



No. 95

# Drugs Courts: Issues and Prospects

Toni Makkai

*The Australian Institute of Criminology has projects under way which attempt to fill a significant gap in our knowledge about the relationship between illicit drug use and criminal behaviour. Most Australian data relate to drug offences, but many other offences have a drug-related genesis. The existing judicial process does not appear to offer long-term solutions to drug-related crime. This paper outlines issues and arguments related to the establishment of treatment-oriented drug courts. Such courts have been established in the US and very recently in the UK. However, no two drug courts operate in the same way.*

*Outlining the issues involved, this paper, concludes drug courts:*

- *have had successes, but will not produce a success every time and careful judgments need to be made about acceptable failure rates;*
- *are focused on treatment, rehabilitation and reduced recidivism;*
- *are more intrusive for offenders than a conviction or short sentence;*
- *are more expensive than traditional courts but when taking the whole package (court+imprisonment+cost of reoffending) could be much cheaper;*
- *face implementation challenges integrating criminal justice and treatment agencies, cooperative arrangements between judge, prosecutor and defence, and achieving objectives broader than those of the criminal justice system.*

*To summarise, we must always be aware that transplanting policy from one country to another does not necessarily produce the same results. Any pilot projects in Australia will need to be adapted to local conditions and must be rigorously and objectively evaluated.*

**Adam Graycar**  
Director

**P**ressures at work in the United States in the 1980s led to the introduction of separate courts to deal with drug dependent criminal offenders. These same pressures are now driving calls for a similar change in the Australian criminal justice system to deal separately with drugs and crime. If the US drug court is to be implemented in Australia we need to understand how the process works in the US, what the evaluations have shown and what are some of the potential problems in establishing such a program in Australia.

Drug users in the community can be grouped into two broad categories (Inciardi et al. 1996). The first category contains individuals who rarely, if ever, come into contact with the criminal justice system and live relatively stable lives (Hall 1996). In contrast, the second category contains those individuals whose lives are chaotic and disorganised. More often than not such individuals are also involved in criminal activities for a variety of reasons. Unfortunately, we lack any systematic data collections<sup>1</sup> that would allow us to authoritatively document the rise in illicit drug use amongst those who are criminally active. There have been dramatic increases

<sup>1</sup>National Drug Strategy Household Surveys are not designed to measure drug use amongst this group. The Australian Illicit Drug Report (1997) provides data on drug offences, not on drug-related crime, and similarly police arrest and court data do not record this kind of information. These systems are not designed to collect information on why a person commits a crime but to simply record what crime was committed.

AUSTRALIAN INSTITUTE  
OF CRIMINOLOGY

*trends*

&

*issues*

in crime and criminal justice

September 1998

ISSN 0817-8542

ISBN 0 642 24083 3



Australian Institute  
of Criminology  
GPO Box 2944  
Canberra ACT 2601  
Australia

Tel: 02 6260 9200

Fax: 02 6260 9201

For subscription information together with a complete list of the papers in the Trends and Issues in Crime and Criminal Justice series, visit the AIC web site at:

<http://www.aic.gov.au>

or send an email to:

[aicpress@aic.gov.au](mailto:aicpress@aic.gov.au)

**Pressures for change**

- Unprecedented levels of drug-related crime
- Increasing numbers of drug users
- Increasing rates of incarceration
- Prison overcrowding
- High recidivism rates among drug abusers
- Increasing workloads on the courts
- Continued public pressure to do something

in both property crime and assault in Australia<sup>2</sup> and many commentators attribute the increase in property crime to the use of drugs, particularly heroin, by offenders.

**Drug Policy in Australia**

To date, the Australian criminal justice system has largely responded to illicit drug use in two ways. The first has been that some jurisdictions have moved towards leniency in dealing with minor drug offences. This has been aimed at relieving the courts from dealing with minor transgressions and as a way of minimising the harm associated with stigmatising users with prison records. Driven by a particular view about what constitutes “harm minimisation”, law enforcement agencies have been encouraged to divert drug offenders to the health care system.

