

DRUG COURT OF NSW

2009 REVIEW

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Reflections on 2009

The year 2009 was the Drug Court's most successful year ever, which was an excellent way to celebrate the court's 10th anniversary. A record-equalling 42 participants graduated to the "gold" standard, as defined in our policies, and a total of 83 were not required to return to gaol.

A principal measure of Drug Court success is as to whether a participant remains in the community at the end of his or her program, or is returned to gaol to serve a sentence of imprisonment. The long-term average of this measure of success is 47% succeed. In 2009, applying the ordinary laws of sentencing, 57% of participants did not return to gaol and were able to continue life in the community, given the substantial rehabilitation achieved during their Drug Court programs. Given the long-term recidivist nature of participants accepted on to the Drug Court program, that is a remarkable rate of success. Of the 146 persons who completed a program last year, 42 graduated, 5 were awarded a Certificate of Achievement, and a further 36 earned their liberty.

10th Anniversary

The Drug Court of N.S.W. opened on 8 February 1999, and has been sitting continuously at Parramatta since that date. This significant anniversary was marked by a conference at the Riverside Theatre, Parramatta, on 6 February 2009.

The Attorney General, the Hon. John Hatzistergos, MLC, opened the conference. Keynote addresses were delivered by Professor Richard Mattick, the Director of the National Drug and Alcohol Research Centre, and Nicholas Cowdery AM QC, the Director of Public Prosecutions. Over 130 attended the conference, with many attendees coming from the agency partners of the Drug Court program such as our counsellors or case managers. A number of magistrates from interstate Drug Courts also attended.

Pre-Ballot Screening

A major innovation in 2009 was the introduction of Pre-Ballot Screening. Under Pre-Ballot Screening, our Police Prosecutor and the Office of the Director of Public Prosecutions screen referred participants to ensure they appeared to be eligible and appropriate for a Drug Court program before they are included in the ballot which allocates places on program.

To explain the usefulness of this innovation, it is necessary to explain the ballot process. A computerised ballot is conducted each week to allocate available program places to the potential participants referred to this Court by the District and Local Courts. On a typical ballot day, there may be eight referrals, and only six program places available. The eight referred offenders would be placed in the ballot, and the computer randomly allocates the six available places. The two potential participants who are unsuccessful in the ballot are returned to the referring court for sentencing in the ordinary way.

Inevitably, offenders are referred who, for a variety of reasons, are either not eligible or not appropriate for a Drug Court Program. Before pre-ballot screening was introduced, quite often an otherwise eligible and appropriate referral would miss out in the ballot, and an ineligible offender would get through the ballot process.

By pre-screening to exclude clearly ineligible and inappropriate referrals, the opportunities for those who are suitable for the Drug Court are greatly increased. The pre-screening procedure is now incorporated within *Policy 12 "Selection of Participants"* so as to be a transparent process. A safety net has been built into the procedure, so if, for example, an ineligible charge had been withdrawn, and the referred offender was in fact eligible for the program, the referred offender can be included in a later ballot. The cut-off time for the ballot has also been brought back to Wednesday afternoon, so as to allow any necessary inquiries to be made before the ballot is conducted at 1pm on Thursdays.

This innovation has produced a strong correlation between the number placed in the ballot and number accepted onto program.

In 2009 the number of referred offenders who were successful in the ballot but denied program entry reduced to 28, down from 104 in the previous year. Not only has this reduced the need to undertake a number of administrative tasks by all agencies, it has reduced creating false expectations of an opportunity of a Drug Court program for many.

Drug Court accommodation

In July 2009 the Drug Court moved into its new and purpose-built registry accommodation in the renovated Parramatta Court House. Over many years the Drug Court registry has managed in quite cramped and difficult accommodation, however that has been remedied by the allocation of excellent accommodation and a brilliant fit-out for our Registry space. The accommodation now provides enough space for all registry staff, including the work done in relation to the Compulsory Drug Treatment Centre (CDTCC), two urinalysis bathrooms, and small meeting rooms which can be utilised by medical or other visiting professionals to meet with participants.

Post-Ballot summary determinations

A loss of access to psychiatric reports necessitated a change in policy and procedure regarding the risk assessment of potential participants. *Policy 12 "Selection of Participants"* was amended to introduce a post-ballot procedure whereby the court may either summarily, or after a more limited hearing, determine the question of whether a potential participant is an "appropriate" person for a Drug Court program.

Previously, medico-legal reports assessing risk to treatment partners and to the community were more readily available through Justice Health, and often obtained to assist the court in determining the question of appropriateness. Whilst this loss of ready access to expert reports was regrettable, it has however led to some increase in court efficiency, and a reduction in the costs incurred. The court has been required to focus closely on the question of what reports or evidence is relevant or required in each individual applicant's case. For example, some offender's have such significant records for violence and/or dangerous behaviour

(such as driving in a manner dangerous) that a risk report which may have been obtained in the past, is unnecessary to reach the conclusion that the risk of allowing this particular participant to take part in the program is unacceptable.

Participant travel

The Drug Court has always accepted that allowing a participant to travel to rural or regional NSW, or even interstate, could be important in the achievement of rehabilitation. The Court may, for example, grant travel permission for a participant to attend a funeral, visit a sick relative, or collect a child from another location. Similarly, allowing a participant to visit a close relative or someone who is very significant in their life who is in gaol may also assist in achieving rehabilitation.

