

CONFERENCE

Sentencing

Principles, Perspectives & Possibilities

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SENTENCING DRUG OFFENDERS

Senior Judge Roger Dive

Drug Court of NSW

Sentencing Drug Offenders

The offenders referred to the Drug Court of NSW usually have appalling criminal records, often spanning twenty years or more. They have damaged their health and family relationships. Drug offenders frequently repeat a pattern of offences, so they continually steal cars, or break into hairdressers or steal from parked motor vehicles. They commit clumsy crimes that will be inevitably detected—breaking into homes and leaving fingerprints and DNA evidence in every room. Over the years they have received all the traditional sentencing outcomes with no apparent positive effect. Many would like to live ordinary lives and are sick of going to gaol, but they are simply unable to change without significant assistance. One thing the general criminal jurisdictions do with drug offenders is sentence them often. But do we sentence them well?

They certainly get sent to gaol, often quite frequently, but on release return to their addictions and their preferred methods of obtaining funds to meet those addictions. The question is, how can the community be protected from drug related crime? What stops drug offenders from continuing to commit crimes? There is an answer: *Change*.

It may require *change* in housing, associates and even relationships. Small simple changes like acquiring identification documents—a young man came to us on the Drug Court Program and he was missing appointments, including with his counsellor. ‘Why aren’t you turning up for appointments?’ ‘I can’t afford the train fares.’ We found he had no income support at all. Why not? He had no identification documents, no birth certificate, no bank account. Therefore he couldn’t receive a Centalink benefit or enrol in TAFE or even register for soccer. It took weeks to sort that out—his parents had his visa documents and spoke no English, and were wisely reluctant to give him the care of anything valuable. Those issues would not be addressed in the traditional criminal justice system.

Of course greater changes are required; engaging in counselling and pharmacotherapy, budgeting, meeting commitments and returning to education or work. Learning to have an honest relationship with the Drug Court team is quite a challenge to many, because dishonesty and manipulation have become key ways to cope with authority and life. Admitting drug use is a key requirement of the Drug Court, but some offenders find that almost impossible, because honesty has never worked for them before. In fact, being successful at being untruthful may have been a key coping strategy acquired very early in life.

How do Drug Courts work?

The essential strategy is to use the sentencing process as an opportunity to manage change in the offender, with justice and health professionals working with the offender as a team. The Drug Court Team works collaboratively, with the Office of the Director of Public Prosecutions, Legal Aid, Health and Probation & Parole working with the Judge to manage individual program plans.

Offenders are referred to the Drug Court from the District Court and the Local Court on entering a plea of guilty, or indicating a plea of guilty. They then spend a minimum of two weeks in custody to detoxify from illicit drugs, and for their individual treatment plan to be prepared.

Once the treatment plan is prepared, the offender returns to the Drug Court to receive an initial sentence for the charges that have been referred to the Drug Court, and that initial sentence is suspended on entering into their Treatment and Case Plan.

Unfortunately the program is limited to Western and South Western Sydney, providing programs to approximately 170 sentenced offenders at any one time.

Treatment and Case Plans

The Treatment and Case Plan will involve:

- Coming to Court and meeting with the judge each week
- Supervised drug testing (urinalysis) three times per week
- Weekly home visits by their allocated Probation and Parole Officer
- Weekly counselling and group work
- Pharmacotherapy if prescribed.

A Drug Court Program can be completed in a minimum of 12 months, which is divided into three stages. The first ‘stabilisation’ phase is for three months, the second, ‘consolidation’ phase is a further three months, and the third ‘re-integration’ phase is for a minimum of six months. A key tactic used is to slowly relax the tight controls initially imposed. So the level of supervised urinalysis is reduced to two times per week in Phases Two and Three, though random tests can always be required.

Short term goals measured and acknowledged

The weekly ‘report back’ meetings with the judge are also seen as a critical element. Short term goals—literally over the next week—are set and reviewed in those meetings, and the participant gets the opportunity to be praised for success in meeting those short term goals. Program compliance is rewarded with applause, and perhaps with the relaxation of controls. For example, a person doing well on Phase One might be allowed to commence paid employment before reaching Phase Two.

Breaches of program

Breaches of program are dealt with by way of sanctions. Sanctions include days of custody for individual breaches of program, and those sanctions can be accumulated and waived. Participants may be required to serve sanctions at any time, however if a participant’s sanctions reach a total of 14 days, the participant is placed in our allocated gaol accommodation for those 14 days, and the time serving sanctions is used as an opportunity to undertake a treatment and case plan review.

