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REFLECTIONS ON 2006

The Drug Court is a very different environment for the judge, the lawyers, and the offenders who have been given an opportunity to participate. Each week participants meet with the judge and the Drug Court team, and those meetings often involve discussions about housing, Centrelink, family pressures and drug use. Honesty, trust, even “grit and determination” are constantly discussed. Participants who have been successful in every aspect of their program during that week will receive applause for that success. Such an acknowledgement of success may well be the first round of applause they have ever received.

This court steers offenders to stunning rehabilitative success. The court also sees the inevitable reality of tragic failure to adapt, change and overcome drug addiction. The court team comes to know the participants, their partners and even their children. By knowing of their detailed personal circumstances, the treatment and case management plans can be reviewed and amended so as to maximize their chances of success.

Worldwide success

Research across the world is now firmly recognising the success of Drug Court programs. A meta analysis of evaluations of Drug Treatment Courts in different jurisdictions has been undertaken by the Department of Justice in Canada, whereby the findings of 54 separate and reliable evaluations have been combined. The principal finding of the meta analysis was that Drug Treatment Courts are an effective method of reducing re-offending, and, very importantly, the longer the study period, the greater the gap in the re-offending rate between the offenders who have received a Drug Treatment Court opportunity, and the control group.

Key statistical measures

The first measure of the Drug Court program each year is as to whether all participants survived. There was no loss of life in 2006, and the last drug-related participant death was in May 2004. For such a grim statistic to be a measure of the program highlights the troubled nature of the participants with whom we work.

Acceptance rate: It is pleasing to report a significant improvement in the rate of acceptance onto the program. A ballot is conducted each week to allocate the places available, however inevitably some participants referred by the District or Local Court and successful in the ballot are later returned to the original sentencing court because they are either ineligible, unsuitable or perhaps not facing a full-time custodial sentence for the offences referred. The number of persons who were successful in the program ballot but subsequently returned to the originating court dropped in 2006 from 98 to 80, or by 18%.

Advancement on program: There are three phases of a Drug Court program, and the rate of advancement to higher phases is a key indicator of program success. The number of participants progressing to Phase 2 and Phase 3 increased by 7% to 166 in 2006. This rate of advancement on program has increased 30% in two years.

Program review: The Drug Court has the statutory power to terminate a participant's program if the participant is unlikely to make any further progress on the program, or if his or her continued participation on the program poses too great a risk of re-offending. The Court can use a formal 'Potential to Progress' hearing as a program management tool, to encourage a participant to increase his or her application to the program, or face an immediate return to custody

During 2006 the number of 'Potential to Progress' hearings increased substantially, from 24 in 2005 to 44 in 2006. Despite this increase, the proportion of these hearings resulting in termination remained stable (64% in 2005, 66% in 2006).

This significant change is indicative of how the Drug Court has continually sought to implement evidence-based improvements to the program, as may be suggested through quality research. The NSW Bureau of Crime Statistics and Research has published a number of evaluations on aspects of the Drug Court, and in October 2005 the Bureau published work on "Early-phase predictors of subsequent program compliance and offending among NSW Adult Drug Court participants".¹

The study found that Drug Court participants who miss appointments, test positive to both opiates and psycho-stimulants or abscond in the first three months of the program are much more likely to subsequently re-offend than those who do not. Guided by these findings, the Court has increased its response to the relatively minor infraction of missing appointments, while being more likely to consider major program plan changes or even termination for offenders who are absconding or continuing to use combinations of illicit drugs.

The BOCSAR research, as well as the accumulated experience of all those associated with the program, has given the Court increased confidence in identifying persons unlikely to complete the program and to reallocate their program place to someone who may make better use of it. While acknowledging that such decisions can be difficult, and can result in legal and clinical arguments regarding individuals facing a return to gaol, the community will overall benefit from increased numbers of program participants and the successful completion of programs by participants.

Non-custodial outcomes: There was an increase in the number of participants returned to full-time gaol when their Drug Court program came to an end. A total of 155 programs were completed in 2006, with 93 participants being returned to gaol, and 62 receiving a non-custodial sentence at the conclusion of their program.