Previously, such issues were considered on a more time-consuming case-by-case basis. The Drug Court has now adopted and published *Policy 13 "Travel by Participants"*, which sets out the Court's expectations and requirements in relation to a participant wanting to travel away from their approved address. There is still, of course, individual consideration of each case, however counsellors and case managers can now talk through any proposed travel with participants, and advise them as to whether it falls within the guidelines or not.

Compulsory Drug Treatment Program

The Compulsory Drug Treatment Program (CDTP), over which the Drug Court exercises judicial supervision, is proving to be very successful in achieving both outstanding rehabilitation opportunities for participants, and in trialling new ways to manage and succeed in the corrections environment. The CDTP is a stand-alone gaol in the suburb of Parklea, with 70 beds on-site for prisoners who have been sentenced in our ordinary courts to lengthy custodial sentences, and who have been referred to the Drug Court for the consideration, and making, of a Compulsory Drug Treatment Order. The program has attracted international interest and recognition, and is quite clearly supported by the judiciary of NSW, as a program which seeks to achieve rehabilitation during an inevitable gaol sentence.

The Drug Court has a number of roles in relation to the CDTP, including the role of Parole Authority regarding the question of release of offenders to parole at the end of their program. More importantly, the Drug Court makes orders in relation to the release of participants into the community as part of their program, and sees those participants for “report-backs” to the Court on a fortnightly or monthly basis.

The Drug Court has been closely involved with the CDTP since before it commenced. That involvement has increased in recent times through both an increasing workload and due to a growing recognition of the importance of the program in the development of government and corrections policy.

Visitors and visits

The Drug Court hosted a number of distinguished visitors this year. Our Attorney General, the Hon. John Hatzistergos, MLC, joined us again for a graduation ceremony. Our court was also honoured to welcome a joint visit by the Minister for Community Services, the Hon. Linda Burney MP, the Director General of that department, Ms Jennifer Mason, and the President of the Children’s Court, His Honour Judge Mark Marien SC. It is an unfortunate fact that many participants of the Drug Court Program are also clients of the Department of Community Services, and their children may be the subject of a care and protection application in the Children’s Court. The therapeutic jurisprudence model of Drug Court proceedings was of interest to our visitors, given the desire to minimise the adversarial nature of care and protection proceedings in the Children’s Court.

In February I had the honour of sitting on the bench with the Hon. Brian Sully, a retired justice of the Supreme Court. Mr Sully attended a graduation ceremony for a man who had been granted bail in the Supreme Court by (as he then was) Justice Sully. Our graduate asked this Court if the judge who gave him the opportunity of conditional liberty, and thereby led to his Drug Court program, could be invited to his graduation. This Court was delighted when Mr Sully accepted our invitation and was able to attend for that ceremony, and the light lunch we share with graduates and their families.

Visitors for Taiwan, the Maldives, New Zealand and Western Australia came to our court this year, and a number of District Court Judges visited during the court vacation. I also met with the Minister for Justice from New Zealand, who was seeking information about Drug Courts and the Compulsory Drug Treatment Correctional Centre (CDTCC).

In June, the biennial County and District Court Conference was held in Sydney, and a visit to the CDTCC arranged. A large coach was required to accommodate the 23 judges from Australia and New Zealand who took the opportunity to travel to the centre at Parklea. The staff and the participant prisoners were very welcoming, and the visit a great success. I do admit to some alarm at watching our visiting judges scattering unaccompanied to the far-flung corners of the Centre to inspect cells and other facilities. All judges were recovered, and the Judicial Commission recorded that the visit was the highlight of the conference for some.

Team Work

There are a number of essential factors required for the operation of a successful Drug Court Program. A principal requirement, which this Court meets with flying colours, is the co-operative efforts of the multi-disciplinary teams who work in the Court, in the CDTCC, and out in the community. The additional efforts made, together with honed communication skills and the commitment to doing something different and effective, have led to splendid results. I would like to commend our teams on a magnificent year.

J R Dive
Senior Judge

Program activity by year for the past six years (2003 to 2009)

Year	Program entrants	Sentenced program completers	Non Custody (Graduates)*	Custody	% Non Custody
2004	142	133	62 (20)	71	47%
2005	165	150	74 (36)	76	49%
2006	164	155	62 (33)	93	40%
2007	169	176	78 (28)	98	44%
2008	132	151	65 (29)	86	43%
2009	158	146	83 (42)	63	57%

NB: The number of those classed as program graduates shown in brackets.

Statistical overview

2009 activity

Program entry	Persons
Placed in ballot	243
Accepted after ballot	231
Not entered into Program	28
Awaiting Initial Drug Court Sentence	9

Program progression	Participants
Participants who entered Phase 1 in 2009	158
Participants who progressed to Phase 2 in 2009	105
Participants who progressed to Phase 3 in 2009	53
Phase 1 participants as at 31/12/09	59
Phase 2 participants as at 31/12/09	66
Phase 3 participants as at 31/12/09	40
Participants on program as at 31/12/09	165

Court Determinations	Participants
Terminated after "potential to progress" hearing	29
Terminated after "risk to community" hearing	18
Retained after "Potential to progress" or "risk" hearing	27

Programs Completed	Participants
Graduated	42
Substantial Compliance	5
Non Custody	36
Total Non custody	83
Custody	63
Total completions	146