

# **Crime prevention through rehabilitation**

**The Hon Roger Dive to Sydney Probus Club**

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*Note pseudonyms have been used for privacy*

Before I was a judge I was a magistrate for 15 years. So, over 30 plus years on the bench, I have dealt with, and punished, thousands of criminals for a wide variety of crime, and that has involved sending many to gaol. So I have been involved in the crime and punishment issue for a long time.

## **Sentencing law**

A sentence of full-time imprisonment is the last sentencing alternative, and must not be imposed unless there is no other appropriate punishment. Courts can impose fines, restrict behaviour with good behaviour bonds, require community service work as lesser or alternate punishments to full time imprisonment.

Terms of full-time imprisonment are the appropriate sentences for many criminals, especially some cases we tend to hear about through the media. They are often so horrific, so dreadful, that it is obvious that a long term of imprisonment is the only proper sentence.

I think we would all agree that terms of imprisonment are appropriate for wicked crime. But there must be a question mark over its efficacy for many who are in our prisons, and for the community our prison system serves.

Many people in gaol are not particularly wicked. If you met them at the shops, you would not be alarmed. They are just like the young man sitting next to you on the ferry or the girl who works in the butchers – up close they seem very ordinary - they are not very scary at all. They are however frequently in poor physical and mental health, unskilled, uneducated, drug addicted, alcohol dependent, and lack any form of stable housing or income. They have multi-generational social failings – perhaps no experience of ever seeing a positive role model - of seeing someone going off to work each day.

I placed a young man on the Drug Court program recently.

His medical history shows he began using Ice at 12, Heroin at 13, Benzos and cannabis at 13. He was taking 7 or 8 Zanax at a time. His only period without constant drug use was in juvenile custody.

He is unemployed, not on Centrelink, and has been homeless since he was 12. He went as far as year 5 at school. Before his arrest he was living in a storage cage - in a garage under a multistorey building.

In juvenile custody he was diagnosed with ADHD, autism and PTSD. Both parents are heroin addicts, his mother is a violent alcoholic, and his father is always in gaol.

He was born 20 years ago. I think anyone born in 2002 should get through primary school at the least.

The medical report described him as co-operative, interactive, pleasant and polite. The Drug Court program you will hear about today will give him real help to overcome that appalling start to life.

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The Drug Court of NSW is doing something different from the more usual task of locking offenders up, and then seeing them come out and just return to their old problems and old ways.

**WHAT WE DO IS CALLED THERAPEUTIC JURISPRUDENCE, OR SOLUTION -FOCUSSED JUDGING.**

The objective of the criminal justice system is, of course, to protect society, to **protect the community from crime**. That is in the law, and has been the law for a long time.

At the Drug Court we seek to take advantage of the opportunity created by the arrest of an offender who commits his or her crimes to fund a drug addiction.

### **HOW DOES IT WORK:**

The usual arrangement in the traditional courts is that drug offenders eventually go to gaol for continually stealing cars, for breaking into businesses and homes, for credit card fraud and driving offences. They go in with substantial deficits in their health and skills, and they come out with just as many, if not more. And when they come out, they return to

their dysfunctional lifestyle, commit new crimes, and are returned to gaol for the cycle to begin again. Their housing is gone, their parents more disillusioned, the girlfriend has left, taking the baby with her.

Over 70% of prisoners are back in gaol within 2 years.

## **The Drug Court**

The Drug Court is a program that seeks to manage and enforce the rehabilitation of offenders in the community, whereby the Criminal Justice System and the Health Treatment System come together to manage and enforce long-term changes to the lives of drug-addicted criminals.

### **What does the Drug Court do?**

At the Drug Court we help break that cycle of crime and drugs, and provide participants with opportunities to get treatment, to stabilise their lives, and to get back into education or employment.

This is achieved with:

- Drug Courts at Parramatta, The Hunter, Central Sydney. Dubbo is to open next year.
- Offenders who plead guilty to drug related crime are referred to the Drug Court by the Local Court and District Court. The legislation prevents violent criminals, sex offenders, or very serious matters of supplying drugs being eligible for a Drug Court program.
- The program concentrates on the long-term, serious, recidivist offenders who will, without doubt, be otherwise going to gaol.
- Eligible and suitable offenders receive their proper sentence of full time gaol for those offences.
- That prison sentence is suspended whilst the participant complies with a very intensive treatment plan. That treatment plan may be require residential rehabilitation, and may include the assistance of pharmacotherapy, such as methadone.
- If the treatment plan is a community-based one, participants do three supervised urine tests per week, attend court to meet with the judge and team twice a week at first, and have weekly counselling, group

programs, home and curfew visits. “NEVER BEEN SO BUSY IN MY LIFE”

**If they succeed** on the program, they do not return to gaol, but receive a non-custodial order, called a Community Corrections Order.

