

Legal Studies Association of NSW

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The Drug Court of NSW – Breaking the Cycle of drugs, crime and jail

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The Drug Court

The Drug Court is a program that seeks to manage and enforce the rehabilitation of offenders in the community, whereby the Criminal Justice System and the Health Treatment System come together to manage and enforce long-term changes to the lives of drug-addicted criminals. The Drug Court must work within the parameters of the ordinary laws of sentencing.

Sentencing law

The objective of the criminal justice system is, of course, to protect society, to **protect the community from crime**. That is in the law, and has been the law for a long time.

At the Drug Court we seek to take advantage of the opportunity created by the arrest of an offender who commits his or her crimes to fund a drug addiction.

A sentence of full-time imprisonment is the last sentencing alternative, and must not be imposed unless there is no other appropriate punishment. Courts can impose fines, restrict behaviour with good behaviour bonds, require community service work as lesser or alternate punishments to full time imprisonment.

Terms of full-time imprisonment are the appropriate sentences for many criminals, especially some cases we tend to hear about through the media. They are often so horrific, so dreadful, that it is obvious that a long term of imprisonment is the only proper sentence.

I think we would all agree that terms of imprisonment are appropriate for wicked crime. But there must be a question mark over its efficacy for many who are in our prisons, and for the community our prison system serves.

Today I am going to talk about one program, the Drug Court of NSW, which is doing something different to the more usual task of locking offenders up, and then seeing them come out and just return to their old problems and old ways.

HOW DOES IT WORK:

Drug offenders go to gaol for continually stealing cars, for breaking into businesses and homes, for credit card fraud and driving offences. They go in with substantial deficits in their health and skills, and they come out with just as many, if not more. And when they come out, they return to their dysfunctional lifestyle, commit new

crimes, and are returned to gaol for the cycle to begin again. Their housing is gone, their parents more disillusioned, the girlfriend is giving no more chances, and has gone, taking the baby with her. Over 70% of prisoners are back in gaol within 2 years.

What does the Drug Court do?

At the Drug Court we break that cycle of crime and drugs, and provide participants with opportunities to get treatment, to stabilise their lives, and to get back into education or employment.

This is achieved with:

- Drug Courts at Parramatta, Newcastle, Central Sydney, and Dubbo has just opened.
- Offenders who plead guilty to drug related crime are referred to the Drug Court by the Local Court and District Court. The legislation prevents violent criminals, sex offenders, or very serious matters of supplying drugs being eligible for a Drug Court program.
- The program concentrates on the long-term, serious, recidivist offenders who will, without doubt, be otherwise going to gaol.
- Eligible and suitable offenders receive their proper sentence of full time gaol for those offences.
- That prison sentence is suspended whilst the participant complies with a very intensive treatment plan. That treatment plan may be require residential rehabilitation, and may include the assistance of pharmacotherapy, such as methadone.

If they succeed on the program, they do not return to gaol, but receive a non-custodial order, called a Community Corrections Order.

Addressing fundamental issues:

You might be surprised if you visit as to how much time is spent discussing:

- Dental work
- Housing
- Mental Health and medication
- Centre Link
- Medicare
- TAFE

- DCJ, children, parenting courses
- Partners
- Financial counselling
- Green Cards, Forklift licences
- Living Skills

The Drug Court manages 270 drug-addicted offenders at any one time and has the resources to provide a realistic opportunity to break the revolving door cycle. That figure will expand to 500 in the next 18 months.

Why concentrate on Drug offenders?

Drugs are the cause of much of the crime that most upsets our community. Research suggests there is an overwhelming case in favour of seeking to rehabilitate offenders who commit crimes to fund their drug addictions, as:

- 70% of prisoners identify drugs and/or alcohol as the reason they offended.
- 50% of burglars acknowledge a serious drug problem.
- Burglars commit an average of 38 burglaries each per year.
- The probability of being apprehended and convicted for a burglary is statistically low – less than 1 in 20.
- It is an overwhelming case in relation to women. 74% of female prisoners have a history of injecting drugs.

Drug offenders commit lots of burglaries because they get so little for your valuables. Your laptop, digital camera, jewellery and coin collection may be worth \$15,000, but the thief may sell it all for \$200. So if your drug habit is costing you \$500 to \$1000 per day, you have to commit a lot of crime each day, and we are all suffering greatly in the process.

- An important management tool is the power the court has to impose sanctions for breaches of program. Sanctions may involve a curfew, tighter controls, more frequent reports to court, or days in gaol.
- **But what is the most important management tool? Praise.** A round of applause. Some words of encouragement and support.

Is the drug court successful?

The Drug Court is a very successful program. Dr Don Weatherburn, our internationally respected Director of the BOCSAR, has said that it is the ONLY program they have evaluated that is proven to work. It is also cheaper than gaol, that having been independently evaluated by the Centre for Health, Economics and Research.

How successful is the program?

The first measure is the survival of the participants. No participant has died a drug-related death in the last 4 years, but we have lost thirteen. So it is an issue we take very seriously.

A success is a participant who is not required, in accordance with the ordinary principles of sentencing, to return to gaol when their program comes to an end. That success rate is consistently 50% over several years. Whilst about 100 graduate each year, reaching our “gold” standard, many more do not need to be returned to gaol. Many have made significant changes in their lives, but not meet the exacting standards of graduation. A few years ago I calculated that the 73 participants NOT required to go back to gaol that year had a total **non-parole** period of 67 years.

It Costs Less

It costs approximately \$250 per day to keep a prisoner in custody. So you can provide a lot of support and services in the community, and get nowhere near that figure.

