs that are abused vary from country to country. In Malaysia, Maldives, Bangladesh and Indonesia, heroin is the most abused. Ghana and El Salvador have cannabis, Japan has methamphetamine and Bhutan has dendrite (adhesive glue), as the most abused drugs.

The younger generation is thought to be the highest risk population in all our countries.

However, the unemployed are also thought to constitute quite a high-risk group.

B. Available Programmes for Prevention

Each country has some programmes for prevention, enlightenment programmes and educational programmes in the community or school by the government or NGOs.

In most countries, the relevant authorities conduct public relations activities to enhance awareness of the dangers and harmfulness of drug abuse among the general public in cooperation with NGOs. In addition, to prevent juvenile drug abuse, special education programmes are implemented in elementary schools, junior and senior high schools and in some countries the police also cooperate in such programmes.

C. Available Programmes for the Treatment of Drug Abusers in the Pre-sentencing Stage

Almost all countries do not have such programmes, but some participant nations have the following treatment programmes in the pre-sentencing stage.

Japan has a rather unique system, whereas it has no treatment for adult offenders, it has a treatment schedule for juveniles. This programme is made available by the family court probation officer and the medical officer in the pre-hearing stage.

In criminal cases involving adults, a Non Profit Organization (Asia-Pacific Addiction Research Institute) manages a recovery-training programme for the prevention of drug abuse for defendants released on bail.

Malaysia has a pre-sentencing treatment programme under the Drug Dependents (Treatment and Rehabilitation) Act, enacted in 1983.

Drug dependants treated under the act are not regarded as offenders. Upon being medically certified as drug dependants, they are required to undergo compulsory treatment and rehabilitation at a drug rehabilitation centre independent of the offence they may have committed.

D. Major Problems in Prevention and Treatment of Drug Abusers in this Stage

1. Prevention

Each country has similar problems with prevention programmes such as the lack of a monitoring evaluation system to estimate the result of those programmes. Besides, some participant countries face the problem of low literacy rates among their population, and as a result, a large majority are unable to appreciate the full impact of drug prevention programmes. This has also, in a way, failed to enhance voluntary participation in community-based drug prevention programmes.

2. Treatment

Most of the countries do not have any treatment programme at the pre-sentencing stage.

But, if this kind of programme was implemented, the greatest obstacles are deeply related to the following matters:

- (i) The general perception that drug abusers are criminals
It is necessary to change this particular point of view, in order to successfully implement reintegration and rehabilitation treatments with the cooperation of the community.
- (ii) Updated database
Without accurate information and statistics, it is impossible to adopt effective measures and appropriate treatment.
- (iii) The issue of presumption of innocence vis-à-vis the imposition of a pre-sentencing treatment regime
There is a fear that subjecting the arrestee to this kind of programme may prejudice his/her defence in the criminal proceedings, which he/she is later subjected to.
- (iv) It is also important to discuss whether these pre-sentencing programmes should be compulsory or voluntary.
- (v) Coordination of related authorities
Such as government institutions, NGO's and non-profit organizations.
- (vi) Lack of funds and human resources in implementing a pre-sentencing treatment and rehabilitation framework
Some countries face financial constraints and lack of expertise required in carrying out such pre-sentencing treatments.
- (vii) Law amendment
Legal basis is indispensable for the implementation of any programme.

As the problems listed in the above 6 and 7 are beyond the group's capacity, they will not be discussed as separate problems.

