

## **International Best Practice in Drug Courts**

*Individuals who are addicted to drugs or alcohol require treatment in order to find long-term recovery, not the threat of punishment . . . if we are serious about reducing substance abuse, crime and recidivism, and saving taxpayers money, then we must accept that our criminal justice system is filled with seriously addicted people who need treatment to change their behaviour. Drug courts must be the foundation of that reform.*<sup>1</sup>

This paper draws on research undertaken during 2011 and 2012 as part of a Master of Criminology and Corrections through the University of Tasmania, including the following:

- An extensive global literature review across the field of therapeutic jurisprudence (TJ);
- Data from court sessions and interviews with 22 practitioners and 16 participants in the Tasmanian Court Mandated Diversion (CMD) program;
- Visits to 16 drug courts and various associated programs in Australia and worldwide, and interviews with a wide range of stakeholders including judges, magistrates, prosecutors, lawyers, case managers, diversion teams, therapists, counsellors and treatment specialists, researchers, evaluators and other professionals working in the drug court environment. Countries and jurisdictions visited include: Australia (Tasmania, Victoria (Dandenong) and New South Wales (Parramatta)); Chile (Santiago); the USA (Santa Barbara County, Los Angeles (LA), Chicago, Washington DC, New York and Baltimore); England (London); Wales (Cardiff and Bridgend); the Netherlands (Amersfoort and Utrecht); Belgium (Ghent); France(Paris); and Austria (Vienna); as well as
- My own experience of working in the Tasmanian CMD program for 10 months (2012-13) (after 22 years case management experience in custodial and community-based Corrective Services).

I will highlight some of the conclusions that this information and experience has led me to reach during this time, particularly in respect of practices that, in my assessment, work well in drug courts. It should be noted that cultural context is critical, and practices from one court cannot always be effectively transposed to another. Nevertheless, with due deference to Gerard Brennan's description of Michael Kirby as a 'bowerbird of ideas'<sup>2</sup>, I believe it is possible to gain knowledge and inspiration from sharing information about what happens in similar programs in other jurisdictions.

### **What works? A strengths-based approach.**

An overwhelming body of evidence, evaluations and meta-analyses support the conclusion that well run drug courts work.<sup>3</sup> Drug courts have been demonstrated beyond reasonable doubt to be powerful and effective mechanisms for breaking addiction and reducing drug use, decreasing criminal offending and cutting public expenditure.<sup>4</sup> They can increase the global functioning of

---

<sup>1</sup> Judge John R Schwartz, Supervising Judge, 7<sup>th</sup> Judicial District of New York, in the *Wall Street Journal*, letters to the editor, 30/4/12.

<sup>2</sup> Brown, AJ (2011), *Michael Kirby: Paradoxes & Principles*. Sydney: The Federation Press, p120.

<sup>3</sup> See Moore, L (2012), 'Measures of Success: Capturing the Impact of Drug Courts', at <http://ssrn.com/abstract=2236482> particularly Chapter 5, pp45-55.

<sup>4</sup> Marlowe, D (2010), 'Research Update on Adult Drug Courts', *Need to Know*, National Association of Drug Court Professionals,

participants who shift from a life of drug use supported by crime (a huge financial and social burden) to a law-abiding lifestyle featuring employment, restored families and contribution to the community, and they can even save lives. The National Association for Drug Court Professionals (NADCP) in the USA advises that in the 20 years since the first drug court was founded, there has been more research published on the effects of drug courts than on virtually all other criminal justice programs combined, and that 'the scientific community has put drug courts under a microscope and concluded that drug courts work'.<sup>5</sup> The NADCP provides rigorous evidence to demonstrate that drug courts reduce crime, save money, ensure compliance, combat drug addiction and restore families.

### The 10 Key Components

The starting point for effective drug court practice is the 10 Key Components<sup>6</sup>, guiding principles developed for state courts in the USA by the Drug Court Standards Committee of the US NADCP, partnered with the US Department of Justice's Office of Justice Programs in 1997. Judge Peggy Hora (retired) concluded in 2011 that the Key Components 'stand the test of time . . . in an era of tremendous growth of problem-solving courts with only a few necessary additions'.<sup>7</sup> The United Nations added two new components in its 1999 report outlining principles for court-directed treatment and rehabilitation programs. The first states that 'ongoing case management should include the social support necessary to achieve social reintegration' and the second addresses cultural competence, indicating that programs should employ flexibility to address the needs of women, indigenous people and minority ethnic groups.<sup>8</sup>

Public funding for drug court programs in the USA often requires compliance with these key principles. It is important that drug courts are resourced sufficiently to enable this to occur. The Key Components will be used as a framework for discussion of some of my experiences of what works well in drug courts around the world.

1. *Drug courts integrate alcohol and other drug treatment services with justice system case processing.*

The best examples I have witnessed of this integration are in experienced and highly-functioning dedicated drug court teams composed of knowledgeable and experienced professionals from a range of disciplines. Teams which have worked together for many years have a strong team identity and shared values and understanding about their roles. They tend to adopt a calm, competent and professional approach to their work. The drug court teams I spent time with in Santa Barbara County and Los Angeles epitomised a culture of relaxed professionalism which manifests as an efficient, well-oiled machine at work, reaping the rewards in terms of participant outcomes. These are dedicated drug courts with long-serving, highly committed judges who are passionate about TJ

---

[www.nadcp.org/sites/default/files/nadcp/Research%20Update%20on%20Adult%20Drug%20Courts%20-%20NADCP\\_1.pdf](http://www.nadcp.org/sites/default/files/nadcp/Research%20Update%20on%20Adult%20Drug%20Courts%20-%20NADCP_1.pdf)

<sup>5</sup> [www.nadpc.org/learn/facts-and-figures](http://www.nadpc.org/learn/facts-and-figures)

<sup>6</sup> US Department of Justice, Drug Courts Program Office, Jan 1997.

