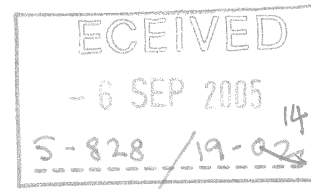




Drug Court of New South Wales

2 September 2005

The Hon Christine Robertson MLC
Chair, Standing Committee on Law and Justice
Legislative Council
Parliament House
SYDNEY NSW 2000



Dear Ms Robertson

Thank you for the opportunity to give evidence before the Standing Committee on Law and Justice into aspects of community based sentencing options. When I appeared on 31 August 2005 I undertook to provide the Committee with a response to questions 7 to 13, and my replies to those questions follow.

I would also like to confirm that I would be pleased to assist the Committee in any other way possible, and would certainly like to extend an invitation to the Committee to visit us at Parramatta and see our work first hand. If you or any Committee members would like to attend the Drug Court, please contact my Executive Officer, Ms Eileen Fryer, on 9895 4515.

Returning to the questions taken on notice:

7. In your opinion would the expansion of the drug court or MERIT program be more suitable for rural and remote areas in NSW? Could you please explain your reasoning to the Committee?

MERIT and the Drug Court have a different clientele. Participants on the Drug Court must be highly likely to receive a full time gaol sentence to be eligible. The MERIT program and the Drug Court work side-by-side in our catchment area, and MERIT has absorbed the less serious offenders who may have previously been referred to the more intensive Drug Court program. MERIT provides an excellent program for offenders who may never require the intensity of a Drug Court Program.

8. Should the drug court model be extended to other areas? What additional resources would be required for this to occur?

The Drug Court could certainly be extended to other areas, and there is a clear

demand for Drug Court programs and placements. Unfortunately, at current resource levels the Drug Court cannot even accept all of the referrals from its current catchment areas of West and South West of Sydney, and a ballot is undertaken each week to select participants from those referred. The Drug Court would certainly support its expansion to enable it to manage more offenders.

Any expansion would simply require the funding of the necessary health treatment services, Probation and Parole services, housing access, court room time and the necessary legal services from Legal Aid and the Office of the Director of Public Prosecutions. Such additional costs should be recognised as directly offsetting the alternate, known and undoubted cost of incarcerating the potential participants.

9. In your opinion, would more people either with special needs or from rural/remote areas, complete a community based sentence if they attended counselling, such as anger management as a requirement of their bond or community based sentence?

Judicial officers use resources and programs which are identified and available. If suitable programs are available, and if the option of that course or program is raised in court as a sentencing option, whether by the magistrate or judge, legal practitioners, prosecutors or probation officers, then completion of that course can be included within the conditions of a community based order.

However, I note that, as a matter of law, inappropriately onerous conditions must not be included within a community based order. So if the Anger Management course is only available in an adjoining town, there is no public transport, and the offender has no driver's licence, attendance should not be required as part of a community based sentence. Otherwise the offender may end up in full time custody for having breached a condition of the good behaviour bond which included an unrealistic condition.

10. Without discussing any particulars, do you believe that it would be useful for magistrates to have extra discretion to be able to order people to attend programs, targeting offenders who require domestic violence, drug and alcohol intervention, as a condition of their bond or other community service order?

No additional discretion is required.

11. Are the Probation and Parole Service pre-sentence reports and assessment reports effective advice for you to sentence an offender? If not what can be done to improve the effectiveness of the reports?

Reports from the Probation and Parole Service should only provide subjective information and a report on available sentencing options, and the sentencing discretion and decision must be seen to remain with the Judicial officer. Indeed, reports must not suggest any particular outcome, as it would be

improper to suggest to the offender a likely result of the court case, an opinion or suggested outcome which could in fact be quite misguided.

12. Do you believe it would be appropriate and in the public interest to consider changing the Drug court's eligibility criteria to include offenders charged with offences involving violence? Why/why not?

The question of access to a Drug Court Program should centre on an assessment of risk to the community. The legislative test could be an assessment of that risk, and whether it is an acceptable level of risk.

Such assessments are in fact already made by the court, after a formal hearing if necessary, to decide if an offender is an appropriate person for a Drug Court Program. The hearing is conducted with the assistance, if necessary, of medico-legal reports from a psychiatrist. The necessary legislative change would assist potential Aboriginal offenders – experience shows, for a whole variety of reasons, that Aboriginal offenders are more likely to have offences of violence or a record of violence, and so the current legislative test can be a barrier to their participation on a Drug Court Program.

13. Submissions to a recent Inquiry by the NSW Sentencing Council noted concerns about the process of appeal against sentence from Local to the District Courts. Can you comment on these concerns?

I would require more information to make any comment.

I trust the above is of assistance,

Yours sincerely



J R Dive
Senior Judge