

Commission Urging Expansion of Drug Courts to Repeat Offenders

By Mary Pat Gallagher

Drug courts are a success in New Jersey, and a state commission wants to improve the success rate by expanding eligibility for admission to the program.

In a report released Friday, the Commission to Review Criminal Sentencing will recommend that drug courts — which send nonviolent, low-level drug offenders into treatment rather than jail — be open to defendants with longer rap sheets.

Eligibility is restricted at present to third-degree offenders, including those with a single, prior conviction, so long as it is not a first- or second-degree.

The commission will recommend allowing admission of defendants with more than one prior, third-degree conviction, subject to prosecutorial veto.

The rationale for the proposal is that many repeat offenders could benefit from treatment and that urban and minority defendants are disproportionately affected by the current limit.

Other recommendations would add flexibility, which commission members say is needed because one size does not fit all defendants. Among the suggestions:

- Allowing participants to complete the required six months of treatment on an out-patient basis, rather than in a residential facility.

- Discharging participants as early as

two years into the five-year program if they complete treatment, do not violate conditions in the preceding 12 months and are deemed unlikely to relapse or commit another offense.

- Allowing judges to reduce, on account of "extreme financial hardship," the mandatory penalties imposed under the Drug Enforcement and Demand Reduction law, N.J.S.A. 2C:35-15. The penalties range from \$750 to \$3,000 depending on the degree of the offense, with \$1,000 for a third-degree crime.

- Removing a barrier to participation in the Intensive Supervision Program, which provides a nonprison option for some crimes. At present, defendants who violate drug court terms are barred forever from ISP. The revision would exclude them from ISP only for the instant offense, not future crimes.

The proposed amendments would be made to the special probation statute, N.J.S.A. 2C:35-14, which sets eligibility criteria for many drug court participants.

Commission chair Barnett Hoffman says "drug court works" but needs improvement. For example, "not everyone needs" the mandatory six months of residential treatment or five-year program.

The commission's recommendations "tailor the program to give the drug court team more discretion," says Hoffman, a retired Superior Court judge now of counsel with Borrus Goldin Foley Vignuolo

Hyman Stahl in North Brunswick.

Hoffmann emphasizes that the recommendations do not mean the commission is "being soft on crime," noting that Attorney General Stuart Rabner and the county prosecutors' association are represented.

The issue of drug court eligibility for defendants with more than one prior, third-degree offense is before the state Supreme Court in *State v. Meyer*, A-121-05, argued on March 20.

The appeal challenges the decision by Warren County Superior Court Judge John Pursel to allow Jason Meyer into the program even though he had more than two, third-degree convictions. The Appellate Division affirmed Pursel.

In 2005, another appeals panel took a more restrictive view of drug court eligibility, in *State v. Matthews*, 378 N.J. Super. 396, but the Supreme Court denied certification.

The unanimous approval of the recommendations by the commission, whose members include a representative of the Court, Appellate Division Judge Edwin Stern, indicate the justices might be inclined to affirm in *Meyer*.

Drug courts began in selected counties in 1996 and spread statewide in 2004. As of March of this year, 2,768 defendants were enrolled, according to the Administrative Office of the Courts.

Also planned for release on May 4 is a supplemental report by the commission on school zone laws, which enhance penalties for drug dealing within 1,000 feet of a school.

The report follows up on the commission's Dec. 7, 2005, report urging that the zones be reduced to 200 feet on the grounds that because they are ineffective

in urban areas and send disproportionately large numbers of minorities to jail.

The supplemental report reiterates that reforms are needed and notes the Legislature's lack of action.

A bill to shrink the school zones, A-4465, made it out of committee in late 2005, shortly before the legislative session ended. The bill would also have shrunk the current 500-foot zones around public buildings to 200 feet.

Sen. Bernard Kenny Jr., D-Hudson, a commission member, introduced a new bill, S-278, in January 2006 but it has not been voted out of the Senate Judiciary Committee.

The commission hopes the supplemental report will spur action on S-278.

"There was unanimous concern that the Legislature has not heeded the commission's recommendations," says Deputy Attorney General Bennett Barlyn, the commission's executive director.

Since the first school zone report, data have continued to accumulate showing that "the current law doesn't do what the Legislature intended, to protect children," says Barlyn.

Another pending bill, A-1784, moves in the opposite direction. It would expand drug-free zones around public housing facilities, public parks and other public buildings from 500 to 1,000 feet.

The Legislature created the commission in 2004 to review the fairness and proportionality of the state's criminal sentencing statutes.

The drug court recommendations were developed by a group headed by Public Defender Yvonne Smith Segars. It included Burlington County Prosecutor Robert Bernardi, representing the county prosecutors' association. ■

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New push to expand drug courts

By Dana E. Sullivan

Getting a service that even at half-price produces far better results seems like too good a bargain to pass up.

That's the logic behind a new proposal by the state Commission to Review Criminal Sentencing, which says expanding the much-acclaimed drug court program will save taxpayers lots of money and ultimately keep more offenders from returning to a life of crime.

Specifically, the commission is asking the legislature to amend the special probation law to allow more offenders into the program, which diverts a relatively small number of defendants into treatment facilities rather than sending them to prison.

It was just a few years ago that the legislature provided sufficient funds for drug courts to operate in every county. Now the goal is to go even further by making more defendants eligible.

"It currently costs \$37, 223 each year to imprison one inmate," the commission said in its latest report last week, while "the placement of one drug court participant in a residential treatment facility for one year is \$19,800."

Twenty percent of participants receive intensive outpatient treatment instead, which costs \$10,300 a year.

The result? Far lower recidivism rates among drug court "graduates" -9 percent vs. 53 percent for inmates released from prisons.

The sentencing commission is asking that some statutory rules barring people with certain prior convictions from participation be lifted.

"The experience of drug court judges, prosecutors and public defenders is that numerous offenders who need and could benefit from treatment, especially those charged with third-degree offenses, are barred by the limitation regarding two or more prior convictions," the commission said.

"In addition," the panel noted, "this statutory provision appears to have a disproportionately negative impact on urban and minority offenders."

Judicial flexibility

The commissioners also seek flexibility for judges in deciding whether those sent to residential programs can move to outpatient treatment in less than the mandatory minimum six months.

Drug courts, first begun on a limited basis in 1996, are widely hailed for diverting from prison qualified defendants whose principal problem is their addiction.

After finally getting funding from the legislature in 2002, the Administrative Office of the Courts standardized the program statewide.

The commission noted that drug incarcerations have tripled since passage of the Comprehensive Drug Reform Act of 1987 - from 11 percent of the prison population to 32 percent - compared to the national average of 20 percent.

Also, 73 percent of those serving drug sentences are black, the report noted.

While the draft amendment proposed by the commission has yet to be filed with the legislature, the recommendation has good odds of passage, considering it seems cost-effective.

The Administrative Office of the Courts (AOC), which over the years has proudly touted the program's successes, probably will support it as well.

While the proposal doesn't have the explicit endorsement of the New Jersey Supreme Court, staffers from the AOC and drug court judges provided background information and testimony to the commission during its year-long study.

Also, Appellate Division Judge Edwin H. Stern is a member of the commission as the chief justice's designee, and commission staff noted the members voted unanimously to support the recommendations.