### **Addressing fundamental issues:**

You might be surprised if you visit as to how much time is spent discussing:

- Dental work
- Housing
- Mental Health and medication
- Centre Link
- Medicare
- TAFE
- FaCS, children, parenting courses
- Partners
- Financial counselling
- Green Cards, Forklift licences
- Living Skills

The Drug Court currently manages 270 drug-addicted offenders at any one time and has the resources to provide a realistic opportunity to break the revolving door cycle.

### **Why concentrate on Drug offenders?**

Drugs are the cause of much of the crime that most upsets our community. Research suggests there is an overwhelming case in favour of seeking to rehabilitate offenders who commit crimes to fund their drug addictions, as:

- 70% of prisoners identify drugs and/or alcohol as the reason they offended.
- 50% of burglars acknowledge a serious drug problem.
- Burglars commit an average of 38 burglaries each per year.
- The probability of being apprehended and convicted for a burglary is statistically low – less than 1 in 20.

- It is an overwhelming case in relation to women. 74% of female prisoners have a history of injecting drugs.

Drug offenders commit lots of burglaries because they get so little for your valuables. Your laptop, digital camera, jewellery and coin collection may be worth \$15,000, but the thief may sell it all for \$200. So if your drug habit is costing you \$500 to \$1000 per day, you have to commit a lot of crime each day, and we are all suffering greatly in the process.

I think the likelihood of my burglars being caught is far greater than the average, because they continually do things like leave their bail notice at the scene, their sunglasses on the porch, or take a can of coke out of the fridge, and leave it on the ironing board. In the last mentioned scenario, the fingerprints were left on the outside of the can, and, to make sure he was caught, his DNA was inside the can.

- An important management tool is the power the court has to impose sanctions for breaches of program. Sanctions may involve a curfew, tighter controls, more frequent reports to court, or days in gaol.
- **But what is the most important management tool? Praise.** A round of applause. Some words of encouragement and support.

GENTLY GENTLY...been whacked around the head – psychologically and literally all their lives. WAYNE AND HIS FIRST “CLAP”

That first round of applause may be the first time they have received such praise in their life. My participants show no reluctance to give themselves a big hand. Other rewards include the relaxation of conditions, or perhaps allowing a return to work or TAFE in the very early intensive phase of the program.

COMMISSIONER FULLER VISIT – certificate and handshake for graduating to the next phase.

Now Vivian loved the Drug Court and her program. When she went from phase 1 to 2, the handshake led to a hearty hug.

Vivian also listed me as her next-of-kin with the Health Services, which was quaint and disturbing all at the same time.

FOR SOME, THESE SERVICE PROFESSIONALS/ADVISORS MAY BE THE ONLY SENSIBLE PEOPLE IN THEIR LIVES.

The average time on program is about 15 months.

At the beginning, we see them twice a week. RESEARCH ON INTENSIVE JUDICIAL SUPERVISION. By seeing them twice a week they were less likely to use drugs, less likely to be terminated from the program, and more likely to advance to the next phase. The results were so powerful they were implemented for all newcomers before the trial even finished.

### **Is the drug court successful?**

The Drug Court is a very successful program. Dr Don Weatherburn, our internationally respected former Director of the BOCSAR, has said that it is the ONLY program they have evaluated that is proven to work. It is also cheaper than gaol, that having been independently evaluated by the Centre for Health, Economics and

### **How successful is the program?**

The first measure is the survival of the participants. No participant has died a drug-related death in the last 2 years, but we have lost thirteen. So it is an issue we take very seriously.

A success is a participant who is not required, in accordance with the ordinary principles of sentencing, to return to gaol when their program comes to an end. That success rate is consistently 50% over several years. Whilst about 100 graduate each year, reaching our “gold” standard, many more do not need to be returned to gaol. Many have made significant changes in their lives, but not meet the exacting standards of graduation. A few years ago I calculated that the 73 participants NOT required to go back to gaol that year had a total **non-parole** period of 67 years. That saved \$6.1 million.

## **It Costs Less**

It costs approximately \$250 per day to keep a prisoner in custody. So you can provide a lot of support and services in the community, and get nowhere near that figure.

It is not uncommon for the court to graduate 3 or 4 participants on the one day, whereby they are leaving the court working full-time, paying their taxes, child support, and rent. Maybe driving a company car....and yet the cost of just that small group serving their non parole periods would have been 5 or 6 hundred thousand dollars.

## **Who succeeds?**

Just one example:

### **CHOOSING SHOES**

One of our recent graduates is the mother of six children. Her children had been taken into State care, but fortunately placed with family, given the chaotic life they were experiencing.

