

**INQUIRY INTO COMMUNITY BASED SENTENCING
OPTIONS FOR RURAL AND REMOTE AREAS AND FOR
DISADVANTAGED POPULATIONS**

Organisation: Drug Court of NSW
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Theme:

Summary:

23 March 2005

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

Dear Ms Robertson

I refer to the inquiry being undertaken by the Standing Committee on Law and Justice into aspects of community based sentencing options, and I appreciate the opportunity to respond. The issues before your Committee, and the materials within your discussion paper, are matters I have a passion for, given my current role as the Senior Judge of the Drug Court, and my previous role as the Senior Children's Magistrate (where I was involved with the Youth Drug and Alcohol Court). I have also been a Local Court magistrate for many years, sitting in city and country towns, including the Bourke and Brewarrina circuit.

Background comments

Before addressing the issues before the Standing Committee, I would like to make some more general comments to set the background to the views I express regarding your specific issues.

I appreciate that it may seem obvious, but it is appropriate to firstly note that the fundamental aim behind the imposition of any punishment, and the grounding for the provision of any expanded, new or alternative sentencing option or regime, must be to provide protection for the public. The sentencing judge or magistrate is seeking, when making any sentencing order in any court case, to deter the offender (and thereby protect the public) from further crime by this and other individuals.

It follows therefore that the greater the range of sentencing alternatives available to the sentencing court, the greater is the opportunity for the court to tailor the sentence to the crime, the individual, and to better protect the public. There is, I believe, a legitimate fundamental expectation in the community that basic sentencing alternatives should be available right across the State, so Probation and Parole should

have the ability to provide meaningful supervision on good behaviour bonds and provide community service order options right across our courts. Cost issues are then very relevant as to the provision of periodic and home detention sentencing options, however the more widespread their availability, the greater is the opportunity for the sentencing court to impose the most appropriate sentence to a particular offender.

What can be very concerning for a sentencing judge or magistrate is the very narrow range of effective sentencing alternatives which can be available at a remote country court. A fine may be rather meaningless as the offender knows it will never have to be paid. A good behaviour bond may not be effectively supervised because the Probation and Parole Service can only visit town on a fortnightly basis, so the interaction between the offender and the officer can be quite short, and the information provided by the offender as to work or activity not necessarily be independently verified. Community Service work may be unavailable locally, and any community service work in a nearby town is unsuitable as the offender is either disqualified from driving and/or there is no public transport. Periodic Detention and Home Detention are only available in very limited locations.

Offenders are often very well informed as to the above issues, and may well know that their current offence is unlikely to warrant the ultimate sanction of full time imprisonment. Such a situation does not lead to respect for the law and its enforcement, and deterrence of the offender appears unlikely.

The new direction

My experiences as a judicial officer, especially of being frequently confronted by the same offenders returning repeatedly to court for new offences, has encouraged me to embrace the new initiatives in the criminal justice system which seek to achieve long term change. Those initiatives are using the offender's crime as a compulsory opportunity to engage the offender in intense and positive activity, which is monitored and controlled by the court.

Intensive court based programs such as the Drug Court or the Youth Drug and Alcohol Court have embraced therapeutic jurisprudence, and increasing the ability of the criminal justice system, working in partnership with other key agencies, to intervene at an intense level and protect the community by encouraging, managing and enforcing changes in the offender's life.

The Drug Court of N.S.W.

The Drug Court of N.S.W. is remarkably successful in achieving change in long-term, hardened and experienced criminals. The criminal histories and life stories of graduates make appalling reading, and the details of the transition to a different life by one graduate of the Drug Court are annexed. An extract from a letter recently received from a participant, which provides a view of the program from a participant's perspective, is also attached.

One hundred and twenty-nine participants have now graduated from the Drug Court, and 39% of participants in the last two years have achieved a non-custodial sentence at the completion their Drug Court programs. Bearing in mind that to be eligible for a Drug Court program the defendant must be highly likely to serve a sentence of full-time imprisonment, this is a remarkable result.

The impact and outcomes from the Drug Court go well beyond the sentencing outcomes. Pregnant participants may go right through their pregnancy without using illicit drugs, resulting in the delivery of a healthy child. Participants re-engage in education and return to work, often after long absences. Indeed sometimes they are so successful in their new work, working long hours every day, that it is a challenge to fit in the strict obligations of their Drug Court program. Participants obtain computer skills, TAFE qualifications and achieve reconnection with their estranged families. An expectant mother may not only re-engage in education, but gain first aid qualifications or complete parenting classes.

The Youth Drug and Alcohol Court

I was involved as a magistrate sitting in the Youth Drug and Alcohol Court for four years. In my view this is a very successful program, which intervened and created change in participants. An additional issue which was more prevalent in the YDAC was the need to extricate the young person from a

negative or destructive home or community environment, and expose that young person to new positive influences and experiences. For example, the young person's mother may be a drug user and her current partner a drug supplier. The traditional approach of placing the young person in custody to serve a sentence, and then returning her to the same toxic environment, perhaps without any new life skills or coping mechanisms, does not create any realistic likelihood of a cessation of offending.