Whilst the rate of non-custodial outcomes dropped from 49% to 40% this year, those who received non-custodial sentences were more likely to have demonstrated significant accomplishments as measured against the Court's criteria for program graduation and completion. A total of 42 of the 62 receiving a non-custodial result either graduated (34) or received a certificate of substantial achievement (8).

As previously noted, the Court has an increased emphasis on the ongoing and timely review of the progress of participants, with a substantial increase in the number of participants terminated in 2006 for having limited potential to progress. As such, the

¹ By Karen Freeman and Neil Donnelly in Crime and Justice Bulletin Number 88

number of finalised programs increased in 2006, and the levels of either considerable success, or return to gaol, both increased.

Aboriginal and Torres Strait Islander participation

There is widespread concern in the community regarding the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system and in our gaols. Unfortunately there are a number of barriers to Aboriginal participation in Drug Court programs, including eligibility provisions in the Drug Court Act 1998, which can disproportionately serve to exclude Aboriginal offenders. A further barrier to program entry, which is faced by all referred offenders, is the ballot system used by the Court to allocate places on a Drug Court Program.

Offenders referred to the Drug Court outnumber the number of places available, so a weekly ballot is undertaken to choose the participants who will have an opportunity to be considered for a Drug Court program. The number of places available may vary from week to week, depending upon the current number of active participants. Unfortunately, Aboriginal offenders who would otherwise be eligible and appropriate for a Drug Court program may be excluded by being unsuccessful in the ballot.

The recognition of special needs, and addressing such needs is specifically authorised by section 21 of the *Anti Discrimination Act 1977*. After discussions with the Anti-Discrimination Board, the Drug Court amended the ballot arrangements to increase the opportunities for Aboriginal offenders to come to the Drug Court. This is achieved by increasing the number of program places available by one place for either male or female applicants (or both) if an Aboriginal offender of that gender has been referred to the Drug Court. The computer-generated random selection then allocates a minimum of one place to a male and female Aboriginal offender, or both, if such nominations are in the ballot.²

It is pleasing to report that a number of applicants identifying as Aboriginal or Torres Strait Islander have gained the opportunity of taking part in a Drug Court program by virtue of the amendment to the selection policy.

It is also pleasing to report that the court continues to have the assistance of a Support Worker, engaged with the co-operation and assistance of the Community Restorative Centre. The Support Worker assists all participants, and particularly Aboriginal participants, in complying with the intense and multiple demands of a Drug Court program.

Check List for referrals to the Drug Court

With the commencement of the Compulsory Drug Treatment Correctional Centre (CDTCC), the Drug Court now has two quite distinct programs to administer. The avenue for a participant to gain entry to a Drug Court program, or for a prisoner to gain the opportunity of entry into the CDTCC, are very different, and have some real complexities which must be addressed at the Courts which make the necessary referrals. To assist judges and magistrates in making accurate and timely referrals, the

² Drug Court Policy #12 "Selection of Participants"

Drug Court has developed a short referral checklist for each program, which has been provided to all relevant magistrates and judges, and is sent to new judicial officers upon their appointment.

Continuing Care Plans

The Drug Court is constantly striving to improve the outcomes achieved by participants, and one of the benefits for the team working in this environment is the opportunity to pursue changes and improvements to an innovative and constantly evolving program.

A feature of the Drug Court is the provision of a very structured supportive environment, and that environment assists in motivating participants as they progress through the program phases towards completion and graduation. Managing the transition from that high level of support and encouragement to full independence in the community after program completion provides a number of challenges.

An innovation of 2006 was the introduction of Continuing Care Plans, which are prepared by the Probation & Parole Officer and the participant's Area Health Service Counsellor. The Probation & Parole Officer concentrates on ensuring that there are proven arrangements as to satisfactory housing, employment or study, and that the participant's finances are in order. The Counsellor's contribution to the Continuing Care Plan addresses health needs, such as any ongoing medication, continuing counselling, and perhaps mental health arrangements.

The Continuing Care Plan concept arose directly from the Drug Court's Practitioners' Conference held in May, 2006 when Professor Ian Webster AO spoke of the developing concept in medicine of a "Chain of Care" whereby the transfer of the care of a patient from one medical practitioner or service to another is carefully followed up, so as to ensure the patient transfers to and engages with the new health professional or service.

