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REFLECTIONS ON 2005

Remarkable success by many Drug Court participants has been the feature of 2005. They have made long-term changes to their lives, and it has been a privilege to witness those transformations. Every successful participant worked very hard on their recovery, co-operating with many organisations, both inside and outside government, to achieve real and measured change to their lifestyles and offending behaviours. The Drug court team, the registry team and our wider group of service partners should be very proud of the achievements of 2005.

Measures of success

The first, and very sobering, objective of the Drug Court is to minimise loss of life. Offenders who take part in a Drug Court program are a high-risk group regarding accidental or non-accidental death. It is a major achievement of 2005 that there was no loss of life; in fact there have been no participant deaths since May 2004.

The formal objectives of the Drug Court are set out in section 3 of the *Drug Court Act 1998*, and are:

- To reduce the drug dependency of drug dependent offenders
- To promote the re-integration of participants into the community
- To reduce the need for such drug dependent persons to resort to criminal activity to fund their drug dependencies.

As participants begin to meet these objectives, they are slowly given more responsibility for their recovery and re-integration into the community. They must meet defined goals to progress through each of the three phases of a Drug Court Program, always under the watchful eye of court supervision. Remarkable success in recovery is recognised by formal graduation from the Drug Court, and it is very significant that graduations increased by 80% in 2005, to a total of 36. That is the highest annual number of graduations since the inception of the Drug Court.

Success on the program is not limited to reaching the graduation standard, and the remarkable achievements of a man who did not graduate are set out in his own compelling words at page 26 of this review.

The number of participants who are not returned to gaol at the conclusion of their program is an important measure of success. That is because, to

be eligible for a Drug Court Program, an offender must have initially been sentenced to a term of full-time imprisonment that is then suspended whilst the Drug Court Program is undertaken. Therefore a vital measure of success is whether, at the end of their program, the offender is required to serve a sentence of full-time imprisonment. A total of 73 of the 149 participants whose programs were finalised in 2005 did not require further imprisonment, so 49% of participants, applying the ordinary sentencing law of this State, were not returned to gaol. Given the chaotic nature of their former lives and long-term recidivist behaviours, this is a remarkable measure of the success of the Drug Court Program. That measure of success has increased for three years in succession and has never been higher.

Key objectives of the Drug Court in 2005 was to increase the availability of Drug Court Programs to offenders who identify as Aboriginal or Torres Strait Islander, and to increase the level of success achieved. It is pleasing to note that the percentage of participants who so identified increased to over 12% in 2005, far higher than the 7% identified in the 2002 evaluations.

An important strategy implemented by the Drug Court regarding these objectives was the engagement of a Support Worker with close ties to the Aboriginal community. The Support Worker Program trial, in cooperation with the Community Restorative Centre, assists all participants, and particularly Aboriginal participants, to settle into the intense requirements of a Drug Court treatment plan. The Court will continue to address the complex issue of Aboriginal access to Drug Court programs in 2006.

Other key measures of success in 2005 were:

- A 16% increase in the number of offenders accepted onto a Drug Court Program, with 165 offenders commencing programs.
- A 13% increase in the number of programs finalised, to a total of 149.

Measures of efficiency

Conducting proceedings efficiently, eliminating delays and maximising the use of court resources are important economic measures of the performance of this court, and constitute another strategy towards achieving the principal aim of protecting the community from the effects of drug related crime.

Key indicators regarding workload performance in 2005 are:

- A 34% reduction in outstanding cases, with the number of cases awaiting hearing and determination reducing from 80 at the beginning of the year to only 53 by 31 December 2005.
- The “court room time” available in 2005 was fully utilised, with daily court sitting times averaging 5 hours and 23 minutes per day.
- The court met with an average of 41 participants per day, for either legal proceedings and/or supervision meetings with the judge.