<http://www.ndci.org/sites/default/files/ndci/KeyComponents.pdf>

<sup>7</sup> Hon Peggy Fulton Hora (Ret) (2011), 'Courting New Solutions Using Problem-Solving Justice: Key Components, Guiding Principles, Strategies, Responses, Models, Approaches, Blueprints and Tool Kits', *Chapman Journal of Criminal Justice*, Vol 2, No 1. <http://ssrn.com/abstract=1801315>, pp10 & 50.

<sup>8</sup> *Op cit*, pp50-51.

and have built strong relationships with a collaborative team of like-minded and long-serving professionals around them. Staff are highly skilled, their workplace satisfaction levels are high and the culture of the courtroom is positive and friendly. Tailored approaches to individual participants may include the use of participants' first names, applause, humour, music, a hug or a handshake from the judge or the reward of a toy for a participant's child. One of Tasmania's CMD magistrates provides a cake on the occasion of graduations from her list.

Throughout my visits to drug courts around the world, a recurring theme has been that people are more important than structures and processes. The mix of individuals in key positions can exercise a marked influence on the functioning of a drug court, and many have been initiated through the serendipitous presence of like-minded individuals responding to local circumstances. This was demonstrated by the Belgian drug court in Ghent, which was developed by a judge and a prosecutor in response to their frustration with bureaucratic processes which delayed offenders accessing treatment. Appropriate structures and processes followed, and it is now the most highly regarded drug court program in Europe. The program works well because of good levels of communication and respect between the various professionals, clear role definition and boundaries, and practitioners who share understanding and similar values centred around assisting clients to avoid criminality.

Notwithstanding the importance of people and relationships, processes and procedures must be instituted and systematised in order to ensure the longevity of such programs. It is important that programs do not remain reliant on the patronage of charismatic individuals. Succession planning is essential in this context.

*2. Using a non-adversarial approach, prosecution and defence counsel promote public safety while protecting participants' due process rights.*

The pre-court conference or 'staffing' meeting is an almost universal feature of the highly functioning drug courts I have experienced to date, and a key element of successful drug courts such as Santiago, Santa Maria, LA and Ghent. The team – dedicated drug court judge, dedicated prosecutor, dedicated public lawyer and dedicated case managers (who also represent the treatment professionals) – meets in a closed session to discuss each case at length prior to the participant appearing in court. These meetings need not be held in the courtroom, but rather in the judicial officer's chambers, or in a conference room. The meetings are genuinely collaborative, rather than 'top-down' and become the forum for the development of a therapeutic culture and a team approach to problem-solving. The court session is thus more efficient, requiring fewer and less detailed written reports (or none at all), and is, more importantly, not the forum for adversarial dispute about progress or further offending or sanctions. By the time the participant is present in court, the team presents a united view as to how best to proceed. This has been compared to separating parents resolving their differences without the children present and providing a united front to the children, and is a constructive approach for the participant to experience.

Cases are triaged such that, in the open courtroom, those demonstrating the most positive progress are dealt with first. This is both a reward for good behaviour (being free to leave earlier) and a show of public support for success which provides peer role-modelling and encourages other participants who may not be doing as well. This practice has been endorsed and implemented by Tasmania's

Deputy Chief Magistrate, who notes that in allowing those who are performing well to leave earlier, justice is best served.<sup>9</sup>

*3. Eligible participants are identified early and promptly placed in the drug court program.*

The adage that ‘justice delayed is justice denied’ is certainly true in the drug court setting, in which timely access to treatment can be instrumental in achieving positive outcomes. One of the practices related to positive outcomes identified by NPC research is the time from a participant’s arrest to drug court entry being 20 days or less.<sup>10</sup>

A case management response tailored to each participant is required. For example, individual treatment plans in Ghent do not merely focus on punishment for wrongdoing but reflect the fact that clients can face a range of complex problems beyond their criminality.

Assessment needs to be rigorous in order to identify the best candidates for drug treatment courts, and the evidence indicates that these will be high-risk offenders. The practice of ‘skimming’, or allowing low-risk offenders who are likely to succeed into programs to enhance graduation figures, should be avoided. Consent to participate is strongly associated with motivation to succeed and is intrinsically linked to success. This feature was notably absent in Wales where a Drug Rehabilitation Requirement, the local form of a drug court order, can be imposed without the consent of the defendant.

*4. Drug courts provide access to a continuum of alcohol, drug and other related treatment and rehabilitation services.*

It is advantageous to have a wide range of community-based interventions available to participants. These might include individual and group therapy, pharmacological interventions, de-tox and abstinence programs and other forms of treatment and support. The LA program commences with a 90 day residential rehabilitation component for every participant (over 1000 to date). In larger cities a wider range of service providers can offer greater choice as to different approaches. Baltimore, with a population of 50,000 registered addicts, has 64 community based substance abuse treatment programs. The aim is for coordinated, rather than fragmented, care. The south of Wales boasts 150 community services for drug court participants to access. Quarterly meetings are held with service providers in the New York (Queens) drug court, of which there are more than 100. Ghent, in Belgium, also has a large network of treatment services the drug court program can access. The provision of co-located and in-house programs seems to correlate with success. In the Santa Maria court, treatment providers attend court and provide individual verbal reports on participant progress.

*5. Abstinence is monitored by frequent alcohol and other drug testing.*

It is noteworthy that some jurisdictions do not test for cannabis use. In Santiago the focus is on offending rather than drug use, so no drug testing occurs. In Queens, New York, use of drugs does not prohibit access to the program as it is ‘to be expected’. Cardiff Drug Court in Wales has

---

<sup>9</sup> Moore, Liz (2012), *Ibid*, p97.

<sup>10</sup> [www.npcresearch.com/Files/NIJ\\_Cross-site\\_Executive\\_Summary\\_0308.pdf](http://www.npcresearch.com/Files/NIJ_Cross-site_Executive_Summary_0308.pdf)

dispensed with testing for cannabis use as it is regarded as so prevalent it would be pointless and a waste of money to test for it.