Commitment and Compassion

The court team, the registry team, and our broader partners working in the field, have all provided magnificent support this year to a very disadvantaged, marginalised and sometimes quite difficult group of offenders. By working with patience and humour, even when confronted with apparently insoluble problems, all teams have striven and co-operated to give so many participants a genuine opportunity to make long-term changes in their lives.

It takes great character and commitment to go on giving 100% to a participant who is not necessarily easy to engage with, or who lacks many social skills. It is that very commitment which makes a Drug Court program different for our participants, and which, time and time again, sees them come to appreciate the respect and patience they are shown, and then start to engage with the supports of the program, contrary to even their own expectations.

J R Dive
Senior Judge
18 July 2007

Drug Court of NSW: Program summary

The Drug Court Act sets out the program's eligibility criteria. Offenders who are before a Local or District Court in the Western Sydney catchment area, who appear to meet these eligibility criteria, and who seek entry into the program, must be referred to the Drug Court for consideration.

Whenever there are more referred offenders than there are available program places, a weekly random selection ('ballot') process occurs to determine which applicant is assigned to each available place.

If selected, an offender is given a preliminary health screen by Justice Health and further investigations regarding the offender's eligibility are made. If considered potentially suitable, the offender must then undergo detoxification, where a detailed assessment of the individual's treatment needs is conducted and, where possible, a highly suitable treatment plan is formulated.

Offenders successful in the ballot may later be excluded from the Drug Court due to ineligibility, unwillingness to participate, or lack of a highly suitable treatment plan. In addition, the Drug Court will consider an offender's criminal history and background when assessing if it is appropriate for a person to enter a Drug Court program. A history of violence, sexual assault or dangerous conduct may prevent the Court from accepting a person.

Offenders who are referred to the Drug Court but do not enter the Drug Court Program are sent back to the referring court for sentence.

After detoxification and assessment, the offender appears before the Drug Court where he or she enters a guilty plea, receives a sentence that is suspended, and signs an undertaking to abide by his or her program conditions. This process marks the commencement of the offender's Drug Court program.

Program Progression

There are four fundamental aspects that are common to each Drug Court program plan:-

- Evidence-based treatment of drug use.
- Social support and the development of living skills.
- Regular reports to the Court regarding participant progress, and
- Regular testing for drug use.

Each participant's program comprises three phases. Each phase has distinct goals that must be achieved before the participant graduates to the next phase of their program. A program will last for at least 12 months unless it is terminated sooner.

Phase One is the 'initiation' phase where participants are expected to reduce drug use, stabilise their physical health and to cease criminal activity. In this phase, participants are required to undergo drug testing at least three times a week and to report back to the Drug Court once a week.

Phase Two is the 'consolidation' phase where participants are expected to remain drug-free and crime-free, and to develop life and job skills. In this phase, testing for drug use is conducted twice weekly and report-back court appearances occur fortnightly.

Phase Three is the 'reintegration' phase where participants are expected to gain or be ready to gain employment, and to be financially responsible. In this phase, drug testing is conducted twice weekly and report-back court appearances are conducted monthly.

Participants appear regularly before the Court. The Drug Court team meets before Court each day to receive reports from treatment providers and Probation Officers and to discuss the participants who will be appearing that day. In the light of this discussion the Judge then speaks to each participant about his or her progress. Rewards and sanctions can be conferred as set out in the Act. The most severe form of sanction available to the court, short of program termination, is a custodial sanction of up to 14 days.

A Drug Court program can be terminated when:-

- the Court decides that the participant has substantially complied with the program, or
- the participant applies to have it terminated, or
- the Court decides that the participant is unlikely to make any further progress in the program, or that further participation poses an unacceptable risk to the community that the offender will re-offend.

When a program is terminated the Court must reconsider the initial sentence. If appropriate, that sentence can be set aside and another sentence imposed in its place. In deciding the final sentence the Court will take into consideration the nature of the offenders participation in the program, any sanctions that have been imposed and any time spent in custody during the program. The initial sentence cannot be increased.

When the Court finds that a participant has substantially complied with a program a bond is the usual final court order. The Court awards a Certificate of Graduation or a Certificate of Substantial Achievement to participants who have met the standards that the Court has set.