The second response has been to use more punitive measures to deter offenders. This has involved governments passing tougher sentencing for drug offences, particularly in regard to trafficking and dealing. In 1996, the median sentence for dealing and trafficking in drugs was the third highest after homicide and robbery (ABS 1996).<sup>3</sup> Yet these

<sup>2</sup> In conjunction with a number of law enforcement agencies and criminal justice research units, the AIC is undertaking a pilot study to monitor the use of illicit drugs amongst the arrestee population.

<sup>3</sup> Prison statistics vary enormously by jurisdiction and the figures quoted here are for the country as a whole.

mixed policy messages have not resulted in significantly fewer individuals using illicit drugs, suggesting that neither leniency nor traditional incarceration methods have deterred illicit drug use.

In addition, alcohol-related crime and disorder remain a significant problem (Makkai 1997; 1998). Abuse of alcohol and illicit drugs often becomes enmeshed in a lifestyle of violence and disorder. The tension between law enforcement and public health in regard to alcohol has been most effectively dealt with in regard to drink-driving. In this area there has been an escalation of penalties, with lower level penalties resulting in treatment and rehabilitation. When alcohol abuse results in more serious criminal behaviour, criminal justice agencies intervene with serious sanctions such as imprisonment.

**Recent US Experience**

Throughout the 1980s the United States responded to rising crime rates with increasingly tougher laws as well as mandatory sentencing. However, drug use among offenders and drug-related crime continued to escalate, forcing a re-evaluation of the role of American courts in the 1990s. Pressure to find a “solution” to a difficult problem was coming from many directions.

In the 1970s, “treatment” within the criminal justice system had fallen into disrepute – the general consensus was that it simply did not work. However, during the 1980s a number of influential research studies showed that:

- treatment could work as long as the treatment was sustained and intensive;
- the key variable to success in treatment was the length of stay; and
- the outcomes from compulsory and voluntary treatment did not differ significantly.

The difficulty lay in keeping drug users in treatment. In a

number of jurisdictions in the United States innovative judges began to look to new ways of dealing with increasing numbers of drug-related offenders that were revolving through the courts. Separate courts were established that focussed on treatment as the “sentence”.

*History of US drug courts*

The first US drug courts were established in the 1970s and focussed on case processing management, whereby felony drug cases were handled in segregated courts. The purpose of these courts was to deal quickly with such cases, to free up the regular court to deal with more serious cases, and to increase the celerity of punishment (Belenko et al. 1994). Since then drug courts have reorientated themselves towards changing the offender’s behaviour via treatment, drug testing, community supervision and traditional sanctions for non-compliance (Belenko et al. 1994).

The first “modern” drug court to incorporate mandatory treatment began in Miami (Dade County) Florida in 1989. Two important changes from the earlier “case processing” drug courts were made. First the sentencing judge, rather than a probation officer, monitored the offender’s progress. Second, offenders could stay in the program even if they violated its conditions of participation. In the United States, laws vary from county to county, not just from State to State, so that the way in which drug courts operate across the country is enormously varied. Inciardi et al. (1996, p. 70) maintain that “no two drug courts are exactly alike”.

**Definition of a drug court:** “courts specifically designated to administer cases referred for judicially supervised drug treatment and rehabilitation within a jurisdiction or court-enforced drug treatment program” (Inciardi et al. 1996, p. 68).

In 1997, over 200 drug courts were operating and 11 of the 52 States had enacted or had under consideration legislation to enable the establishment of drug courts in the US (Cook 1997; Office of Justice Programs 1997). For the 1997 financial year the US Justice Department allocated \$US30 million specifically to drug courts with State and local jurisdictions more than matching federal funds. To date, 65 000 people are estimated to have participated in US drug courts (Cook 1997). Because of the diversity in how drug courts operate, the National Association of Drug Court Professionals Drug Court Standards Committee has identified ten key components (shown in Figure 1) that are designed to establish practical benchmarks “for developing effective drug courts in vastly different jurisdictions and to provide a structure for conducting research and evaluation for program accountability” (Office of Justice Programs 1997, p. 3).