*6. A coordinated strategy governs drug court responses to participants' compliance.*

Innovative sanctions I have seen implemented to positive effect in drug courts include a 1000 word biography or essay to explain breaches; and a 'day in the box' penalty, in which participants spend a day observing the drug court in action and later critique it and discuss their observations with the judge. This was a surprisingly impressive technique, with Judge Fred Wiesberg (in Washington, DC) concluding that 'sometimes it's easier to see yourself in someone else than in the mirror'. In some jurisdictions, including Queens, New York, fines payment is a condition of graduation from the program. Queens also requires participants to have a job 'on the books' as a condition of graduation.

*7. Ongoing judicial intervention with each drug court participant is essential.*

Judges perform a range of roles in effective drug courts, including those of parent, therapist, school teacher, school principal, service broker, guidance counsellor and probation officer. Some cases take considerable time and energy as the judicial officer develops a workable relationship with each participant. Expressions of gratitude and positive feedback from participants in court are common. Some programs present a 'Client of the month' award to reward and encourage commitment to progress.

The feature of ongoing judicial intervention was notably absent in the Vienna drug court, in which, after sentence, the judge only deals with the file, rather than the participant, except in cases of breaches. Although undoubtedly demonstrating classic Germanic efficiency, this is a much less rewarding experience for the judge as well as lacking a crucial aspect of therapeutic jurisprudential practice for the participant.

The panels of lay citizen voluntary magistrates which deal with many drug court matters in England and Wales are not composed of the same members on each occasion and so do not provide continuity, consistency or the opportunity for the participant to develop an ongoing relationship with the judicial officer. The panels also lack legal training and, in my experience, were inefficient and quite out of touch with the offender population.

*8. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.*

One of the major conclusions of this research is the importance of high quality evaluation of program outcomes, in order to be able to objectively demonstrate success. Data collection can be thorough without being unnecessarily complex or time-consuming, and this process is essential in order to enable programs to compete for limited funds in challenging economic and political climates.

The best examples of high quality drug court evaluation seem to occur where the courts are closely associated with local universities which conduct ongoing evaluation, such as in Santa Maria, Washington DC and Ghent. The Ghent drug court treatment program has strong links to Ghent University, which has subjected the program to rigorous evaluation (qualitative, quantitative and

process evaluation) since its inception as a pilot program in 2008. It is significant that the Institute of International Research on Criminal Policy at Ghent University has 25 full time staff!

The most prevalent measure of success identified throughout this trip was graduation numbers, with around 40-50% of participants estimated as graduating from many of these drug court programs. However, differences in program length and other requirements are relevant considerations in comparing results.

*9. Continuing interdisciplinary education promotes effective drug court planning, implementation and operations.*

A culture of continuous improvement with respect to staff training and development is evident in the most effective drug courts I have visited, along with teams comprised of highly qualified and skilled professionals. Well trained staff are regarded as a safeguard for quality work, and programs are evidence-based and informed by expert knowledge, for example exhibiting a high degree of compliance with the Key Components. This seems to have the effect of quarantining programs to some extent from the influence of political opportunism, negative media criticism and ill-informed public opinion. The Washington DC drug court was an excellent example of this, and is operating as a 'mentor court' to other problem-solving courts throughout the country. Interdisciplinary professional development strengthens the team approach. Ongoing education about TJ should ideally extend across all stakeholders and include the wider legal profession, treatment professionals and police. The drug courts in Ghent and Vienna also place a high value on continuing interdisciplinary education.

Collaboration between researchers and practitioners informs both research and practice, and the benefits of this were evident in Santa Maria, Washington DC and Ghent, Belgium.

*10. Forging partnerships among drug courts, public agencies and community-based organisations generates local support and enhances drug court effectiveness.*

A feature that appears to be regularly associated with success in criminal justice (and beyond) is the multi-disciplinary team. This was exemplified in the Welsh Youth Offending Multi-Disciplinary Teams which bring together representatives of health, police, victims, social services, offender mediation, bail support, restorative justice, housing, drug treatment, parenting, crime prevention and reparation. The teams function in an holistic manner, minimising the conflict and misunderstandings that can sometimes arise when workers are dealing with the same case or family from different professional perspectives. The interdisciplinary approach brings diverse ideas together into a coherent whole<sup>11</sup>, thereby strengthening teams, and effective teamwork is crucial to success in the drug court field.

Such partnerships can also help to 'scaffold' drug court treatment programs which might be threatened by funding limitations or media negativity.

---

<sup>11</sup> See Michael Kirby's approach to law reform in Brown, *Ibid*, p120.

### **Other observations that work – what else does success look like?**

The US National Association of Criminal Defense Lawyers has produced an extensive report into America's problem-solving courts, making dozens of recommendations about decriminalising substance abuse; the operation of drug courts (including pleas of guilty and admission criteria and practices); ethical considerations about the role of defence counsel; concerns about minorities, the poor and immigrants; the misallocation of public resources (to low rather than high risk participants); and the need for further methodologically sound research.<sup>12</sup>

Fortunately, in Australia, we do not have to contend with either elected judges, as in many parts of the USA, or volunteer lay magistrates with no requirement for legal training or experience, as in the UK. Alex de Savornin Lohman, a lawyer working for sustainable justice in the Netherlands, makes the interesting observation that judges and magistrates in common law countries such as Australia and New Zealand have, in effect, greater freedom than their continental European judicial counterparts to develop innovative responses in programs such as drug courts, as they are not as constrained by codified legal systems and generations of legal and cultural heritage and tradition.

The physical architecture of problem-solving courts is a factor that can facilitate or impede the therapeutic process. I have experienced many variations in courtroom styles, from the traditional courtroom structure with a raised bench and considerable distance and height between the defendant and the judge, to courts convened in an office, with or without a desk in between the participant and the judicial officer. My conclusion is that the culture of the therapeutic process is more important than the physical structure of the courtroom, but the surroundings in which TJ is undertaken can certainly impact the process. This is borne out by my experiences of an extremely high-functioning drug court being held in an old and somewhat run-down temporary building housing a traditional court structure, compared with much less impressive drug courts being convened with the judicial officer and participants sitting in close proximity around a coffee table or a desk. I have no doubt that a purpose-built therapeutic courtroom could potentially incorporate features supportive of the therapeutic culture, such as a more level, 'round-table' arrangement. But not unlike the importance of relationships of personnel over structures and processes, the therapeutic culture of the court and the team is of primary significance and can mitigate the negative effects of the traditional adversarial courtroom setting. This perspective was endorsed by my experience of a highly progressive drug treatment program, featuring 'acudetox', the only acupuncture program run within a US custodial environment, undertaken from the physically impoverished and run-down environment of the Baltimore prison complex.

