

JUDICIAL OFFICERS' BULLETIN

Published by the Judicial Commission of NSW

February 2019 | Volume 31 | No 1



Twenty years of the Drug Court of NSW

His Honour Roger Dive
Senior Judge, Drug Court of NSW

The Senior Judge of the Drug Court of NSW reviews 20 years of an innovative, therapeutic approach to dealing with drug-related offences which evaluations have found to be more effective and less expensive than gaol.

The Drug Court of NSW commenced as a pilot program 20 years ago on 8 February 1999.

Then Premier, the Honourable Bob Carr, described it as a “new initiative in the war against drugs”¹ and, interestingly, acknowledged that the “existing judicial process does not appear to offer long term solutions to drug related crime”.²

Drug addicted offenders who plead guilty to offences for which they are highly likely to be imprisoned *must* be referred to the Drug Court by both the District and Local Courts within the defined catchment areas.³ If they are found to be eligible and appropriate for the program, the Drug Court will impose an “initial sentence” for those offences, and that sentence is suspended while they undertake a comprehensive treatment and case management plan. At the conclusion of the program a “final sentence” is imposed, taking into account success and participation on program. If graduation status is achieved, a Community Correction Order is imposed in lieu of what may have been a significant term of imprisonment. Completion of the program requires a minimum of 12 months; however the average successful program is about 15 months. The program is broken up into three stages, whereby in stage 1 the participants attend to review

1 The Hon Bob Carr MP, “Premier’s Announcement on Drug Courts”, Press Release, 15.10.1998.
2 *ibid.*
3 *Drug Court Act 1998* ss 6(1), 7(1)(b) and *Drug Court Regulation 2015*, cl 6.

FEATURES

Twenty years of the Drug Court of NSW

His Honour Roger Dive 1

Improving the Forensic Mental Health System for victims

Anina Johnson and Kavitha Selvakumar Jayawardena 4

The Honourable Justice Margaret Beazley AO appointed NSW Governor 6

New President of the Court of Appeal appointed 6

REGULARS

Case updates 7

JIRS update 10

Judicial news 10

Continuing Judicial Education Program events 10



their progress with the judge once (or even twice) a week, and by stage 3, court attendance is down to just once a month.

There are about 270 participants on the Drug Court program at any one time. Parramatta Drug Court has 160 places, Toronto Drug Court a maximum of 80, and Sydney has a smaller program of 40 places. Sadly, many potential participants are turned away, and inevitably imprisoned, because they either live out of area or because the program is already beyond capacity.

The program is governed by the *Drug Court Act 1998* (the Act), the regulations and our published policies.⁴ The Act has some important and quite innovative features, including sensible and measurable objectives. The most useful aspect of the legislation is our flexible jurisdiction. In addition to the special powers provided for the Drug Court jurisdiction, a Drug Court judge can also exercise all the usual powers of a District Court judge and those of a magistrate in the Local Court. This means the Drug Court judge can, on the one occasion, deal seamlessly with strictly indictable matters, purely summary matters, and perhaps a multitude of breached community-based orders. Given the often chaotic nature of drug-addicted offenders, this breadth of jurisdiction reduces the loss of potential participants due to them having court obligations elsewhere, which may well lead to other sentences being imposed.

It is important to note that the Drug Court also provides judicial supervision for the Compulsory Drug Treatment Correctional Centre program, which is a separate gaol at Parklea, for more serious offenders. Not only does the Drug Court approve release opportunities for those prisoners during their non-parole periods, they come to meet regularly with a Drug Court judge once they progress to stages 2 and 3 of that program.

Additional Drug Court opportunities are provided for those who identify as Aboriginal or Torres Strait Islander people, with positive discrimination embedded into the policy regarding the selection of participants to commence the program. Currently, 15% of participants at Parramatta identify as Aboriginal or Torres Strait Islander people, and 28% at the Sydney Drug Court.

The legislated power to imprison participants for breaches of the program is a powerful and very useful judicial tool. Custodial sanctions are imposed for breaches of the program, so an admitted drug use will result in a “one day sanction”, and an unadmitted drug use leads to a “three day sanction”. Generally, the court will wait until sanctions reach a total of 14 before the sanctions must be served in custody. Good performance is rewarded by sanctions being waived, so many who receive sanctions never have to go into custody.

There is separate custodial accommodation for Drug Court participants serving sanctions, so as to make that period of time as drug free as is possible in a custodial environment. The level of trust and co-operation between the participants and the judge is surprising — it is not uncommon for

participants to come to court and acknowledge they need some “time out”, and go into custody for a few weeks before starting anew.

The team work between partner agencies is the beating heart of the program. The major partnership is between the justice system and the health system. Before the court opens, the judge sits down at the bar table with the DPP, Legal Aid, police prosecutor, Community Corrections, Health and the registrar to share information about the progress (or otherwise) of each participant listed for that day — usually about 40. Counselling and group program attendance, home or workplace visits, drug test results, and any contact with police are all reviewed. Progress regarding housing, dental work and workplace qualifications are discussed. The team meeting is both efficient and informal, and may well involve laughter, groans and cake.