For further information, including policies and decisions of the Drug Court, go to: www.lawlink.nsw.gov.au/drugcrt.

Drug Court of NSW: program legislation

The *Drug Court Act 1998* (the Act) commenced on 5 February 1999, and the Drug Court first sat three days later. The legislation is supported by the *Drug Court Regulation 2005*.

The legislation has provided a solid foundation for program operation. It has been subject to regular, minor amendment to clarify operating procedures. It was comprehensively reviewed in 2002. The review concluded that the Act “has provided the program with a solid but flexible framework for its operation” and has “supported the achievement of the program’s aims”. Key aspects of the legislation are outlined below.

Objects of the Act

The program’s objectives are set out in section 3 of the Act. They are:

- to reduce the drug dependency of eligible persons,
- to promote the re-integration of such drug dependent persons into the community,
- to reduce the need for such drug dependent persons to resort to criminal activity to support their drug dependencies.

It is noted that these objectives encourage the court to deal with offenders, not only by treating addiction, but by attending to the social circumstances of drug offenders. Such a broad focus is crucial if the Court is to make long lasting changes in the lives of participants that will result in protracted reductions in criminal activity.

Dual jurisdiction of the Drug Court of NSW

The Act gives the Drug Court the jurisdiction of both a Local and a District Court. The Drug Court of NSW is the only Australian Drug Court which is able to deal with higher court matters. This was highlighted in a 2003 article by Dr David Indemauro that concluded that the NSW program was “the superior model” of Australian Drug Courts.³

Dr Indemauro noted that the dual jurisdiction allowed Drug Court resources to be used on those more serious offenders who warrant intensive intervention. NSW is fortunate in having the Magistrates Early Referral Into Treatment (MERIT) program for bailed defendants with drug problems, allowing the Drug Court to concentrate on convicted offenders.

It is suggested that around 15-20% of matters referred to the Drug Court would otherwise have proceeded to the District Court. This figure is higher than the actual proportion of matters referred from the District Court, as Local Courts take advantage of the dual jurisdiction to simply refer apparently suitable and eligible indictable matters directly to the Drug Court.

³ Indemauro, D & Roberts, L 2003, 'Drug courts in Australia : the first generation', Current issues in criminal justice, vol. 15, no. 2, Institute of Criminology, Sydney

Violent offenders and offenders with mental health problems

The Act provides two restrictions on violent offenders entering the program: s.5 (2) prevents offenders charged with an offence involving violent conduct from entering the program, while s.7A (2) requires the Court to determine whether “having regard to the person’s antecedents, it would be appropriate for the person to participate in a program under this Act”.

Both criteria can require legal argument, and hearings as to the appropriateness of an offender entering the Drug Court program often require psychiatric assessment to support the Court’s consideration of any future propensity for violence. However, s.7A (2) offers some flexibility to the Court to consider offenders who may have violent conduct in their criminal record, but who are assessed as representing an acceptable level of risk to the community of future violence behaviour.

The Regulation provides that a participant “must not be suffering from any mental condition that could prevent or restrict the person’s active participation in a program under the Act”. The availability of a Justice Health psychiatric clinic for Drug Court participants (see page 15) enables the active participation in the program of some persons with moderate mental health conditions.

Restrictions on residence and referring courts

Program legislation restricts Drug Court participation to offenders who are resident in Western Sydney and who are convicted by Local and District Courts in Western Sydney. The Court would welcome a second Drug Court to be established to serve the remainder of the Sydney area, along with regional court-based programs to deal with convicted drug dependent offenders.

Program ballot

The legislation does not describe how the program is to allocate program places to the large number of offenders seeking to enter the program. The program has around two persons seeking entry for every program place available, although some persons seeking entry do not (following legal argument) prove to be eligible and/or suitable – for example, some referred offenders are not “highly likely” to receive a full-time custodial sentence.

To efficiently allocate program resources, the Court introduced a ballot system to determine which referred offenders would be assessed for program entry. Each week the Senior Judge determines how many male and female referrals will be accepted.

To support the Government’s attempts to reduce the level of indigenous incarceration, indigenous persons are advantaged in the ballot system. To support the increased number of indigenous persons who enter the program, the Court has established a welfare officer position (see p16), which is an identified position, located within CRC Justice Support.