#### Promising practices

A number of 'promising practices' employed by drug courts have been identified across a range of jurisdictions and are worthy of consideration in the context of best practice. The 2007 Multnomah 'Mature Drug Court' analysis found that drug court judges who worked longer with the drug court

---

<sup>12</sup> National Association of Criminal Defense Lawyers (2009), 'America's Problem-Solving Courts: The Criminal Costs of Treatment and the Case for Reform', pp54-5. <http://www.nacdl.org/criminal-defense/problem-solving-courts/>

had improved participant outcomes.<sup>13</sup> A study of Californian Drug Courts<sup>14</sup> found the following promising practices:

- Drug courts where more agency staff attended drug court meetings and court sessions tended to experience more positive outcomes;
- Sites with either a single provider or with multiple referring options but a single overseeing provider had the most positive outcomes;
- Judges on voluntary assignment to drug court, with either no fixed term or a term of at least two years, help produce the most beneficial outcomes;
- The sites that require participants to be 'clean' for at least six months before graduation had lower costs and higher net benefits; and
- Drug testing frequency greater than three times per week did not appear to have added benefit; however lower frequencies were associated with less positive benefits.

The same study identified the following practices which were related to positive outcomes:

- Court frequency starts at one session every two to three weeks;
- Treatment commences at two to three times per week;
- Drug tests begin at three times per week.

Findings of a study into 20 Oregon Drug Courts<sup>15</sup> echoed sections of the Californian study:

- Drug courts that incorporated law enforcement into the drug court team had 33% less recidivism;
- Programs that had at least six team members attend staffing (the pre-court conference) had less than half the recidivism;
- Drug courts that used a standardised assessment to determine eligibility for the program had 40% lower recidivism;
- Programs where treatment providers performed home visits had graduation rates 15% higher. Those that had the coordinator perform home visits had almost half the recidivism and 33% higher cost savings;
- Drug courts requiring participants to pay program fees to graduate had 40% lower recidivism;
- Drug courts that trained staff on strengths-based philosophy had 25% lower recidivism and double the taxpayer savings.

Relative to the enormity of scale of some of the difficulties facing innovative criminal justice programs in the USA (such as the disparity of the distribution of wealth and the disconnect between rhetoric and reality apparent throughout the country), Australia is in a fortunate position which should enable the continued implementation of progressive programs such as problem-solving courts. If the cost effectiveness of such programs can be quantified and demonstrated to governments, and if rational decision-making prevails over reactionary political responses, the future

---

<sup>13</sup> Bureau of Justice Assistance, Office of Justice Programs, US Department of Justice (2011), Drug Court Technical Assistance and Clearinghouse Project, 'Cost-Benefits/Costs Avoided Reported by Drug Court Programs', available at [www.american.edu/justice](http://www.american.edu/justice), part 3, p21

<sup>14</sup> Bureau of Justice Assistance Clearinghouse Project, *Ibid*, part 3, p17.

<sup>15</sup> BJA Clearinghouse Project, *Ibid*, Part 3, p46.



of drug court programs in this country should be assured. However, recent political decisions to cut funding to drug and other specialist courts by conservative governments in New South Wales, Queensland and the Northern Territory suggest that such decision-making is not necessarily conducted on a simple rational accounting basis.

The Annual Report of the Magistrates Court of Queensland 2010-11 indicated that the Drug Court saved 588 years of prison time in 2010-11 by diverting people from prison.<sup>16</sup> Queensland Law Society President John de Groot highlighted the savings of the Drug Court alone to taxpayers: 'In dollar terms, based on a conservative estimate of the cost of imprisonment of \$200 per day per person, the money saved for taxpayers and the government by the Drug Court is in excess of \$41 million'. Judge Irwin from Queensland notes that 'there is no room for rational debate. The decisions have been made for policy reasons directed to reducing spending in the short term . . . they are part of an overall slash and burn philosophy. Because of the other cuts to the budget in many areas, diversionary programs have been lost in the process. It is not helped by having a News Limited media which is more interested in sensationalism (subject to a few journalists) and soft sentencing than any rational discussion of policy. As a result it is difficult to get the story out to the public in any meaningful way'.<sup>17</sup> Securing a bi-party (or multi-party) commitment to the drug court agenda in a non-election climate might be a sound approach for programs to take in order to safeguard funding commitments.

The UK experience should be a sobering warning for this industry to beware of privatisation, 'payment by results' and over-bureaucratisation at the expense of good casework, all of which have had damaging effects on staff and client morale, which was particularly evident in the south of Wales.

A focus on budget issues to the detriment of specialist domain knowledge and a conscious shift towards a more managerialist approach in France has had dire consequences for the efficiency and effectiveness of corrective services in that country. Research has confirmed that recent managerialist reforms to the courts, damaged relationships with the prison and probation services, 'a terrible caseload and dreadful working conditions' have combined to make it increasingly difficult for judges to keep their therapeutic compass in mind, even though many of the judges (Juges de l'Application des Peines (JAP)) are problem-solvers and therapeutic, humane judges.<sup>18</sup>

By way of contrast, the Santiago drug court was very well resourced and staffed by enthusiastic young criminal justice professionals keen to see the development of TJ and social justice in their

---

<sup>16</sup> <http://www.brisbanetimes.com.au/queensland/diversionary-courts-fall-victim-to-funding-cuts-20120912-25sj5.html#ixzz26m5eIF23>

<sup>17</sup> Judge Irwin, Queensland, commenting to [tjsp@topica.com](mailto:tjsp@topica.com), 18/9/12. See the discussion with members of the TJ community in Australia and overseas between 13/9/12 and 19/9/12 in response to this debate. Numerous high profile proponents of TJ from around the world express their dismay at the Queensland decision, describing it variously as 'short-sighted', 'ill-founded', 'sad, stupid and heartless', 'part of a slash and burn philosophy', 'mindless punitivity', 'a sad affront to justice and a false economy' and 'wrong-headed and hard-hearted'. See also 'Court closures a savage blow to justice and respect for the law', The Courier Mail, 25/9/12.