Closed “Report Backs”

A key component of a Drug Court Program is the frequent return of participants to the court to report back to the judge and the court team. Initially “report backs” are conducted weekly, and are an opportunity to review progress and drug test results, and to both set short term goals and check on their achievement. The Court has reintroduced the limited use of “closed court” report back sessions, whereby the court is closed, and the judge sits at the bar table with the court team and the participant. A “closed court” report back may be requested when a participant is distressed, and, for example, needs to disclose family or personal issues that they simply could not do in open court. A “closed court” report back also allows a participant to be admonished and punished for a breach of program conditions without any aspect of public shaming and humiliation, which may have been, at that time, very detrimental to the therapeutic relationship between the participant and the court.

Such sessions have been most therapeutic in two contrasting situations. Firstly, for women participants who have issues concerning their children, especially if the children have been, or may be, taken into care and Children’s Court proceedings are pending. Secondly, older and more seasoned male participants, who would never reveal emotional issues before a crowded courtroom, do so to a surprising degree in the more secure environment of a closed report back. The carefully limited use of this new therapeutic tool appears to have markedly improved the compliance and engagement of those granted the opportunity.

A Controlled Caseload

The court seeks to maximise the use of its resources by maintaining a steady optimum number of participants who are actively participating in their Drug Court Program. This is most important to our partner service providers, such as the Area Health Services and Probation and Parole, who provide participant support in the community. It is quite a challenge to achieve that steady caseload, with a constant flow of participants finalising their programs, and new offenders being referred for assessment. Those factors are then overlaid by the more unpredictable events of some participants abandoning their programs or being temporarily removed from the community to serve sanctions in prison.

Measured weekly, the average number of participants actively on a Drug Court program was 164 across 2005, and the number of such participants remained within a tight range; from a low of 148 to a maximum of 174. There is in fact a seasonal variation in Drug Court participant numbers, as the Drug Court does not take new referrals late in the year, as it would lead to releasing offenders in the holiday season when it is difficult to provide the intense community supervision essential at the commencement of a Drug Court Program.

A successful crime prevention strategy

The establishment of the Drug Court of NSW created a partnership between the criminal justice system and the health treatment system. The Drug Court has now been established for seven years, 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. Research suggests there is an overwhelming case in favour of seeking to rehabilitate offenders who commit crimes to fund their drug addictions, as:

- An estimated 50% of property offenders (such as burglars) have a serious drug problem,
- Burglars in N.S.W. commit an average of 38 burglaries each per year.
- The probability of being apprehended and convicted for a burglary is .045, that is, a less than 5 in 100 chance.

- The Bureau of Crime Statistics and Research recently found that 64% of offenders released from prison on parole re-offend within two years of release, and that the time before re-offending was significantly shorter for some parolees, including parolees who had convictions for possession of drugs in recent years.

The Drug Court is a cost effective strategy to reduce crimes by an obvious target group of offenders. Whilst the following is a blunt and unsophisticated monetary measure, one statistic that demonstrates the cost of immediately imprisoning apprehended offenders, instead of requiring them to complete a Drug Court Program, is to calculate the monetary cost that would have been incurred by the community to imprison the successful participants of 2005. Those 73 participants had a combined non-parole period of 67 years of full-time imprisonment, which, when calculated at the actual cost of \$189.10 per day, amounts to a financial cost to the community of \$4.6 million.

Unfortunately not all communities and their offenders have access to the Drug Court and the rehabilitation of their addicted offenders. In 2005, even within the restricted geographical drawing area of the Drug Court at Parramatta, it is regrettable to note that 72 of the 331 apparently eligible offenders referred were rejected in the ballot conducted to allocate the limited places on program, and those offenders therefore faced sentence in the ordinary way.

Preliminary estimates suggest that the Drug Court currently deals with approximately half of the annual overall total of 370 – 470 offenders who would be eligible for a Drug Court Program across the broad Sydney metropolitan region. There are, of course, also many potential offender/participants in regional and rural areas of the State. The Drug Court would welcome consideration being given to providing an intensely supervised rehabilitation option for offender populations beyond the current boundaries.

J R Dive
Senior Judge
April 2006

THE DRUG COURT- COMBINING JUSTICE AND TREATMENT

Drug Courts are specialist courts that deal with offenders who are dependent on drugs. They emerged as a result of growing disenchantment with the ability of traditional criminal justice approaches to provide long-term solutions to the cycle of drug use and crime. Drug Courts aim to assist drug-dependent offenders to overcome both their drug dependence and their criminal offending.