III. POSSIBLE MEASURES FOR ENHANCING EFFECTIVE TREATMENT AND PREVENTION FOR DRUG ABUSERS

A. Treatment

1. Necessity of a Pre-sentencing Treatment Programme

Issues:

- (i) Whether drug abusers should be regarded as patients or ordinary offenders
- (ii) Whether drug abusers ought to be offered medical treatment or punished
- (iii) Whether drug abuse / use ought to be criminalized or otherwise

It was generally felt that these issues are closely connected to each other and was, therefore, necessary to discuss them together. In the ensuing discussion, some participants reflected on their countries' position and put up a strong case that it is necessary to criminalize drug consumption. The argument being that drug consumption is harmful not only to the abuser himself but also to family members as well; and this phenomenon ultimately disrupts the peace and harmony of society. There is a fear that decriminalization of drug use would be perceived as giving an official stamp of approval to the misuse of drugs which in turn would engender an uncontrollable surge in the number of drug users. This argument is obviously premised upon the precept that criminalizing drug use deters people from taking drugs. It was also noted that in some countries drug consumption is prohibited by the religion embraced by the common majority of the population. The national law of these countries would often be premised upon doctrines drawn from religious edicts, which consider drug consumption a sin. It was, therefore, inconceivable for these countries to legislate a rule that runs contrary to their religious belief. For these reasons, these countries viewed the decriminalization of drug use as an issue that could not be compromised.

124TH INTERNATIONAL TRAINING COURSE
REPORTS OF THE COURSE

In contradistinction, some participants felt that drug abusers are distinct from common criminals because they suffer from a medical condition. They were of the view that these people ought to be treated differently because they require urgent medical treatment more than they needed to be punished. Denying drug dependants the requisite treatment is therefore not an exercise taken in the best interest and welfare of these individuals. More importantly, it was felt that incarcerating drug abusers would not achieve the desired effect of deterring them from further abusing drugs, or curb recidivism. Notice was taken of the fact that some countries, particularly the developed ones, do not criminalize drug consumption.

At this juncture, the views of the visiting expert on this issue as well as the rationale for the decriminalization of drug use were sought. The visiting expert explained that while it has been a general trend for most countries to impose severe criminal sanctions to deter people from using drugs, experience shows that the rate of drug use is still high even when harsh punishments are imposed. He is of the opinion that the belief that harsh criminal sanctions do effectively deter drug abuse is not adequately proven. Studies have shown that punishment does not seem to have a positive effect on offenders. Drug use, he says, is linked to the person's criminal behaviour. It is that behaviour that needs to be dealt with. Drug abusers, apart from abusing drugs, generally would have also committed other offences. One therefore needs to deal with the criminal behaviour in order to reduce the number of crimes committed. And, giving timely treatment to these offenders would be one of the ways of dealing with that criminal behaviour.

Further views were offered which postulated that a stringent legislative regime may still fail to achieve its desired effect if enforcement of these laws is lacking or hampered by the want of human resources. It was felt that these are policy considerations of which further ventures in the discussion would undoubtedly prove unfruitful. In short, strict laws may not be the sole determinant in bringing about the necessary deterrent effect.

In resolving this extremely difficult and complex issue, the meeting recognized the diversity of circumstances that prevails in each country. Some jurisdictions have found it feasible and efficient to decriminalize drug abuse while others have found it imperative to consider it as a criminal offence. As the problems faced by each country vary according to its own individual needs, there is clearly no panacea to be offered here. Therefore, the question as to whether the misuse of drugs ought to be criminalized or otherwise would be best left to the sovereign decision of the respective countries. It was also resolved that the question as to whether drug abusers ought to be given the necessary medical treatment instead of merely being incarcerated should be decided by the government of the respective countries. In conclusion the group recognizes the need to give medical treatment to drug abusers in addition to or in place of punishment.

(iv) The Necessity of an Updated Database

As this issue is highly technical in nature, the views of the visiting expert were sought. According to the visiting expert, research carried out in Canada¹ on offenders showed that there is a strong relationship between crimes and, alcohol and drug abuse. The results showed that more than 50% of those who commit crimes have been using drugs or alcohol. These results were consistent with similar research carried out in the US and UK where approximately 50% to 60% of the offenders were found to be using drugs. He clarified that, generally, drug abuse gives rise to three different types of crimes. First, crimes of violence that are associated with the drug trade. Second, drug trafficking and possession, which are, by themselves, prohibited. Third, acquisitive crimes, which are committed to finance the offenders' drug taking, habit. The first and second categories are punishable by law. The third, according to him, is problematic because it is not the money that drives them to commit crimes. In comparison with the first and second categories, this type of offender needs to be dealt with in a different way. Following this, one needs to know who has been committing crimes and what kind of crimes were being committed under the influence of or associated with drug use. This is where a database would not only be useful but necessary. It was further explained that for this purpose it was not necessary to have a national database. To develop a system, a regional database would suffice. For example, Japan could use a particular prefecture to conduct the research. The results could then be used to argue whether a pre-sentencing treatment regime ought to be implemented or otherwise. The working group concurred with and adopted the views of the visiting expert.