<sup>18</sup> Herzog-Evans, Martine (University of Reims) (2013), 'Can a Sixty Year Old French Re-Entry Court Remain Therapeutic in an Era of Managerialism and Prison Overcrowding?', Abstracts of the 33<sup>rd</sup> International Congress on Law and Mental Health, International Academy of Law and Mental Health, p407. [www.ialmh.org](http://www.ialmh.org)

post-revolutionary country. As Chief Magistrate Michael Hill reiterates, 'in a place the size of Tasmania I would have thought we could achieve some good results with the right approach.'<sup>19</sup>

### **Emphasis on evaluation**

Any rational and reasoned approach to the topical matter of law and order is vulnerable in a challenging political and media climate. Responses to the media and the public about these matters must be well-informed and evidence-based in order to be convincing. Good quality evaluative research is essential in order to mount a persuasive and successful campaign for public and/or political support, with direct implications for securing program funding.

The Santa Barbara drug court uses the Addiction Severity Index (ASI) to measure changes in functioning over time. The Level of Service / Case Management Inventory (LS/CMI), used in Tasmania, can provide a snapshot of criminogenic needs 'before' and 'after' program participation, which, in practice, effectively translates to a level of risk. Each of these tools has strengths and deficits, and both are inherently deficit oriented, rather than strengths-based. Whichever method or tool is used to collect and calibrate outcome data, it is clear from my experiences that undertaking the task of evaluating participant progress in some form at the end of each drug court order is indispensable. It facilitates the collection of information about the impact and effectiveness of program participation, thereby rendering the data available for analysis, interpretation and application, including in program modification.

NPC Research in the USA has developed a useful 'logic model' to examine the performance of drug courts. The model can assist in clarifying the best way to use resources and which outcomes (performance measures) should be measured. The model can guide evaluations of drug court programs including process evaluation, outcome evaluation, impact evaluation and cost-efficiency analysis.<sup>20</sup>

### **What's in it for me? Benefits for participants, politicians and the public.**

#### Participant feedback

Drug courts are often catalysts for other constructive change in many areas of participants' lives. 'Before' and 'After' photos are a useful visual indicator for participants and the team to see the progress made, typically reflected in the Washington DC Judge's comment that 'they just look better'.

Feedback from 16 Tasmanian CMD participants interviewed between August and October 2012 identified the following areas as those in which the most substantial benefits had been gained from their participation in the program. Comments under each area are direct quotes from the participants.

- **Physical health** eg weight gain, joining a gym, playing sport, sleeping better, interest in appearance, engaging with medical and dental services. 'People tell me how well I'm

---

<sup>19</sup> Hill, Michael (2012), 'Wandering Down the Therapeutic Jurisprudence Road', *Australian Law Librarian*, Vol 20, No 2, p73.

<sup>20</sup> [http://www.npcresearch.com/specialty\\_drug\\_courts.php](http://www.npcresearch.com/specialty_drug_courts.php)

looking'. 'I'm trying to get fit and healthier'. 'I'm not strung out all the time'. 'I eat properly now'. 'I got sick of being sick all the time'.

- **Mental health / insight / attitude**, eg increased confidence, self-esteem, motivation and maturity, an improved attitude, improved thinking skills and coping techniques, victim empathy, learning about undiagnosed mental illness, achieving mental stability and accessing mental health services. 'My attitude has changed – I'm not a cocky-arsed c\*nt any more'. 'I'm more honest with myself instead of being in denial'. 'I'm not a paranoid head case anymore'. 'I'm listening more instead of thinking I know everything'. 'I feel bad about what I've done'. 'I can see where I'm going and where I was'. 'I assess things differently now and I resolve the issue instead of getting angry, walking out and destroying property'. 'I now know I have a choice about using or not'. 'I learnt strategies to deal with stress, which was why I used'. 'I'm getting better and I can actually sit still and have a conversation'. 'I'm able to reach out and ask for help'. 'I'm going for a mental health assessment next week'. 'I've settled right down and I have a new way of looking at life'. 'I'm trying to organise my life and pull my head in'.
- **Relationships** with partners, children, peers and parents, eg repairing relationships and rebuilding trust, reconnecting with children and achieving access or custody, improved relationships with police, taking responsibility for pets and showing respect for other people. 'I don't want my family to go through that lifestyle every day'. 'I'm getting on better with my girlfriend because I'm not scamming and drugged off my head and she's not worried about me all the time'. 'There's no conflict now because I'm not lying about situations so there are no trust issues'. 'Gives my teenage daughter more confidence in me'. 'I'm heaps better at relating to my kids coz I'm willing to do stuff with them instead of being down all the time'. 'I want to give my kids an upbringing without drugs, alcohol and violence'. 'I'm doing a parenting program'. 'The CMD worker helped me contact Welfare to work towards custody of my son'. 'I get to see my family more and play with my son more – I take him to parks and to daycare. I never used to do that coz I was always out chasing money'. 'I've dealt with a lot of counsellors, psychiatrists and therapists for myself and my son'. 'I've been drug free from day one in my three year old's life'. 'The program saved my butt so I could get out (of prison) with my son'. 'I play football with my 12 year old'. 'I'm no longer with my partner who is still using'. 'My Mum hadn't slept properly for five years and now she sleeps every night'.
- **Drug use** eg reduced use and accessing ongoing treatment, including pharmacotherapy. 'I used to use 20 times a day'. 'I was using upwards of \$500 a day. Now I have positive strategies instead of using'. 'I knew the program would give me the structure I needed to give up the drugs'. 'I can talk about where I've been – before I could never talk about drugs without needing them'. 'This is the longest I've been clean for over 10 years'. 'I used one weekend but the program helped me not to go into a downhill spiral. I was disappointed in myself for using and I was honest about it'. 'I've gone from using everything to just using cannabis'.