From 11am, the participants attend court for a “report back”, coming up to a lectern to discuss their week with the judge. If there has been no drug use, and all commitments have been kept, they receive a round of applause. A “clap” is a surprisingly effective, cheap and quick reward and may, in fact, be the first public affirmation of success in their lives. The report backs are interspersed with fresh referrals, usually in custody, and other hearings, such as initial or final sentences.

The co-operation between the team goes well beyond the courtroom. All partners share office space in commercial premises near the courthouse. So if, for example, the police prosecutor becomes aware of a newly laid pre-program charge for a participant, a short walk down the corridor to Legal Aid with a copy of the papers enables arrangements to be made for the matter to come to the Drug Court before any court registry is even aware of the new matter. Negotiations between Community Corrections and Health regarding the best treatment plan — for example if the parents are prepared to have their son or daughter back, or whether there is a need to undertake residential rehabilitation first — are all dealt with swiftly and informally and, from the judge's perspective, seamlessly.

Supervised urine drug testing is a foundation of the program, and that is conducted at the court registry in special mirrored bathrooms, and in the presence of a nurse. Testing is three times a week on stage 1, and remains twice a week throughout the program, and returns to three times a week for a month before graduation.

The Drug Court has always maintained a close working relationship with the NSW Bureau of Crime Statistics and Research (BOCSAR). Two major BOCSAR evaluations have firmly established that the Drug Court is both more effective and less expensive than gaol. BOCSAR found that Drug Court participants (whether ultimately successful on the program or not) were 17% less likely to be reconvicted for any offence, and those who successfully completed the Drug Court program were 37% less likely than a comparison group to be reconvicted of any offence at any point during the follow up period.⁵

4 All policies are published on the Drug Court website at www.drugcourt.justice.nsw.gov.au/Pages/dc_publications/dc_pub_policydocs.aspx, accessed 25.1.2019.

5 D Weatherburn et al, “The NSW Drug Court: a re-evaluation of its effectiveness” (2008) 121 *Crime and Justice Bulletin*.

Some further research was conducted in 2011 by Dr Craig Jones of BOCSAR into intensive judicial supervision,⁶ which showed that increasing the intensity of an already significant level of supervision reduced drug use and the need for sanctions. The intensity trialled by Dr Jones was immediately adopted at Parramatta, where daily sittings make that possible.

Perhaps unlike any other jurisdiction, the judges of the Drug Court receive constant positive feedback as to the success of their work. In our ordinary courts, the system only notifies us of failure — when a community-based order is not complied with, or is marred by re-offending. At the Drug Court, graduates are invited to return two months after that ceremony, and quite often return even years later with a new baby, or perhaps when working nearby. Graduates often stay in touch, and I recently received photos from a graduate — the first photo was of her presenting at a local community meeting, and the second was a photo of her family, including her partner (who also graduated) and their teenage son, who was born during the Drug Court program. The success of others can be far less extraordinary — just bumping along in life, but staying away from drugs, crime and gaol.

The Drug Court program only works because it has the ability and the services available to help make things happen, such as finding a bed in residential rehabilitation or a place on a methadone program, clearing barriers with Housing NSW or the State Parole Authority. Our Community Corrections officers are a specialised team who are both canny and helpful. They may drop in at 7am on Sunday morning and make sure the participant is home and not using drugs or alcohol, but will also give them a lift to the methadone clinic, or attend the police station with a participant if there is a need to seek an AVO. Our counsellors specialise in drug and alcohol addiction, and

additional counselling regarding other issues, such as grief or PTSD, is arranged as required. Our many partnerships go well beyond the formal. We have signed accords with the relevant housing divisions of Family & Community Services, and frequently gain significant dental treatments, including dentures, through the Exodus Foundation.

Being a judge at the Drug Court is an unusual role. There are now six judges sharing 150 years of bench time. This provides a wealth of knowledge about crime, drugs and, very importantly, people. Much of our time is spent trying to find the opportunity or angle to inspire or cajole a participant to make very significant changes to their lives. The participants are, perhaps with good reason, the last to believe such change is possible. The participants range from the dispirited and draining to the inspirational and charming. The challenge can be to work as effectively with the man who appears, by virtue of his personality alone, to be able to suck the oxygen out of the court room, as with the young woman who is blossoming with some support.

The Drug Court is an unusual work place. The pace is fast, but everyone has a chance to speak. The mobile phones of the team members buzz and vibrate, doors open and close endlessly as participants, families and team members come and go. There is much talk about urine, teeth, children, lost licences and train fines. There is a culture of co-operation, courtesy, and respect in the teams at the three locations, and the judges nurture that culture.

The Drug Court was a brave experiment 20 years ago. It is now a well-established and useful part of the justice system, providing some worthwhile people with a decent opportunity to climb out of the wretched life they had been living, and, at the same time, relieve some of our communities from drug-related crime.

6 C Jones, "Intensive judicial supervision and drug court outcomes: interim findings from a randomised controlled trial" (2011) 152 *Crime and Justice Bulletin*. See also C Jones, "Judicial supervision and adult drug court outcomes" (2013) 25 *Judicial Officers' Bulletin* 81.

Residents of The Glen rehabilitation program, based on the Central Coast, danced at the graduation of a young man and fellow Glen resident who successfully completed the Drug Court program.