¹ Grant, Brian A. Substance Abuse in the Canadian Correctional Context. VE Lecture presented at the 124 International Training Course at UNAFEI. 26 May 2003. Fuchu, Tokyo.

2. Legal Problems – Presumption of Innocence

Some concerns were felt regarding the imposition of a pre-sentencing treatment regime in that it may impinge on the time honoured and universally recognized rule that a man is presumed innocent until proven guilty. This is relevant, particularly in countries which criminalize drug use. There was a real concern that submission by the arrestee to pre-sentencing treatment for drug addiction before trial could be perceived as an admission to a charge of drug abuse and may therefore prejudice his defence. In response to this, several solutions were canvassed to overcome the problem. Some of the suggested measures, which may be seen as a palliative to this predicament, are:

- a) The introduction of a voluntary pre-sentencing treatment scheme as opposed to one that is compulsory; or
- b) Excluding from the criminal proceedings any evidence pertaining to the pre-sentencing treatment.

Recognizing that the interests at stake here are diametrically opposed, an opinion was given to the effect that if the benefits that can be derived from a pre-sentencing treatment regime outweigh the prejudice that an arrestee may suffer from the receipt of such treatment, such a scheme ought to be given favourable consideration. In any event, it was agreed that it was inappropriate for this issue to be discussed at length here. Rather, it was felt that it would be more convenient for it to be addressed at the time when the structure of the proposed treatment scheme was being discussed. It was also agreed that the treatment scheme proposed must take into account the rule on presumption of innocence.

3. Forms of Pre-sentencing Treatment Programmes that may be Introduced

- (i) *The target of the programme – should it be confined strictly to drug offenders or to include other offenders, who are drug abusers, as well?*

This was by far the most difficult and controversial issue. Some participants were of the opinion that the treatment programme should be confined to those who have committed drug offences only. Others felt that limiting the programme to drug offences only would render the programme as being too restrictive in scope. There was a concern that the effectiveness of the programme would be undermined if, regardless of the offence committed, offenders having a drug problem were not treated at an early stage. Some views were expressed that it would be difficult to regard those who have committed serious offences such as rape, robbery and murder as patients merely because they happen to be drug users as well. Additionally, questions were raised as to how these offences were to be dealt with in accordance with the criminal procedure if pre-sentencing treatment was given to the offenders. There was no consensus on this issue and neither was there any solution in sight.

- (ii) *Voluntary or compulsory treatment scheme: whether consent to treatment by the offender is required*

The question here was which of these alternatives was the better and more appropriate choice. The working group was again equally divided in its deliberation on this issue. Some participants were in favour of a voluntary scheme because it would not impinge on the rule of presumption of innocence. It was also felt that making it compulsory may violate the arrestee's personal rights. Some participants, on the other hand, favoured a compulsory regime because a voluntary scheme may not be as effective as one that is compulsory. Drug offenders could refuse treatment and the authorities would be powerless to do anything to remedy the situation. In the end, the objective of the programme would not be achieved. To overcome the issue of presumption of innocence, it was also suggested that the treatment programme be placed outside the criminal justice system. By separating the treatment programme from the criminal justice system, a much more effective result would be achieved without encroachment into the rule of presumption of innocence.