My experience in the Children's Court and the adult courts also suggests that serious and persistent offenders continue to offend despite the traditional responses of the criminal justice system to their offending. Therefore the earlier such offenders are identified, and the earlier in their criminal career intensive intervention is provided, the greater potential benefit to the community.

Intensive Court Supervision

Drawing on my experiences in the YDAC and in the remote towns of Brewarrina and Bourke, in 2004 a proposal was prepared advocating the use of therapeutic jurisprudence principles in those communities. Most importantly, involving the Community Justice Group from the Aboriginal community was added to the court team mix. That proposal was supported by the Attorney General and developed into a comprehensive programme within the Attorney General's Department, and I understand that it will commence in the sittings of the Children's Court at Brewarrina this week.

I note that your terms of reference refers in paragraph 1(c) to "*the impact of the availability of Intensive Supervision Programs upon rural and remote communities*". I had the opportunity in 2004 to discuss the Intensive Court Supervision proposal with the elders of the Aboriginal communities in Bourke and Brewarrina, and with other community leaders, such as the mayors of each of those towns. The response was extremely positive, and there was real excitement about the prospect of action, and the chance to be involved with a new and positive opportunity for young people causing trouble in their communities.

The discussion paper refers to programs being "tailored" for rural and remote areas, and for disadvantaged populations. I would strongly support the recognition within that proposal that different communities have entirely different needs, and that a program which is supported by the community in one country town may not be appropriate (without consultation and modification) for a community which is geographically close by.

Evaluation and Outcomes

The consideration and development of evaluation techniques should form an integral part of the planning of any new initiative. The Drug Court of N.S.W. has a close working relationship with the Bureau of Crime Statistics and Research, whereby the Drug Court has been guided in its maturation and development by the critical analysis of BOCSAR, and the court continues to work closely with BOCSAR on research projects.

Experience at the Drug Court demonstrates the entrenched nature of offending within our participants, and their extraordinary lengthy criminal records evidence how difficult it is for those participants to make long term changes to their habits of offending. It often appears quite apparent that the ordinary process of detection, sentence and then imprisonment have had no apparent impact on their offending over a period of decades. The achievements of innovative programs such as our Drug Courts should be measured against that background.

Resources

It should also be acknowledged and expected that new and intensive programmes and alternatives may require greater court and other resources than the traditional sentencing model, however if such programs are trialled and proven to be effective, then there are enormous benefits to the community and savings on the cost of our custodial system.

I trust that this short submission to the Inquiry is of assistance.

Yours sincerely

J R Dive
Senior Judge

A Drug Court graduate

Aged 37 years

First Court appearance:

In 1983, at 14 years of age - Yasmar Children's Court for assault. Placed on a good behaviour bond for 12 months.

Criminal History 1983 to 2001:

During the next 18 years convicted of 53 offences on 23 different sentencing occasions, including sixteen offences of "break and enter", three offences of receiving stolen goods and six offences of driving whilst disqualified. During those years he was also convicted of high range drink driving, stealing, goods in custody, malicious injury, supply prohibited drug, escaping lawful custody and other more minor offences.

Charges referred to the Drug Court:

In October 2002 he was referred to the Drug Court for three charges of "break, enter and steal", 22 charges of "larceny as a servant", 2 x "receiving stolen goods", 2 x "goods in custody", "possess implements to enter conveyance", "taking and driving", and "drive manner dangerous".

Performance on Drug Court

- Submitted to 117 supervised urine drug tests.
- Attended Drug Court on 25 occasions to meet with the Drug Court team to review his progress on program.
- Returned to full-time employment
- Paid off substantial fines and obtained his driver's licence and fork lift licence.
- Progressed through all phases of the Drug Court program in the minimum 12 month period, graduating on 1 December 2003.
- Committed no new offences either on the Drug Court program or since.

Extract from a letter from a participant

January 2005

“I am just writing to personally “thank you” for all your continuous support, faith and belief in me and my ability to get through this program.

I know at times it must have seemed, not only to yourself, but all the Drug Court staff, that I was headed for that “4 ½” years that so threateningly hovers over me, and admittedly these thoughts have reoccurred to me on a few occasions also. But thanks to your unwavering belief and countless “chances” you have helped me WANT to be drug free, crime free, and the desperately wanted but unobtainable, “NORMAL”!

And finally after 23 miserable, lonely years I believe honestly I am there! I know its only early days and there’s a high chance I could and will have occasional lapses, (not only of judgement but also of clean-time) I just pray they are that, lapses not re-lapses. All your wonderful members of your team at court, the registry, P&P and the counsellors are to be thanked and congratulated for their supportiveness, professionalism and, when needed, friendship. In all of my long using years, and times in and out of courts, jail, detox, rehab, refuges, kids homes, I have never before came across a program to help, genuinely help, criminal drug addicts that has so much of a variety of services put into it. It’s honestly the one-of-a-kind operation that I (and I know) countless others have been searching for to get us out of this down hill ride before it’s too late. So, you honour THANK YOU from the bottom of not only my heart, but also the hearts of my grateful mother and children, (who are, thanks to you guys, ALL back with me). You all have helped so much, to give me never before feelings of achievement, confidence (to do this, but also that I can live alone and don’t need a man), Faith in a system and myself and pleasure in just being a normal version of me!

I owe you my life and that’s no exaggeration ”