Statistical overview

2006 activity

Program entry	Persons
Placed in ballot	332
Accepted after ballot	253
Not entered into Program	98
Awaiting Initial Drug Court Sentence	3

Program progression	Participants
Participants who entered Phase 1 in 2006	164
Participants who progressed to Phase 2 in 2006	103
Participants who progressed to Phase 3 in 2006	63
Phase 1 participants as at 31/12/06	72
Phase 2 participants as at 31/12/06	58
Phase 3 participants as at 31/12/06	36
Participants on program as at 31/12/06	167

Court Determinations	Participants
Terminated after “potential to progress” hearing	44
Terminated after “risk to community” hearing	16
Retained after “Potential to progress” or “risk” hearing	26

Programs Completed	Participants
Graduated	43
Substantial Compliance	8
Non Custody	11
Total Non custody	62
Custody	93
Total completions	155

Progress since inception

The main outcome measure used by the court is the number and proportion of program participants who receive a non-custodial sentence at program completion. Within this group, there are program graduates (those who meet all program standards, including protracted abstinence from all drug use) and those who do not meet all program goals but who have met significant progression such that their custodial sentence can be set aside.

The Drug Court has maintained extensive statistical information since commencement in 1999. In the seven years of program operation to 31 December 2006, 1,358 offenders had commenced Drug Court programs. There were 167 offenders undertaking Drug Court programs at that date and 1158 finalised cases. Of the remaining 33, nine were deceased and 24 were awaiting sentence and/or subject to bench warrants for their apprehension.

Of these 1158 finalised cases, 397 (34 per cent) have successfully completed the program and received a non-custodial sentence at program exit. Graduates represent 201 of the 397 successful program participants.

Program activity by year (as at 31 December 2006)

Year	Program entrants	Sentenced program completers	Non Custody (graduates)*	Custody	% Non Custody
1999	210	63	1 (0)	62	1.6%
2000	174	136	22 (20)	114	16.2%
2001	169	158	45 (18)	113	28.5%
2002	173	172	68 (35)	104	39.5%
2003	182	191	63 (29)	128	33.5%
2004	142	133	62 (20)	71	46.6%
2005	165	150	74 (36)	76	49.3%
2006	164	155	62 (43)	93	40.0%

Evaluation

The Bureau of Crime Statistics and Research evaluated the first nineteen months of operation of the Drug Court in 2002. The evaluation considered the cost-effectiveness of the program in comparison with gaol, as well as assessing the health and social functioning of participants.

The key finding of the cost-effectiveness evaluation was that the NSW Drug Court program has proved more cost-effective than imprisonment in reducing the number of drug offences and equally cost-effective in delaying the onset of further offending.

Those participants who remained on the Drug Court program showed clear and sustained evidence of improvement in their health and social functioning. Participants on the program were generally very satisfied with it. Stakeholder Interviews also indicated general satisfaction with the program.

It is stressed that the evaluation of the program considered the first 19 months of operation and included considerable start-up costs associated with the program's development and early operation.

Consistent with the experience of many US Drug Courts, the first few months of operation of the Drug Court of NSW was relatively inefficient and involved the development and review of operating practices across all program agencies. The Drug Court of NSW has invited the Bureau of Crime Statistics and Research to undertake a second evaluation to consider the program's performance six years after the first evaluation was completed.

Drug Court operations

The Drug Court involves judicial, legal, health and correctional officers working together in a partnership based on therapeutic jurisprudence.

In 2006 the Drug Court sat for 215 days. A typical Drug Court sitting day lasts five to six hours and involves 30-50 court appearances by program participants, of which 5-15 will involve specific legal matters and the balance will involve supervision and monitoring of the participant's progress.

The sitting day commences with a 90 minute team meeting, where representatives from all program agencies discuss each participant appearing that day with the consideration of their health, drug testing and correctional reports, and any new legal matters. This ensures the efficient operation of the Court, which is particularly important in providing the stable, consistent program environment that supports positive client outcomes.

The remainder of the sitting day involves individual appearances by participants, who discuss their progress in treatment directly with the Judge and other team members, who offer praise or censure as warranted. While legal matters are still conducted in a formal adversarial setting, progress reports operate in a team environment.