- **Offending / legal** eg reduced offending, reduced manufacturing / dealing of drugs, reduced charges and court appearances, compliance with court orders (drug court, probation, Family Court, restraint orders, bail conditions), reduced negative interactions with police, reduced prison time, accountability to the program through urinalysis and being able to acquire a drivers licence. 'I'm not making speed and ice any more'. 'Not stealing . . . before I couldn't walk past something without taking it'. 'Thieving is something I was so used to doing before'. 'I'm not looking for trouble any more – I've realised it's not worth it'. 'I'd be in prison without the program'. 'I'll never go to prison again'. 'The court order gives weight to my attempts to stay away from other users'. 'I don't hate the police and judges now'. 'When you go to court the judge treats you completely different . . . they talk to you and let you know you're doing a good job . . . it's a good feeling . . . I look forward to going to court'. 'I treat the judge with respect and he treats me with respect'. '(The magistrate) is engrossed in the program and wants you to succeed and come out better. He saw me in the street and would come up and ask how I'm going. Court is easier and more laid back'. 'The prosecutor apologised for not wanting me on the program and let me know I'm doing good'.
- **Education, employment** and other forms of productivity, eg enrolling in formal education, finding work and accessing schemes to support new business opportunities. 'I've done lots of courses and got my white ticket for building sites and fork lift and traffic management tickets'. 'Casual paving led to roofing work and that led to more and more work'. 'I've set up a legal business now'. 'I'm trying to start my own business making furniture'. 'I want employment and I never wanted to work before'.
- **Financial management** eg addressing rent arrears, debts and court fines. 'I pay my bills and debts and I have money for nice things'. 'I have less money because I'm paying my rent and power and groceries but I don't waste it on stuff I don't need'. 'My financial situation is bouncing back because I'm not buying drugs'. 'I got a super payout and before the program it would have been straight up my arm but I'm looking into buying a property – I've never owned property before'.
- **Social engagement and life skills** eg volunteering and community activities which make a contribution to society, developing a pro-social peer network and accessing other social services (such as social security and advocacy services). 'I now have nothing to do with drug dealers – I hang out with normal people'. 'My whole circle is different in every single way'. 'I have different friends now, including some Christians!' 'I changed my phone numbers to avoid drug dealers – if you sleep with dogs you catch fleas'. 'A really good hobby you're passionate about helps'. 'I'm spending time fishing and bike riding instead of smoking dope'. 'I've realised that what's normal is to stay home and watch TV and walk the dog and pay the rent'. 'I had to cut off my three best mates and my brother now that I have nothing to do with other users'.
- **Stable accommodation.** 'This is the first house I've ever had'. 'I'm looking into buying my first house'.

The interview feedback was overwhelmingly positive and suggests a pattern of comprehensive change. This was reflected in comments such as 'It's changed my whole life around', 'I've never looked back since starting CMD', 'I felt that I was treated like a human', 'I feel normality now', 'My whole world is different . . . I have responsibilities now', and 'I don't have to wake up and figure out who I'm going to rob, and I'm not sick and crook and hanging out'. This qualitative information about global functioning puts a human face to the statistical data used to evaluate program success. It can serve to remind us of the ripple effect of drug abuse and crime within families and communities, and the corresponding breadth of benefits which can accrue to families and communities when drug abuse is treated and crime is reduced as a result. It is hoped that this data set can be usefully employed in conjunction with quantitative data that includes recidivism figures, drug use analysis and calculations of costs saved and avoided in order to provide a comprehensive case in favour of adequately funding drug courts as an intelligent and strategic investment of public money.

### Cost savings

The Director of the Office of Drug Control Policy for the Obama Administration, Gil Kerlikowske, indicated in March 2012 that the USA spends around \$300 billion per year on healthcare and corrections associated with illicit drug use. The Obama Administration has responded to this dire situation by dropping the 'war on drugs' rhetoric and is instead focussing on education, public health and treatment. The rapid growth of drug courts across the country, now numbering close to 3000, is in direct response to the expenses associated with incarceration.<sup>21</sup>

Drug courts can be shown to represent intelligent and effective use of public money and to be a wise investment for governments to make. Well run programs which comply with the 10 Key Components can return considerable financial benefits across the public sector in agencies such as public health, mental health, police and emergency services, legal services, courts, prisons, community corrections, child protection, public housing and social welfare and unemployment services. The literature and my own research suggests that investment in such programs must be sufficient to ensure that the job is done properly, and that 'skimping' on the provision of services to what is typically a very complex, high-risk and high-needs offender cohort is a false economy. The return on investment of this nature has the potential to pay dividends well into the future, serving the generations which follow. The US National Institute of Justice concludes that 'criminal justice intervention is a good investment of public funds'.<sup>22</sup>

The field of cost analysis in drug courts has developed significantly from calculating simple savings in prison costs to a much more comprehensive analysis incorporating calculations of criminal justice system costs, public health costs, lost productivity costs, social welfare costs and victimisation costs. Based on extensive research, NPC Research has developed a list of 27 practices related to 'positive cost outcomes', specifically targetted to saving and avoiding costs in drug court programs.<sup>23</sup>

---

<sup>21</sup> Gil Kerlikowske, addressing the International Council of Police Representative Associations, Baltimore, March 2012.

<sup>22</sup> Harrell et al (2000), 'Evaluation of the DC Superior Court Drug Intervention Programs', *Research in Brief*, National Institute of Justice, US Department of Justice, [www.ojp.usdoj.gov/nij](http://www.ojp.usdoj.gov/nij)

<sup>23</sup> [www.npcresearch.com/Files/NIJ\\_Cross-site\\_Executive\\_Summary\\_0308.pdf](http://www.npcresearch.com/Files/NIJ_Cross-site_Executive_Summary_0308.pdf)

The seminal American financial study, CALDATA 1994, tracked 1,821 Californian drug users in treatment and found that, despite an average treatment cost of \$1400 per person, taxpayers saved approximately \$10,000 'with the greatest share of benefit deriving from reductions in the economic burden of crime'.<sup>24</sup> An estimate of the annual per person cost of program participation in the LA drug court is \$14,000-\$15,000, compared with an annual prison cost of \$42,000.