The working group heard the views of the visiting expert on the programme that is currently implemented in Thailand². According to him, the programme is compulsory rather than voluntary. Prosecution of the drug offence is suspended temporarily while the arrestee undergoes treatment. Prosecution will resume if the arrestee refuses treatment or if he fails to be successfully treated due to a lack of cooperation on his part. The progress and condition of the arrestee during treatment are monitored by a sub-committee who makes its recommendation to the public prosecutor on whether the arrestee ought to be

² Sungkawan, Decha. Thai Community Based Correctional Programmes for Narcotics Addicts in Response to the 2002 Rehabilitation Act: A System Approach. VE Lecture presented at the 124 International Training Course at UNAFEI 28 May 2003. Fuchu, Tokyo.

124TH INTERNATIONAL TRAINING COURSE
REPORTS OF THE COURSE

prosecuted for the drug offence. It was further explained that this programme is limited in that it only applies to drug offences. Some participants felt that this system is not appropriate for their jurisdiction because the public prosecutor has no power to suspend prosecution.

In conclusion, this issue could not be resolved one-way or the other. It was therefore suggested and agreed that a voluntary scheme could be implemented in countries that criminalize drug use, and the choice between a compulsory and a voluntary scheme would be available in countries that do not criminalize drug use. However, should a compulsory scheme be implemented, due process must be taken into account.

(iii) The agency responsible for the management of the programme

Various views were heard on the different types of agencies or institutions that are capable of handling such a task. Examples of which are the: Narcotic Board, health department, correctional institutions, national agency responsible for the prevention and treatment of drug abusers or a non-profit organization. The meetings heard the views of some participants where post sentencing treatment is currently being successfully carried out in their countries by the national drug prevention agency and it was felt that this agency could also be capable of managing the pre-sentencing treatment. Criminal justice agencies such as the police and prosecutors may be involved effectively in some way in pre-sentencing treatment, such as referring offenders to treatment or in reviewing their progress, etc. However, as regards the possibility of the police or prosecutors being responsible for the management of a particular treatment programme, the meeting was unanimous in its opinion that such an approach would be inappropriate. Not only would they lack the necessary manpower, skill, knowledge or capability, there would also be a conflict of interests. Relying on law enforcement officers to carry out treatment programmes would undoubtedly hinder the success of the treatment programme.

An ancillary issue cropped up in the above discussion. There was a concern as to whether information obtained by the institution responsible for such a treatment programme could be made available to the public and law enforcement agencies. Many views were heard and most favoured the disclosure of information. It was, however, suggested that there was a need to distinguish between information that could be made public and information that could not be made public. General information such as the planning, execution, success and costs of such a programme, as well as the scientific information derived from the implementation of the programme ought to be made available to the public for the purpose of public accountability and to further the progress of society. Private information that relates to the arrestees, on the other hand, must be safeguarded in order to protect the integrity of the programme and to ensure its success. Additionally, it will also eradicate any fear of invasion of privacy.

(iv) Whether such treatment should be accepted as a mitigating factor

The meeting was again divided in its deliberation as to whether pre-sentencing treatment should be accepted by the court as a mitigating factor when the offender is found guilty and sentenced. Some were of the view that it could only be a mitigating factor if the offence committed was a drug related offence while others felt that it can be a mitigating factor regardless of the crime committed as it shows that, since his arrest, the offender has been repentant and cooperative by reacting positively to the pre-sentencing treatment.

A further issue was discussed as to whether the court could dismiss the charge if the offender had submitted himself to pre-sentencing treatment. However, some participants felt that this suggestion was overtly radical as certain offences like drug trafficking and possession are too serious an offence to merit dismissal merely because the offender had received treatment. Often in such cases the prosecution of the offence would take precedence as opposed to dismissal. A dismissal would be possible only in cases where the charge is for drug abuse.