*Operation of the court*

In terms of the case disposition process Cook (1997) found in her study of 97 drug courts that 30 per cent were pretrial/pre-plea, 16 per cent were pretrial/postplea, 12 per cent were post conviction and 42 per cent were a combination of two or more of

the preceding options. Three-quarters of the courts used only one judge who spent an average of ten hours per week hearing cases. Often the drug court cases were scheduled either before or after the regular trial day. US drug courts traditionally have confined themselves to non-violent offenders whose involvement in the criminal justice system is largely due to their drug involvement. Such individuals are identified **as soon as possible** after arrest and if accepted are immediately enrolled in an outpatient treatment program. The contact between the offender and the judge is frequent and intense, establishing a close bond between the two. In this environment the role of the judge is very different from the traditional court process. In the drug court the judge “assumes the roles of confessor, taskmaster, cheerleader and mentor. They exhort, threaten, encourage and congratulate participants for their progress or lack thereof ” (Inciardi et al. 1996, p. 71).

Operationally, courts vary from each other. In the Miami court treatment and counselling is for a minimum of one year and there are three phases. In the first phase, offenders supply a urine specimen, meet with a counsellor and receive acupuncture every day for three weeks. If they

**The factors that affect the operation of a drug court include**

- Judicial and financial resources
- Available courthouse facilities
- Constituent support
- Commitment from treatment providers
- Local legal culture

remain drug free for 12 consecutive days they are moved into phase two where they go to the centre only three times a week. On completion of phase two they move to phase three; this involves counselling and group sessions. During phase three offenders are encouraged to enter general education classes and to obtain vocational training. Offenders are in the program for between 12 to 16 months. Judge Goldstein (1996, p. 33) reports that with first time offenders “about 90 per cent of them have overcome their drug addiction and have not been rearrested. Hard core addicts are successful about 70 per cent of the time.”

This is a slow track process, where the individual is placed under the jurisdiction of the court usually for 12 months. In contrast, traditional court processes may result in the offender, at best, receiving a shorter jail sentence. Drug courts have treatment providers who have tendered for the Court’s contract and they provide up-to-date evaluations of the offender’s response to treatment to the court, often on a daily basis. Usually the drug court has access to the offender’s arrest history, offender’s treatment file and urinalysis results via computer links, thus ensuring that the judge is fully informed about the offender. The judge or magistrate presides over the court. Reporting directly to them is a senior case manager who oversees the programs and usually has several case managers who are responsible for day-to-day administrative duties, including the urinalysis and court records. The treatment providers report to the case managers. Attached to this structure is a range of educational, health and social services.

**Figure 1: Ten key components for a successful drug court**

1. Alcohol and other drug treatment services need to be integrated with the justice system case processing.
2. Prosecution and defense counsel need to work together to promote public safety while safeguarding the participant’s due process rights.
3. Participants are identified early and promptly placed in a treatment program.
4. There needs to be access to a continuum of alcohol, drug and other related treatment and rehabilitation services.
5. Abstinence should be monitored by frequent drug testing.
6. Coordinated strategy governs drug court responses to participant’s compliance.
7. Ongoing judicial interaction with each drug court participant is essential.
8. Monitoring and evaluation to measure the achievement of program goals and assess effectiveness.
9. Continuing interdisciplinary education promotes effective drug court planning, implementation and operations.
10. Partnerships between drug courts, public agencies, and community based organisations is essential for generating local support and enhancing drug court effectiveness.

**Source:** Office of Justice Programs 1997.

Evaluations have shown that it is offenders with multiple problems (HIV and mental health problems) that are much more likely to fail to complete the course (Bean 1996).

Relapse is a common occurrence for drug dependent persons under treatment. In recognition of the reality of drug addiction offenders are usually given three chances to remain in the program. Bench warrants are issued on an expedited basis for participants who fail to attend court status hearings. Different courts apply different sanctions. In some cases offenders may be returned to custody for a period of time, be required to attend the court more often, moved to another program or placed in mandatory in-patient detoxification (Bean 1996; *International Police Review* 1997). The penalties escalate for successive failures with the ultimate sanction being to terminate the process and return the offender to the mainstream court process.<sup>4</sup> It is the judge who decides when an offender is not able to complete the program and must be dealt with through the traditional court processes, not the treatment provider.