A series of cost analyses has been conducted on drug courts across the USA, finding average costs savings per participant from \$2,615 to \$12,218 and average benefits per \$1 invested from \$1.74 to \$6.32.<sup>25</sup> This increases to up to \$27.00 for every dollar invested when savings from reduced foster care placements and healthcare utilisation are taken into account. The Multnomah County Drug Court in Oregon saved nearly \$2.5 million per year in criminal justice costs, with the payoff rising to over \$10 million per year when savings in victimisation, theft reduction, public assistance and medical costs were added. Recidivism savings to date in the Superior Court of Sacramento County Drug Court were calculated at \$20,257,535. Cost savings estimated across the Californian drug courts are in the order of \$18,000,000 per year; cost offset and cost avoidance are estimated at \$43,000,000 per year, and projections of future savings in California conclude that by the ninth year \$1,000,000 would be saved for every 100 drug court participants.

One program participant interviewed during the course of this research disclosed that he would regularly 'binge steal', or break into 20 to 30 houses a night in order to secure the means to fund his illicit drug habit. Another described as 'business as usual' his practice of using \$100 worth of amphetamines before proceeding to rob numerous businesses in order to fund a further \$1000 worth of drug use on the same night. The extensive true cost of such offending is a powerful argument to address the causes rather than the symptoms of crime in the community. A reduction in drug-related crime has benefits for potential victims, insurance companies and the criminal justice system, and is a significant step towards achieving safer communities.

A 2012 calculation of costs avoided in saved (state) prison days alone for 14 participants of the Tasmanian Court Mandated Diversion (CMD) program totalled \$1.23 million, a similar amount to the annual (federal) budget allocation for the program.<sup>26</sup>

### **A problem-solving approach to resources**

Dr Meredith Cosden, a university-based program evaluator in California, posed the question 'Why would it be cheap to fix this problem?', recognising the complexity of the client group, their history and the severity of the problems they face. This comment was endorsed by Judge Mike Tynan in the LA court, who elaborated that this particular client group already costs the state an extraordinary amount of money when expenditure across all public sector budgets (such as housing, welfare payments, public health, mental health, police and emergency services, child protection, courts, legal aid and corrections (particularly prisons)) is considered. He argues that it is unreasonable to expect drug courts to be a 'silver bullet' but that a sensible investment in addressing the underlying problem could lead to enormous cost savings for the public sector. It is a complex economic task to

---

<sup>24</sup> Roberts, Keith (2012), 'Focus on Problem-Solving Courts', *The Judges Journal*, Vol 51, No 2, Spring 2012, p1. (USA wide study of 23 drug courts plus studies in Seattle and Portland, Oregon).

<sup>25</sup> Cited in Moore, Liz (2012), *Ibid*, p58. See Chapter 6, pp56-66 for further US and UK examples of cost savings and benefits, including employment and tax revenue.

<sup>26</sup> Moore, Liz (2012), *Op.cit*, p85.

calculate the comprehensive costs saved and avoided across agencies by addressing illicit drug use and related crime but a recurrent theme across these drug courts was that cost savings are considerable and that the courts represent good value for public money.

A prominent theme emerging from many of the drug courts I visited was the need for programs to be resourced to a sufficient level to enable the job to be done effectively. An inadequate level of funding, whereby the 10 Key Components cannot be complied with, risks undermining the integrity of programs. This is likely to lead to inferior outcomes which are reflected in a poor public and media response. The credibility of therapeutic jurisprudence is threatened in this manner, and the USA has been particularly vigilant in ensuring that programs are well supported in order that they remain capable of achieving good outcomes. Access to a sufficient range of appropriate services is an important part of this equation, and the lack of residential rehabilitation places in Tasmania is a case in point which needs 'urgent attention' in the view of the Chief Magistrate.<sup>27</sup>

A creative problem-solving approach can also be applied to the problematic issue of securing funding to support drug court programs. In some jurisdictions I visited, funding originates from novel and innovative sources such as private health insurance companies and church groups. Donations in kind can also be sought – for example, Wal-Mart donates the toys given to participants as rewards in the Santa Barbara drug court. Donations could be sought for relatively low-cost items to support drug court participants, such as diaries, drink bottles and bus passes, and for other 'rewards' presented in court in recognition of good progress or graduation. The availability of treatment programs during evenings and weekends is another example of an important aspect of drug court programs which could be achieved through a creative and flexible approach to work hours, without necessarily involving a considerable additional cost. Close cooperation with local universities can reap significant benefits such as further education for staff, research, evaluation, assistance with grants applications and placements for post-graduate students, all of which can bring material benefits to programs without the need for specific budget line-item expenditure.

### **Reflections on the Tasmanian experience**

Tasmania's Court Mandated Diversion (CMD) list is one of many lists (or dockets) managed by eight of the State's 14 magistrates. As such it is very much a part-time jurisdiction, involving an average of one sitting session per fortnight for each magistrate (four in the south, two in the north and two in the north-west of the state). The program is necessarily fragmented by virtue of this structure, and doesn't therefore reap many of the benefits of consistency and continuity that can flow to a 'dedicated team' program. In practice, the 'team' composition in Tasmania (including magistrate, prosecutor, lawyer and Court Diversion Officer) is different for almost every participant and can vary even for the same participant from one court review to the next. The program is capped at 80 participants around the state (40 in the south, 20 in the north and 20 in the north-west) and is limited by the absence of any dedicated state government funding, being entirely funded through the Illicit Drugs Diversion Initiative of the federal government. Chief Magistrate Hill<sup>28</sup> notes that 'resources will always be an issue with programs like this'. He also comments that 'to obtain and retain properly qualified staff seems to have been an issue . . . consistency of staff retention means consistency and reliability in approach which I think is vital.' A high turnover of staff and managers

---

<sup>27</sup> Hill, Michael (2012), *Ibid*, p72.