4. Drug Treatment and Testing Orders (DTTO)³ and the Drug Court⁴

As these two programmes were somewhat similar, in that they are court-supervised programmes, the working group discussed them simultaneously. Some participants see these programmes as an attractive option as it offers a way out of the presumption of innocence dilemma. Additionally, if the arrest of the offender culminates with a successful completion of treatment rather than mere punishment, there is a strong motivation factor for the arrestee to follow the treatment programme. It was also felt that having the drug court system safeguards the arrestee's interest in that the decision to subject him to treatment is given by the court as opposed to that of a law enforcement officer. This ensures impartiality and transparency. Concerns, however, about the suitability of the use of the drug court system were also raised. It was recognized that these programmes generally require the court to decide on the appropriate treatment to be given to the drug user and to, thereafter, monitor his progress and response to the treatment. In short, the drug court is obliged to administer and supervise the treatment of the offenders. Some participants felt that judges, generally, lack the necessary skill, knowledge and training to juggle between inquiring into the arrestee's offence and, treatment dispensation and supervision. Others, however, do not view this as an obstacle as the court could always be guided by expert evidence on technical matters or judges could receive short term specialized training. There was another concern that the disposal of cases by the drug court must be speedy otherwise the objective of giving early intervention would be defeated.

Further, an opinion was expressed to the effect that the role of the drug court is limited in that it was not created to deal with all kinds of offences. It is basically designed to deal only with cases where crimes were committed as a result of the offenders' drug dependency; for example, acquisitive crimes which are committed to obtain money to buy drugs. The drug court can only deal with less serious offences; because if the offender undergoes successful treatment, there is no prosecution for the offence committed. The system is designed to deal with the drug addiction problem faced by the man in the street as opposed to serious or organized crimes. Drug users who commit serious offences would have to be dealt with under the usual penal laws outside the drug court system. Notice was also taken of the fact that under the DTTO programme the arrestee must consent to the treatment. This is another limitation in the scope of that programme.

Further concerns were raised as to whether the drug court could continue to inquire into the offence committed by the drug user if he fails in the treatment programme. Would he be prejudiced by the fact that the same court had ordered him to undergo treatment earlier? Has he abandoned his right to a fair trial by submitting to pre-sentencing treatment?

Several suggestions were offered to overcome these jurisprudential problems. First, it was suggested that the court should proceed to inquire into the offence and subject him to treatment if he is found guilty and convicted for the offence. He will not be sentenced if he undergoes successful treatment. Second, the arrestee would be tried by the normal criminal court should the treatment programme fail to produce any positive results.

In addition to these schemes, the Arrest Referral⁵ of the United Kingdom and Australian Police Diversion Programme⁶ were looked at by the group, and the group realized that treatment may be introduced in various stages of the Criminal Justice system.

³ Sadiq, Shereen. A Brief Overview of Drug Interventions in the Criminal Justice System (England and Wales): With a Focus on Specific Interventions Provided at Arrest-Arrest Referral and as a Community Sentence- Drug Treatment and Testing Orders. VE Lecture presented at the 124 International Training Course at UNAFEI. 15 May, 2003. Fuchu, Tokyo.

⁴ Gebelein, Richard S. The Rebirth of Rehabilitation: Promise and Perils of Drug Courts Sentencing & Corrections. U.S. Department of Justice. May 2000.

⁵ Sadiq, see note 3.

⁶ Vaughn, Stephan. Australian Diversionary Programmes – An Alternative to Imprisonment for Drug and Alcohol Offenders. Paper presented at the 121st International Training Course at UNAFEI. June 2002. Fuchu, Tokyo.

124TH INTERNATIONAL TRAINING COURSE
REPORTS OF THE COURSE

B. Prevention

1. Problems Relating to the Implementation of Drug Education Programmes, Particularly those in Relation to the Coordination and Cooperation between Respective Governmental Agencies

There was a general consensus that drug education programmes are absolutely necessary to combat drug abuse and since time was short the issue was not discussed further.

2. The Failure of Drug Education Programmes to Create an Impact on High Risk Groups

This issue was raised as some participants felt that the existing drug prevention programmes are not achieving the desired results with the high risk groups such as juveniles and the unemployed. There was thus a need to reappraise the strategy that is currently employed.