M is very proud that she is paying her bills, and that the children can now come into the shop and try on shoes. The shoes are now paid for, rather than the previous, necessarily rushed, selection process!

At the Drug Court we often talk about the RIPPLE EFFECT on multiple generations.

M's mother is very proud of her daughter, and they have a great relationship, after 10 years of strain and burden, including caring for the children at various times. So we saw the RIPPLE EFFECT on Ms mother, and all of her children.

During the program the couple completed a parenting program, a living skills program and undertook financial counselling. She has learnt to cook.

M was dreadful at the start, yet grasped the help and made enormous changes. So whilst you cannot predict who will succeed, and who will fail, we have established that by creating a genuine opportunity, some of the most unlikely offenders can and do respond in extraordinary ways.

In 2008, the Bureau of Crime Statistics and Research have re-evaluated the Drug Court's effectiveness regarding recidivism.

*The Bureau's study covered a period between February 2003 and April 2007, and involved 645 in the Drug Court Group, and 329 individuals in a Comparison Group. So the samples were of a significant size. After controlling for pre-existing differences between the treatment and comparison groups, BOCSAR found that, when compared with those in the Comparison Group, Drug Court participants (whether ultimately successful on the program or not) were:*

- 17 per cent less likely to be reconvicted for any offence,
- 30 per cent less likely to be reconvicted for a violent offence and
- 38 per cent less likely to be reconvicted for a drug offence

And in relation to those who successfully completed the Drug Court program, they were found to be:

- 37 per cent less likely to be reconvicted of any offence at any point;
- 65 per cent less likely to be reconvicted of an offence against the person;
- 35 per cent less likely to be reconvicted of a property offence; and
- 58 per cent less likely to be reconvicted of a drug offence

Don Weatherburn has said: "These are very substantial findings. It is possible that they are influenced by extraneous factors not controlled for in the present study. In my opinion, however, this is fairly unlikely. Our analysis includes controls for all the main factors known to influence risk of recidivism. "

## **KEY STRATEGIES:**

### **Team work**

At the Drug Court, I meet daily with team members and service partners from the Health Department, Justice Health, the Community Corrections Office, Office of the Director of Public Prosecutions, the Police Service, Legal Aid, and other agencies, to review the progress of every participant.



## **Intensive follow-up**

I mentioned earlier the intensity of the program, with multiple obligations a day at times. In addition to drug testing and counselling, individual needs will be addressed by perhaps living skills tuition, literacy and numeracy, anger management, parenting or budgeting programs.

So when I meet with a participant at 11am I know if he kept his counselling appointment this morning, and whether he was home for his curfew at 7pm last night. The judge meets with over 40 participants in this way every day.

THEY ARE USED TO THE JUSTICE SYSTEM BEING CUMBERSOME. THEY COUNT ON IT. SMOKING TICKET STORY.

## **Empower**

**Instil responsibility** – Participants are made responsible for their choices and actions, and have to accept that responsibility. Participants are often used to blaming others, especially figures in authority, for their situation. We seek to reverse that, so if they end up going back into gaol to serve sanctions, or even to serve their sentence, it is because of the decisions they have made which have required me to do what I may have promised, or threatened, for some weeks.

CONFRONTING TO BE CHALLENGED – “I’M TRYING HARDER THAN YOU TO KEEP YOU OUT OF JAIL”

## **Short-term goals**

A week is a very long time for a recovering drug addict. So setting short-term goals, and checking to see if they have been met, is vital. Participants often ask to come to court more often than required, even twice a week at times, when they are struggling. They are recognising that without intense support and encouragement, they are not going to succeed on their own.

## **Fairness, respect, dignity**

Our participants often perceive that they have never had a fair go from anyone in authority before. The judge and the team need to make this experience different from their previous, and often multi-generational, perceptions of authority. I am pleased to say I've heard that the team rates me as the best at the "Disappointed Judge", but I rate poorly as a terminator. **"Judge, is this a "last chance" or a "last last chance?"** I might be asked by the DPP.

## **Honesty and trust**

These are foreign concepts for some participants. Being a good liar may be their BEST survival skill, learnt from the age of three. As a child you got belted even if you told the truth, but if you lied well, you might just get away with it.

At the Drug Court we require honesty, and we seek to establish it by dealing quite severely with dishonest behaviour, but making it a safe place to be honest. So if they admit having used drugs during the week, they don't get a hard time – we treat it essentially as a health issue. But if they are dishonest, and we find out they have used drugs by virtue of their drug test results, then that is a completely different situation, and I get quite difficult about that.

As for trust, that is a sentiment long foreign to their way of life. Their parents may not have allowed them in the house for years, having just lost too many valuables for too long. They may let them shower in the home, but certainly not stay overnight. I am not criticizing the parents. They are often totally exhausted by the behaviour of their child over many years, even decades. Trusting others, or should I say learning how and who to trust, is a key skill we work to develop with our participants.