#### *Identifying and handling clients*

In theory, most diversionary schemes are limited to first-time offenders. This is based on labelling theory which argues that once an individual is labelled as "criminal" their capacity to participate fully in society is greatly diminished. In reality, many offenders have a long history of alcohol abuse and criminal activity before they begin using drugs such as heroin (Hall 1996). A recent study of young people in the United Kingdom found that the average age of onset for use of alcohol and offending was around three years younger than the average age of onset of illicit drug use

(Graham & Bowling 1995, p. 24).<sup>5</sup> Offenders with prior arrests are rarely subject to diversionary schemes and understandably judges and magistrates are reluctant to divert heroin users with extensive criminal histories to such programs.

The eligibility criteria in the US vary from court to court. For example, in Miami, offenders who have been identified with either no previous conviction or up to two non-violent felony convictions are brought to the drug court. At this time the public defender explains the program and the offenders' rights. They are then interviewed by a treatment provider who explains the treatment program in detail and determines whether the offender needs residential or outpatient treatment. Offenders may then choose whether they wish to stay in the drug court or return to the mainstream court. Other programs require the defendant to have had no prior criminal charge and most drug courts in the US limit criminal history to non-violent offences (Cook 1997).

It is important that the drug court not be constrained to deal only with those appearing on drug charges or first-time offenders. Given the cost of establishing the drug court and the accompanying treatment and social welfare provisions, it is unlikely that such courts would provide a cost-effective mechanism for dealing with first-time offenders. Police exercising discretion, or other diversionary programs, are probably a more effective use of public money.<sup>6</sup> To achieve a

<sup>5</sup> Thirteen years for use of alcohol and offending for both boys and girls and 16 years for girls and 17 years for boys for onset of illicit drug use. However, the average age of onset for marijuana use and offending was 15 years. There are no such comparable studies to draw upon in Australia.

<sup>6</sup> There appear to be no published evaluations that compare drug courts with other forms of diversion. Clearly an important aspect of evaluating the drug court would be to compare it with current diversionary schemes such as the Drug Assessment and Aid Panels in South Australia and the Court Diversion Service in Western Australia (ADAC 1996).

significant benefit from establishing a drug court, the system must focus on those offenders who are committing a high volume of crime – namely repeat offenders, primarily property offenders, whose activity is largely driven by their drug dependence.

#### *Treatment outcomes*

Given that relapse and intermittent progress are integral to voluntary drug treatment programs, how do we measure the success of coerced treatment within the framework of the criminal justice system? It is easy to be unrealistic about treatment outcomes and unrealistic expectations can damage the long-term benefits that might derive from the drug court. From the outset, judges, magistrates, law enforcement agencies, the legal profession and the general public need to understand the limitations as well as the possibilities of treatment. It was the failure to understand the limited outcomes possible with the treatment for drug users that led to the decline in diversion into treatment by the courts in the 1970s and 1980s in some Australian States (see Hall 1997, p. 108).

Studies of offenders show that most begin committing crimes before they begin using illicit drugs (Dobinson & Ward 1985; Hall et al. 1993; Hall 1996). As a result it is unrealistic to expect drug courts to reduce noticeably the rate of initiation into crime. However, offenders who are drug users commit many more crimes than their non-drug using peers do. If treatment can reduce the frequency with which individuals commit crimes, and research suggests this to be possible (Ward et al. 1992; Lipton 1996), then this will impact on the overall number of crimes that the community experiences. Treatment must be both intensive and long term. Short-term treatment rarely succeeds with hard core addicts (Brown 1997). In addition, treatment has been found to be most effective when combined with criminal justice sanctions

<sup>4</sup> Depending on the jurisdiction the drug court judge can determine the sentence of the original offence.

**Key components of the outpatient treatment program**

- Multiple weekly contacts with treatment providers for counselling, therapy and education.
- Frequent urinalysis to determine if offenders are complying with the requirement to be abstinent.
- Frequent status hearing before the drug court judge.
- Participation in a rehabilitation program involving vocation, educational, family, medical and other support services.