Outside the court setting, health and correctional officers attached to the program undertake therapeutic and supervisory activities in line with the participant's individual treatment plan and court undertaking.

While the Court day can be dominated with supervision, the Drug Court's role as a sentencing court should not be overlooked. In total, the Court sentenced 329 persons in 2006, resulting in 1718 separate sentences given in relation to 2709 offences. Initial sentences were given to 164 program entrants, with final sentences given to 155 terminated persons.

Judicial officers

The Drug Court Act provides that there be a senior Drug Court Judge, as well as Drug Court Judges who are required to be Judges of the District Court. This does not prevent temporary appointments to the role of Drug Court Judge. Since inception, there have been three Judges appointed as Senior Drug Court Judge, and five Judges appointed as Drug Court Judges.

During 2006, the Court was led by Senior Drug Court Judge Roger Dive (who is a permanently appointed Judge of the District Court), and Drug Court Judges Ian Barnett and Jillian Orchiston (who are temporarily appointed as Judges of the District Court).

Compulsory Drug Treatment Correctional Centre

The Compulsory Drug Treatment Correctional Centre (CDTCC) program provides custodial drug treatment for recidivist drug dependent prisoners facing significant custodial sentences. The program is based at a standalone custodial facility within the Parklea Correctional Facility in Western Sydney.

Dedicated program legislation gives the Drug Court the power to order an offender who is assessed as eligible and suitable to serve his or her sentence on the compulsory drug treatment program, or the Drug Court may decline to make such an order in view of the circumstances of a particular case.

This compulsory drug treatment detention is conducted in three distinct program stages:

Stage one, *closed detention*, where participating inmates will be incarcerated in the Compulsory Drug Treatment Correctional Centre at Parklea for intensive drug treatment and rehabilitation;

Stage two, *semi-open detention*, where participating inmates will live at the centre but spend time outside in employment, training or other approved programs; and

Stage three, *community custody*, which will be similar to home detention.

During this final stage, the offender will move to semi-open independent living but remain under intensive supervision, including electronic monitoring and regular appearances before the Drug Court.

The CDTCC can accommodate 70 male participants in individual cells (37 in Stage 1 and 33 in Stage 2) with 30 or more participants expected in Stage 3.

Progress in 2006

Centre opened

The CDTCC was opened by the Minister for Justice The Hon Tony Kelly MLC on 23 August 2006 and received its first participants on 4 September 2006. The Minister noted that, as with the Drug Court of NSW, the CDTCC program is the first of its type in Australia. Mr Kelly noted that the Centre refurbishment required \$4m, and that the annual budget allocation for the program was \$4.5m.

Mr Kelly said that the program will target “hard core criminal drug addicts who are responsible for most of the property crime in Australia”, noting that “this group is resistant to treatment [and]... have continually failed voluntary prison programs”.

Legislation amended and commenced

The CDTCC is primarily guided by the *Compulsory Drug Treatment Correctional Centre Act 2004*. This Act amended the *Drug Court Act 1998*, the *Crimes (Sentencing Procedure) Act 1999*, and the *Crimes (Administration of Sentences) Act 1999*.

In the months prior to commencement the program legislation was significantly amended in three ways with respect to the eligibility criteria for the Compulsory Drug Treatment Program.

The amendments adjust the criteria to allow offenders with an unexpired non-parole period of 18 months at the time of sentence to access the program. Previously, an offender must have an unexpired non-parole period of at least 18 months at the time the Drug Court makes the compulsory drug treatment order.

This amendment increased potential referrals by preventing offenders from lapsing out of eligibility due to the necessary assessment and processing time between referral by a sentencing court and the making of the Drug Court's compulsory drug treatment order.

The second amendment changed the recidivism criteria of eligible offenders from three prior convictions in the past five years to at least two convictions over the same period. This will mean that offenders on the program will have committed at least three offences in a five year period.

The third amendment removed the automatic exclusion of offenders convicted at any time of an offence involving serious violence but will require the Drug Court to have regard to the offender's history of committing offences involving violence as part of the assessment of the offender's suitability for the program. The amendment creates greater flexibility for consideration as to whether offenders who may have committed an offence involving violence at some point should nonetheless be suitable for the program.