How is change achieved? In my view, by using the criminal justice system in new ways to encourage, enforce and manage the myriad of small steps needed to change lifetime habits.

Key indicators of success

No-one has died on program for over 21 months. This is a crucial measure of success. Our participants are people of high risk of accidental and non-accidental death.

Last year 165 persons entered onto program, and 149 programs were finalised. Thirty six graduated with the gold standard, and a total of 73 received non-custodial sentences. So, for 49% of 149 completions, applying the ordinary sentencing law, a non-custodial sentence was imposed.

Non graduates can be remarkably successful—‘J’ is a man with a social phobia, who struggled with coming to the stressful environment of a court for many months. He didn’t graduate, but at the end of his program related his life history to us, and said:

Twenty to twenty-six, crime, drugs, gaol, no family, living under Harbour Bridge, wood chips for four years. Twelve months before Drug Court I awoke to three deaths, all within weeks of each other which saddened me again.

Finally my favourite part of my whole life began on 5/11/03. I began Drug Court, which I believe was meant to be, and then the most wonderful thing happened—my son was born.

So Drug Court has given me my Mum, my Dad, my brother, my sister, a son, a daughter, a fiancée, many assets, hobbies, some day soon a recognized business, true friends, almost beating a concerning phobia, a car, a permanent roof over my head, bills, my licence back within months, drug-free life, savings, and lastly the courage to wake up and face the world without hiding behind heroin.

Thank you, thank you, thank you everyone

The Drug Court of NSW is a proven success. remarkable outcomes are achieved, and those achievements have been measured by the evaluation and research of the NSW Bureau of Crime Statistics and Research. The key findings were:

- The Drug Court is cheaper than imprisoning offenders, and the authors of the research acknowledge that they did not include any of the clear broader societal savings.
- A lower crime rate whilst remaining on program.
- A lower recidivism rate for those not sent back to prison.
- The community is enhanced by the re-integration of successful participants.

Very importantly, those evaluations, and ongoing research by Bureau of Crime Stats and Research, have continued to direct the practices and maturation of the Drug Court. For example:

- The way in which sanctions are now used as a treatment review. That has led to significant cost savings, because the cost of serving shorter sanction periods was a significant cost within the group evaluated.

- The ongoing review of policies and procedures (a formalised process) and the programmed review of participants as to whether they have continuing potential to progress on their program. The evaluation assisted in an amendment to the legislation to move away from a ‘*no useful purpose*’ test as to program continuation to the more effective ‘*potential to progress*’ test.

Further, *The Health, Well-being and Participant satisfaction Evaluation of 2002* found:

- Improved and sustained outcomes re health, social functioning and drug use.
- Significant improvements in all but one of the health dimensions examined. (eight dimensions measured—one exception: ‘the extent to which a person’s emotional problems impacted on their work or daily activities’). After 12 months on the program, male participants health was rated as high or higher than the Australian population norms for each of the health dimensions examined.
- Social functioning significantly improved within the first four months, and further improvements by eight months.

The *Health and Well-being Evaluation* suggested the effectiveness of the program could be improved by increasing the rate of retention on program. The retention rate is now at record levels.

It is a demonstrable fact that the Court is far more effective and efficient since the 2002 evaluations. Costs are down, success is up, retention has increased, and the Court has responded to the indicators for change identified in the evaluations.

An interesting indicator of the success of the program is a rather blunt but legitimate calculation of the costs savings achieved for the community. A measure of the success of the program can be calculated by looking at the cost that would have been incurred by the community if the participants had simply served their initial sentences. In 2004, the 55 successful participants who were not returned to gaol had an average Initial Sentence with a non-parole period of 15.5 months. With the daily cost of imprisonment being \$189 per day, those participants would have spent a total of 71 years in gaol, at a cost to the community of approximately \$4.8 million.

There are other immeasurable social and other gains which are difficult to measure in monetary terms. For example, a program participant abstained from illicit drugs during her pregnancy, and consequently her baby did not bear any consequences of her addictions during that pregnancy. After the necessary and appropriate proceedings in the Children’s Court, the participant was allowed to have the long term care of this, her seventh child. They remain well settled and stable in the community. None of her other children had been allowed to remain in her care.

Where to from here?

Close consideration should be taken of the lessons learnt in the Drug Court, and on the skills developed by justice and health professionals in this special partnership. This is a program that has been stringently evaluated and shown to be successful.

The skills and lessons learnt are relevant to sentencing well beyond specialist courts, and have application to the broader criminal justice system. I hope that in 15 years the community will look back on the ordinary processes of the criminal justice system of 2006 and shake their heads as to why uneconomic and simplistic solutions to crime were pursued for so long.