<sup>28</sup> Hill, Michael (2012), *Ibid*, p71-2.

has characterised the program since its inception as a pilot in 2008, and mitigates the capacity for effective teamwork, continuity of practice, stability and program development. Other issues CM Hill highlights are

‘the lack of residential rehabilitation and the area of youth offending which . . . need urgent attention. We need more appropriately qualified counsellors and drug clinicians. We need administrative support in the court system to ensure our data collection processes are as good as they can be and to administer the list throughout the State. The restrictions on the number of participants are simply unacceptable from an access to justice perspective or from basic fairness . . . We need to continue professional development in each of the areas, namely judicial, treatment provision, diversion administration and prosecutorial and defence roles.’<sup>29</sup>

Chief Magistrate Hill notes that the legislative provisions establishing this problem-solving court have inserted a non-adversarial approach in an adversarial structure.<sup>30</sup> In practice, CMD lists are regularly combined with other court matters, which inhibits the development of a therapeutic culture for the members of the team.

In my experience of CMD (researching the program for a few months before working as a Court Diversion Officer for 10 months), the sort of dynamic and creative problem-solving approaches that I have witnessed in various successful programs around the world are not well-served by the risk-averse and process-oriented public service machine in which the program is currently embedded. This is notwithstanding the independence of the judiciary, and the combined blessings of a progressive Chief Magistrate and CMD Magistrates who are, without exception in my experience, competent, intelligent, professional, constructive in their approach and committed to the concept of therapeutic jurisprudence.

Arguments in favour of diversified, rather than dedicated, drug court team(s) include exposing more judicial officers to the therapeutic problem-solving culture with the possible attendant benefit that they transport elements of this approach to their decision-making practices in the ‘mainstream’ body of their court work. It is also possible that the security of funding for the program is enhanced by spreading the participant numbers across a number of courts, although I doubt this practicality would impact a political decision to cut funding to the program. The cost to the court of running the list is not substantially different to that of dealing with the participants in a mainstream list, which would have to occur in any case in the absence of this particular sentencing option.

Perhaps the last word should be left to judicial officers, who have described their work in therapeutic courts in terms ranging from ‘time consuming and draining but rewarding’<sup>31</sup> to ‘very satisfying’<sup>32</sup>, indeed to the extent that: ‘in all my years here it is one of the most satisfying and effective sentencing options. You can actually see it working and I think that is really positive, and I think the community can have confidence because we are putting a fair bit of work into it’.<sup>33</sup>

---

<sup>29</sup> *Loc.cit*

<sup>30</sup> Hill, Michael (2012), *Ibid*, p71.

<sup>31</sup> Comment made by Judge Fred Wiesberg in Washington DC, 16/3/12. Personal notes with author.

<sup>32</sup> Hill, Michael (2012), *Ibid*, p72.

<sup>33</sup> Hill, Michael, in The Hobart Mercury, 25/10/11, [www.themercury.com.au](http://www.themercury.com.au)



## References

Brisbane Times, <http://www.brisbanetimes.com.au/queensland/diversionary-courts-fall-victim-to-funding-cuts-20120912-25sj5.html#ixzz26m5elF23>

Brown, AJ (2011), *Michael Kirby: Paradoxes & Principles*. Sydney: The Federation Press.

Bureau of Justice Assistance, Office of Justice Programs, US Department of Justice (2011), Drug Court Technical Assistance and Clearinghouse Project, 'Cost-Benefits/Costs Avoided Reported by Drug Court Programs', parts 1-3, available at [www.american.edu/justice](http://www.american.edu/justice)

Harrell, A, Cavanagh, S & Roman, J (2000), 'Evaluation of the DC Superior Court Drug Intervention Programs', *Research in Brief*, National Institute of Justice, US Department of Justice, [www.ojp.usdoj.gov/nij](http://www.ojp.usdoj.gov/nij)

Herzog-Evans, Martine (University of Reims) (2013), 'Can a Sixty Year Old French Re-Entry Court Remain Therapeutic in an Era of Managerialism and Prison Overcrowding?', Abstracts of the 33<sup>rd</sup> International Congress on Law and Mental Health, International Academy of Law and Mental Health. [www.ialmh.org](http://www.ialmh.org)

Hill, Michael (2012), 'Wandering Down the Therapeutic Jurisprudence Road', *Australian Law Librarian*, Vol 20, No 2.

Hora, Hon Peggy Fulton (Ret) (2011), 'Courting New Solutions Using Problem-Solving Justice: Key Components, Guiding Principles, Strategies, Responses, Models, Approaches, Blueprints and Tool Kits', *Chapman Journal of Criminal Justice*, Vol 2, No 1. <http://ssrn.com/abstract=1801315>

Marlowe, D (2010), 'Research Update on Adult Drug Courts', *Need to Know*, National Association of Drug Court Professionals, [www.nadcp.org/sites/default/files/nadcp/Research%20Update%20on%20Adult%20Drug%20Courts%20-%20NADCP\\_1.pdf](http://www.nadcp.org/sites/default/files/nadcp/Research%20Update%20on%20Adult%20Drug%20Courts%20-%20NADCP_1.pdf)

Moore, L (2012), 'Measures of Success: Capturing the Impact of Drug Courts', at <http://ssrn.com/abstract=2236482>

National Association of Criminal Defense Lawyers (2009), 'America's Problem-Solving Courts: The Criminal Costs of Treatment and the Case for Reform', pp54-5. <http://www.nacdl.org/criminal-defense/problem-solving-courts/>

National Association of Drug Court Professionals, [www.nadpc.org/learn/facts-and-figures](http://www.nadpc.org/learn/facts-and-figures)

NPC Research, [http://www.npcresearch.com/specialty\\_drug\\_courts.php](http://www.npcresearch.com/specialty_drug_courts.php)

Roberts, Keith (2012), 'Focus on Problem-Solving Courts', *The Judges Journal*, Vol 51, No 2, Spring 2012.

Schwartz, Judge John R, Supervising Judge, 7<sup>th</sup> Judicial District of New York, in the *Wall Street Journal*, letters to the editor, 30/4/12.

US Department of Justice, Drug Courts Program Office, Jan 1997,  
<http://www.ndci.org/sites/default/files/ndci/KeyComponents.pdf>