The Drug Court of New South Wales is the first Drug Court to be trialled and evaluated in Australia. The Court began operation as a two-year pilot in February 1999 and has matured from that pilot status to become a welcome addition to the criminal justice system of this State.

Objectives

The objectives of the Drug Court are set out in section 3 of the *Drug Court Act 1998*:-

- 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.

To achieve those objectives the Drug Court diverts drug dependent offenders into supervised treatment plans, which are designed to reduce or eliminate their drug dependence, and each participant's Drug Court program is individually tailored to address his or her specific needs. The treatment options offered include abstinence and pharmacotherapy programs, and may be provided in either a community or residential rehabilitation environment.

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.

Eligibility and selection

To be eligible for the Drug Court a person must:-

- be highly likely to be sentenced to full-time imprisonment if convicted,
- have indicated that he or she will plead guilty to the offence,
- be dependent on the use of prohibited drugs,
- reside within the specified catchment area,
- be referred from a court in the catchment area,
- be 18 years of age or over, and
- be willing to participate.

A person is not eligible if he or she:-

- is charged with an offence involving violent conduct,
- is charged with a sexual offence or an offence punishable under Division 2 Part 2 of *the Drug Misuse and Trafficking Act (1985)*, or
- is suffering from a mental condition that could prevent or restrict participation in the Program.

Offenders who are before a Local or District Court in the defined catchment area, who appear to meet the Drug Court eligibility criteria, and seek entry into a program, must be referred to the Drug Court.

Whenever there are more eligible applicants than there are available program places, a weekly random selection process occurs to determine which applicant is assigned to each available place. The number of places available each week is determined by the Senior Judge, in consultation with the court team, after consideration of the number of participants currently actively engaged in their program.

Justice Health gives each offender successfully referred to the Drug Court a preliminary health assessment and further investigations regarding the offender's eligibility are made. Successful applicants must then enter the assessment and detoxification stage, where an assessment of the individual's treatment needs is conducted and, where possible, a highly suitable treatment plan is formulated.

Offenders chosen in the ballot to the Drug Court may later be excluded from participation in the Drug Court Program 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.

Program Progression

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.

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.

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.

The Court closely monitors all participants. 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. The team consists of the Judge, the DPP solicitor, the Police Prosecutor, the Clinical Nurse Consultant, Legal Aid solicitors, the Probation & Parole Coordinator and the Registrar of the Court. In the light of this discussion the Judge then speaks to each participant about his or her progress.

The *Drug Court Act 1998* allows the Court to confer rewards on a participant when they maintain a satisfactory level of compliance with their Drug Court program. Rewards may be simply a round of applause, or perhaps permission to work even during Phase One.

Sanctions may be imposed on a participant who fails to comply with the program. Participants are informed of the types of behaviour that can attract rewards and sanctions. The most severe form of sanction available to the court, short of program termination, is a custodial sanction of up to 14 days. Community-based sanctions, such as increased supervision or community work, are also available to the Court.

A program will last for at least 12 months unless it is terminated sooner.

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.

PROGRAM PARTICIPATION DATA

Participant Data 2005

01/01/2005 - 31/12/2005	Pre 2005 referrals	2005 referrals	TOTAL 2005 Activity
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Pre-program

Placed in ballot		331	331
Accepted after ballot		259	259
Not entered into Program		98	98
Awaiting Initial Sentence		5	5

On Program

Number of participants who entered Phase 1	9	156	165
Number of participants who progressed to Phase 2	50	45	95
Number of participants who progressed to Phase 3	50	10	60
Number of Participants on program as at 31/12/05	47	126	173 ¹

Court Determinations ²

Participants terminated after "potential to progress" hearing	18	6	24
Participants terminated after "risk to community" hearing	8	10	18
Participants retained after "Potential to progress" or "risk" hearing	20	4	24

Programs Completed

Graduated	36		36
Substantial Compliance	2		2
Non Custody	35		35
Total Non custody			73
Custody	64	7	76
Total	139	10	149

¹ Not all participants are receiving treatment in the community at any one time. As at 31 December 2005, 14 were serving sanctions, 8 were the subject of arrest warrants, and 21 were in residential rehabilitation.