In dealing with the former, the following suggestions were offered:

- Implementing compulsory drug education programmes in schools;
- Getting people from the community and non-governmental agencies to speak about drugs in schools, especially rehabilitated drug offenders who can talk about their past experiences with drugs;
- Screening of documentary films in schools to show the debilitating effects of drugs;
- Holding drug prevention activities in places of entertainment; and
- Conducting advertising campaigns on prevention of drug abuse.

As for the unemployed, it was recognized that this group of people usually lacks the necessary skills and have very little education. It was therefore suggested that vocational training be given to enable them to find gainful employment easily. By so doing the risk of exposure to drugs would be reduced. The group also heard how community based education programmes were successfully carried out in some countries while it has also failed in others because drugs in these countries were cheap and easily available.

3. Harm Reduction

This was raised as an additional issue for discussion. In line with what the visiting experts have touched on in their lectures, questions were posed as to whether it was necessary to distribute syringes or condoms to drug dependants in order to reduce the risk of the spread of HIV or HCV among them. There was no unanimity in the deliberation. Although the intentions are noteworthy, some participants felt that this would not be possible in countries that criminalize drug use. First, there would be a strong likelihood of a public outcry and, second, it would be a serious contradiction for the authorities to give out free syringes to drug users on one hand and to prosecute them on the other. Some participants, however, felt that no such contradiction exists and that the reduction of harm is done for the good of society.

IV. CONCLUSION

Most of our countries do not have treatment programmes for drug abusers at the pre-sentencing stage. Also, there are considerable differences regarding the ways in handling drug abuse problems, i.e. whether drug abuse should be criminalized or decriminalized, therefore, we have found many difficulties and problems concerning the introduction of such programmes without contradicting the current legal framework of the respective countries. Nonetheless, we have made our best efforts to explore any possible future programmes at the pre-sentencing stage for the purpose of rehabilitation and reintegration of drug abusers, creating a safer community and reducing the caseloads of criminal justice agencies.

We then reach the general consensus as follows:

1. It is necessary to introduce pre-sentencing treatment in dealing with drug abusers in the interests of criminal justice and our society.
2. It is desirable that the implementation of the pre-sentencing treatment programme should be in accordance with each country's legal framework, social background and so on.

3. In the introduction of any pre-sentencing treatment, the following factors should be considered:

- (i) Presumption of innocence.
- (ii) The target of the treatment: persons who commit drug abuse. However, countries may wish to consider the possibility of enlarging the scope of the programme by encompassing drug abusers who commit other offences under the influence of drugs or for the purpose of obtaining drugs.
- (iii) Necessity of consent: A voluntary scheme could be implemented in countries that criminalize drug use and a compulsory scheme would be a better option in countries that do not criminalize drug use, the choice between a compulsory and a voluntary scheme would be available in countries, which do not criminalize drug use. However, should a compulsory scheme be implemented, due process must be taken into account.
- (iv) Agencies responsible for the management of the programme: Criminal justice agencies may be involved in some way in pre-sentencing treatment. However since most criminal justice agencies lack the necessary manpower, skill and knowledge in administering effective treatment, it is necessary to rely on other agencies, e.g. Narcotic Boards, Health Ministries, Interior Ministries and NGOs for the execution of the programme.
- (v) Coordination: it is indispensable to establish and maintain coordination among treatment agencies and criminal justice agencies.
- (vi) Effect of treatment: Successful completion of treatment may result in non-prosecution or dismissal of charge, or be taken as a mitigating factor if a charge is for drug abuse only.
- (vii) Updated database.

4. Drug education programmes

It was unanimously agreed that drug education programmes are absolutely necessary. In order to enhance existing drug prevention programmes, the following points are suggested:

- (i) Implementing compulsory drug education programmes in schools;
- (ii) Getting people from the community and non-governmental agencies to speak about the harmful effects of drugs in schools, especially rehabilitated drug offenders who can talk about their past experiences with drugs;
- (iii) Screening of documentary films in schools to show the debilitating effects of drugs;
- (iv) Holding drug prevention activities in places of entertainment; and
- (v) Conducting advertisement campaigns on prevention of drug abuse.