**Source:** Drug Court Clearinghouse and Technical Assistance Project 1997.

(Leukefeld & Tims 1986). What is particularly important is that the criminal justice sanctions must be formalised, credible, known and enforced and it is this that differentiates drug courts from many other diversionary programs.

Flexibility in dealing with drug-related offenders must be captured within the formalised framework to allow for treatment relapse. "This expectation of failure and the necessity for program flexibility are antithetical to the standard criminal justice perspective ..." (Goldkamp 1994), yet it is an essential component if treatment outcomes are to be achieved. The important policy question is what level of failure is tolerable. If we are to evaluate objectively the performance of drug courts the "acceptable" failure level needs to be determined at the outset.

In practice the drug court is more intrusive than a process involving a conviction and short sentence. For this reason, the drug court has to provide incentives for offenders to choose this option. It is important that appropriate treatment be available, yet treatment places are in short supply in Australia. Offenders usually require more than just treatment to reorganise their lives. A package of support including educational and social services is essential if offenders are to be redirected away from crime. An incentive for entering the drug court is the promise of immediate treatment and a non-custodial sentence. Finally, if the drug court cannot demonstrate early on that it is effective, then offenders will not choose to enter the program.

*Cost benefit analysis*

Funding for drug courts is not cheap. The Miami drug court program's average annual operating budget was \$US1.6 million in the early 1990s. If drug courts are to succeed then the court has to provide a package of services that go beyond treatment provision and include educational and vocational training, social and welfare services as well as health and housing provisions. If this package is under resourced the drug court cannot be expected to achieve the outcome of reduced offending and drug abstinence in the community.

When comparing costs it appears that the traditional court process is cheaper than the costs of identifying, referring, monitoring and treating drug users. Where an individual is incarcerated as a result of a court outcome then the costs quickly escalate. This simple cost benefit analysis does not factor in the costs associated with the high volume repeat offending that characterises many drug dependent offenders. In the Miami court that deals with 80 offenders per day the cost per offender is \$US800 per year compared to \$US25 000 per year to imprison an offender for one year (in Australia the comparable cost is \$A52 000 (*Report on Government Services*, vol. 1, p. 98). Cost benefit analyses indicate that in Miami for every \$US1 spent on Drug Courts approximately \$US7 is saved elsewhere in the criminal justice system (Bean 1996).

A major review of drug courts for the US House of Representatives concluded that

*none of the programs had been thoroughly and systematically evaluated in terms of costs and benefits, and more information would be needed on this, as well as on the longer-term likelihood of relapsing and recidivating, before it can be firmly established whether these courts have diminished costs or simply delayed them* (United States General Accounting Office 1997, p. 74).

A recent cost assessment, not included in the US General Accounting Office 1997 report, of the Multnomah County Oregon Drug Court (Finigan 1998) found an estimated \$US1 002 979 was spent per year on 440 offenders. It was estimated that drug courts saved the criminal justice system in the county \$US2.50 for every \$US1.00 spent. When the broader costs such as victimisation and future offending were taken into account for Oregon State as a whole \$US10.00 was saved for every \$US1.00 spent.

*Evaluations*

Many evaluations of US drug courts show favourable outcomes. However, the actual outcome measures are usually focussed on the proportion of individuals who remain in the program, the extent to which they stay drug free and whether or not they are arrested for offences while in treatment. To be successful in the longer term, drug courts need to demonstrate that offenders who pass through the drug court have a significantly lower rate of recidivism three to five years in the future and that greater proportions of them remain drug free as compared to those who are processed via the traditional court system.

Across the USA, the retention rate for drug courts averages 71 per cent, which is higher than that for most voluntary treatment programs. In practice, drug courts have not been operating in the United States for long enough

### UK approach

The increase in drug-related crime is also being experienced in the United Kingdom and Europe. A recent study of drug use amongst arrestees in England indicated that 61 per cent of offenders had traces of illicit drug in their urine at the time of their arrest (Bennett 1998). Partly in response to the growth of drug-related crime and a general increase in the levels of fear of crime, the government introduced the Crime and Disorder Act 1998 (<http://www.homeoffice.gov.uk/>). Part of the Act deals with more effective sentencing with the introduction of drug treatment and testing orders. The Act allows the court to make an order for drug treatment for a period of not less than six months and not more than three years for persons aged 16 or over. Certain offenders are excluded because of the seriousness of their crime and the court must be satisfied that the person is dependent or has a propensity to misuse drugs.