² Under s.3 of the Act, If the Court is satisfied, on the balance of probabilities, that a drug offender has failed to comply with his or her program, and that the offender is unlikely to make any further progress in the program or that the offender's further participation in the program poses an unacceptable risk to the community that the person may re-offend—the Court may decide to terminate the program.

TREATMENT MODALITIES FOR PARTICIPANTS

	Community Based	Residential Rehabilitation	Supported Accommodation
Abstinence program	39	12	0
Pharmacotherapy support			
Methadone	67	4	12
Buprenorphine	26	0	5

Approximately 69% of all participants as at 31 December 2005 were undertaking pharmacological treatment as part of their Drug Court Program.

EXTRACTS FROM A DRUG COURT TRANSCRIPT

J's Story

During final sentence proceedings, a young man asked to address the court, despite the severe social phobia he had suffered from for many years...

OFFENDER: ...I would like to express my gratitude and honour to each and every one who guided me through to where I am now. There are many respected and trustworthy persons in my personal program that I could not forget, nor ever want to, as without them I definitely would have been looking through bars or, at least, still on drugs, not even caring or thinking or anybody else.

Well if it is okay with everyone in this courtroom if I can please explain exactly how everybody changed my life and got me to wake up from a self-pitiful sleep that costly hurt everyone in my path.

....I was 13 and someone close and immediate to me showed me a joint telling me that it was a cigarette, and of course, being young and thinking

I was tough, considered myself a cigarette smoker and jumped at the chance to try this special rollie.

The only thing was my father was a typical Army bloke with a no tolerance to drugs, and, of course, I could not explain exactly what happened, so on the streets I go and stayed until the Drug Court became my whole life.

The only time before Drug Court I ever lived in a house was when I got parole, but like most addicts I could not resist the temptation of the drugs and streets. The only other time my family knew exactly where I was, plus knew if I was safe and alive, was when I was in prison.

....I was in prison and awoken to go to court, and this is when my whole life changed for the best. I was taken to Parramatta Court where two detectives charged me with old DNA charges. Believe me I still regard this as one of my biggest miracles.

I was now here at Parramatta so I asked for Drug Court. In my head all I wanted to do was to get out any way possible to see my son born, and I would have used any excuse to get out. Well I got on Drug Court but did not take it very serious, and honestly thought I could beat the system, but to my huge amazement this was impossible and put me in a situation that meant snap out of it, or grow up and I'll lose my whole family again by going back to gaol.

So to sum things up I really want each and all of the Drug Court team to understand how special you all are to me and my family.

.....I would like if each of the pleasant people mentioned could accept the appreciation and gratitude that I will feel for the rest of my life, and my family's lives. All of you lovely people probably cannot understand that only two years ago I was mentally dead, and everyone here made the backbone that woke me up and made me, and showed me more to life plus family, so thank you, thank you, thank you.

.....My quick summary of the past to the present. I am, I guess, a typical life of a drug addict.

Thirteen, on the streets, never lived in refuges or homes, then crime, crime and more crime, and this was without drugs.

Never spoke to parents until Christmas time, all I wanted was them, but grew to be rebellious.

Sixteen, girlfriend who had two abortions in three years, this drove me over the edge, I did not care about living for years, and started smoking pot with her, at eighteen years old, broke up.

When I was twenty full of self-pity and anger, turned to heroin after parents refused to help my depression.

Twenty to twenty-six, crime, drugs, gaol, no family, living under Harbour Bridge, wood chips for four years, two to three years everywhere else....

Twelve months before Drug Court I awoke to three deaths, all within weeks of each other which saddened me again. It's not all negative. I have achieved little in a life up to this, but did get my Year 10 Certificate on the streets, also I did three and a half years of a chef apprenticeship which I couldn't finish due to hygiene and drugs.

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.

My parents are also special, and I am proud that we are what we should have been years ago, but my love for them will never fade again.

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 everyone and please forgive me if I forgot you, as it was not intentional. Thank you, thank you, thank you everyone.

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