It is not uncommon for the court to graduate 3 or 4 participants on the one day, whereby they are leaving the court working full-time, paying their taxes, child support, and rent. Maybe driving a company car....and yet the cost of just that small group serving their non parole periods would have been 5 or 6 hundred thousand dollars.

In 2008, the Bureau of Crime Statistics and Research have re-evaluated the Drug Court's effectiveness regarding recidivism.

The Bureau's study covered a period between February 2003 and April 2007, and involved 645 in the Drug Court Group, and 329 individuals in a Comparison Group. So the samples were of a significant size. After controlling for pre-existing differences between the treatment and comparison groups, BOCSAR found that, when compared with those in the Comparison Group, Drug Court participants (whether ultimately successful on the program or not) were:

- 17 per cent less likely to be reconvicted for any offence,
- 30 per cent less likely to be reconvicted for a violent offence and
- 38 per cent less likely to be reconvicted for a drug offence

And in relation to those who successfully completed the Drug Court program, they were found to be:

- 37 per cent less likely to be reconvicted of any offence at any point;
- 65 per cent less likely to be reconvicted of an offence against the person;

- 35 per cent less likely to be reconvicted of a property offence; and
- 58 per cent less likely to be reconvicted of a drug offence

Don Weatherburn has said: "These are very substantial findings. It is possible that they are influenced by extraneous factors not controlled for in the present study. In my opinion, however, this is fairly unlikely. Our analysis includes controls for all the main factors known to influence risk of recidivism. "

KEY STRATEGIES:

Team work

At the Drug Court, I meet daily with team members and service partners from the Health Department, Justice Health, the Community Corrections Office, Office of the Director of Public Prosecutions, the Police Service, Legal Aid, and other agencies, to review the progress of every participant.

Intensive follow-up

In the first three months, the participant:

- Meets with the judge and team each week
- Undertakes three supervised urine drug tests each week
- Has weekly counselling and a home visit from his Community Corrections officer.
- Attends group counselling and perhaps living skills tuition, anger management, parenting or budgeting programs.

So when I meet with a participant at 11am I know if he kept his counselling appointment this morning, and whether he was home for his curfew at 7pm last night. The judge meets with over 40 participants in this way every day.

Empower

Instil responsibility – Participants are made responsible for their choices and actions, and have to accept that responsibility. Participants are often used to blaming others, especially figures in authority, for their situation. We seek to reverse that, so if they end up going back into gaol to serve sanctions, or even to serve their sentence, it is because of the decisions they have made which have required me to do what I may have promised, or threatened, for some weeks.

Short-term goals

A week is a very long time for a recovering drug addict. So setting short-term goals, and checking to see if they have been met, is vital. Participants often ask to come to court more often than required, even twice a week at times,

when they are struggling. They are recognising that without intense support and encouragement, they are not going to succeed on their own.

Fairness, respect, dignity

Our participants often perceive that they have never had a fair go from anyone in authority before. The judge and the team need to make this experience different from their previous, and often multi-generational, perceptions of authority.

Honesty and trust

These are foreign concepts for some participants. Being a good liar may be their BEST survival skill, learnt from the age of three. As a child you got belted even if you told the truth, but if you lied well, you might just get away with it.

At the Drug Court we require honesty, and we seek to establish it by dealing quite severely with dishonest behaviour, but making it a safe place to be honest. So if they admit having used drugs during the week, they don't get a hard time – we treat it essentially as a health issue. But if they are dishonest, and we find out they have used drugs by virtue of their drug test results, then that is a completely different situation, and I get quite difficult about that.

As for trust, that is a sentiment long foreign to their way of life. Their parents may not have allowed them in the house for years, having just lost too many valuables for too many years. They may let them shower in the home, but certainly not stay overnight. I am not criticizing the parents. They are often totally exhausted by the behaviour of their child over many years, even decades. Trusting others, or should I say learning how and who to trust, is a key skill we work to develop with our participants.

Determination

We just never give up until we have to. Some participants are quite determined that I, like every other figure of authority throughout their lives, will let them down and give up on them. They seem to unconsciously self-sabotage so as to see that expectation fulfilled. This does not mean we are naively unrealistic regarding some of our flock, and so the human reaction on seeing Richard's name on the list for today's court may be to inwardly groan and think, *"Is he STILL on this program??"*

Of course, not all are successful on the program, and so I send them back to gaol. It is not difficult, because I know, and they know, that they have had a fair opportunity, have often learnt a lot, and remain grateful for what we have done. It is not unusual to be thanked by the former participant at the conclusion of the final sentencing hearing, and before being taken down to the cells: *" Thanks Judge, thanks Sue, sorry I didn't do better.... "*

A successful crime prevention strategy

The Drug Court has now been established for many years now, and has evolved during that time to consistently meet the objectives set out in the legislation; providing proven protection to the community by reducing the criminal behaviour of an offender group who are particularly likely to commit offences that are of great concern to the community.

A meta-analysis of 54 drug treatment court programs by the Department of Justice in Canada found that they are an effective method of reducing future criminal behaviour compared to traditional responses. Importantly, that research suggests that sustained behavioural changes are a likely outcome of drug treatment court participation. The report also concluded that it is likely that the benefits of drug treatment court participation increase with time.

Unfortunately not all communities and their offenders have access to the Drug Court and the rehabilitation of their addicted offenders. Only half of Sydney has access, so if you can live on the wrong side of Punchbowl Road and thereby miss out, you just go to gaol. Limited places on program mean that apparently eligible and appropriate offenders cannot gain access to the program, and are therefore sent back to the ordinary courts to face sentence in the ordinary way.

Let us hope that consideration will be given to continuing the expansion of a program which is proven and effective in protecting the public from crime, and which is restoring the lives of some very damaged citizens.

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