## **Determination**

We just never give up until we have to. Some participants are quite determined that I, like every other figure of authority throughout their lives, will let them down and give up on them. They seem to unconsciously self-sabotage so as to see that expectation fulfilled. This does not mean we are naively unrealistic regarding some of our flock, and so the human reaction on seeing Richard's name on the list for today's court may be to inwardly groan and think, *"Is he STILL on this program??"* *He is a complicated man in his 40s – and he always brings a smile to my face when I see him, because one*

*week he told us his mother had disappeared, and taken the fridge, and how cross he was about the fridge. Then the next week he had got the fridge back without the mother, which was apparently quite ideal. But he is clever. His beloved Roosters were playing the Cowboys in the grand final. I was concerned he would lapse if the Roosters lost. But he had that covered. He placed a bet on the Cowboys, but wanted the Roosters to win. Either which way he told me, he will be happy at the end.*

Of course, not all are successful on the program, and so I send them back to gaol. It is not difficult, because I know, and they know, that they have had a fair opportunity, have often learnt a lot, and remain grateful for what we have done. It is not unusual to be thanked by the former participant at the conclusion of the final sentencing hearing, and before being taken down to the cells: “*Thanks Judge, thanks Sue, sorry I didn’t do better....*”

### **A successful crime prevention strategy**

The Drug Court has now been established for many years now, and has evolved during that time to consistently meet the objectives set out in the legislation; providing proven protection to the community by reducing the criminal behaviour of an offender group who are particularly likely to commit offences that are of great concern to the community.

### **Long-term effect of the Drug Court on Recidivism**

In September 2020 the highly respected BOCSAR published its findings regarding *the long-term effect of the NSW Drug Court on recidivism*.

The study returned to the major 2008 Drug Court Evaluation – following up the 900 or so subjects of that evaluation, and followed them for an average of 13.5 years until 2019. The conclusion reached was that “***The Drug Court appears to have long term beneficial effects on the total number of reconvictions and the risk of another person offence***”. The key findings were:

*“Net of controls, offenders in the treatment group took 22 per cent longer to re-offend for a person offence than offenders in the control group. Offenders in the treatment group also had a 17 per cent lower re-offending rate than offenders in the control group. No differences between groups were found in relation to time to the next offence of any kind, time to the next property offence or time to the next drug offence.”*

Given the constant increase in the number and proportion of successful program completions across the intervening years, I would be very confident that the beneficial effects of the program are now greater than ever. The Drug Court of 2020 is a very different program to the program of 2008.

There is always a need to respond to changes in the environment in which we work – for example, the type of drugs abused is in a constant state of flux. The use of “ice” is now the predominant drug of concern, however across those years we have seen synthetic cannabis come and go, the widespread abuse of Alprazolam diminish with changes to the regulatory regime, and a reduction in the use of heroin. The abuse of Fentanyl was unknown only a few years ago.

So there is a need to keep treatment plans relevant and appropriate for the current circumstances, and to use new technologies. A virtual home visit utilizing an app on the participant’s phone was beyond our imagination in 2008.

It is no exaggeration to say that this research will have an impact across the world. Many countries have active and expanding Drug Court programs to address issues of substance use and crime, and new findings by a highly respected research organisation is vitally important for all decision makers.

**A meta-analysis of 54 drug treatment court programs** by the Department of Justice in Canada found that they are an effective method of reducing future criminal behaviour compared to traditional responses. Importantly, that research suggests that sustained behavioural changes are a likely outcome of drug treatment court participation. The report also concluded that it is likely that the benefits of drug treatment court participation increase with time.

Additionally, I note that there are many examples of success on program that will never be measured in monetary terms, yet the community will benefit greatly from those successes over decades. To see a young mother go through a safe and successful pregnancy, and to see the child born drug free. To see that young mother then be allowed to keep custody of her new child is very special, especially when all her previous children have been taken into care. That success is never measured in dollar terms, yet the community will benefit for the child’s healthy start for the next 70 years.

Unfortunately not all communities and their offenders have access to the Drug Court and the rehabilitation of their addicted offenders. Only half of Sydney has access, so if you can live on the wrong side of Punchbowl Road and thereby miss out, you just go to gaol. Limited places on program mean that apparently eligible and appropriate offenders cannot gain access to the program, and are therefore sent back to the ordinary courts to face sentence in the ordinary way.

The recent welcome news is the Government's response to the Ice Commission, which confirms funding for the Dubbo Drug Court and a fivefold increase to the capacity of the Sydney Drug Court (over \$100m across four years). This will virtually double to number of participants on the program to 500 at any one time.

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