The Act allows for the mandatory provision of samples to enable drug tests to be conducted and the order can specify the kind of treatment and how often mandatory drug testing is to occur. Regular reporting on the offender's progress and compliance with the order are required. The order, however, cannot initially be imposed without the consent of the offender nor can the order be modified without the consent of the offender. The court can revoke the order and deal with the offender as "if he had just been convicted by the court of the offence." In a speech to magistrates early this year, the Home Secretary announced that the implementation of the drug treatment and testing order would be delayed until the results of an 18 month pilot project were known (<http://www.homeoffice.gov.uk/>).

to determine accurately the long-term effect on drug-related crime. Preliminary data on recidivism is encouraging but many of the evaluations have been methodologically flawed.

In evaluating the Miami Court, Goldkamp (1994, p. 128) concluded "not only did drug court defendants appear to reoffend less often but those who did reoffend delayed reoffending for considerable periods." This study has been criticised on a number of grounds. First, the study design did not allow for a randomised controlled experiment, thus selection biases may have occurred. Second, the results for the drug court defendants are based on less than half of the drug court defendants due to the high rate of failures-to-appear in court. A more recent evaluation of the Multnomah County Oregon Drug Court (Finigan 1998) followed graduates for 24 months. They found that participants, particularly those who completed the program, were significantly and substantially less likely to have subsequent arrests and convictions. There was a 76 per cent difference between graduates and a matched comparison group in total subsequent serious property arrests

over a two-year period. The rate of rearrest within the time frame was 7 per 100 for the graduates and 29 per 100 for the comparison group.

An experimental evaluation of the Maricopa County Drug Court, found that "there was no statistically significant difference between participants in the drug court program and those on routine probation in terms of new arrests, drug court participants had a lower overall rate of technical violations with fewer drug violations in particular" (Deschenes et al. 1995, p. 55). One of the interesting differences noted between the two groups was offenders who tested positive to a drug test in the probation sample were rarely sanctioned until the fourth or fifth positive test. This compares to a sanction by a drug court judge for each positive test for drug court clients. In concluding, the researchers found that drug court clients had higher rates of participation in drug education and treatment than those on routine probation; however, a higher proportion of the latter were employed or in school than the former.

In evaluating the Oakland Drug court "among 19 to 30 year-olds, the number of felony arrests

in the 14-month period following arraignment in 1990 averaged 1.18 per person. In 1991, the average was down to 0.61 per person, a 48 per cent reduction" (Prendergast & Maud 1995, p. 14). In a review of drug courts to the Committee on the Judiciary, US Senate and House of Representatives, the report concluded

*several factors prevent us from drawing firm conclusions about the impact of these drug court programs. First, the programs the studies evaluated differed considerably in several areas. Second, the studies themselves also differed in terms of their objectives, scopes and methodologies. And third, the studies showed varying impacts of the drug court programs* (United States General Accounting Office 1997, p. 70).

Only six of the 20 studies used a comparison group to assess recidivism rates between those who had completed the drug court and those who did not, yet this is essential in determining the success or otherwise of drug courts. Four of these studies found lower rearrest rates among drug court participants than the comparison group while two found a small non-significant difference. Many of the studies have only short follow-up periods and drug relapse was less frequently measured. It is important to note that "none of the studies, however, showed any adverse effect from participation in the drug treatment program" (United States General Accounting Office 1997, p. 85).

Two programs regarded as being successful are the Miami drug court and the Boston Drug court. Both are characterised by strong coalitions between the court, law enforcement, treatment providers and community groups. Brown (1997, p. 96) notes "the importance of collaboration and cooperation cannot be overestimated". The Boston court deliberately restricted numbers in

the first year in order to ensure the development of protocols and evaluation of results and the court was established within the grounds of a health care campus to maximise contact between the court and treatment providers. Importantly, the review of drug courts for the US Senate and the Committee on the Judiciary (US General Accounting Office 1997) recommended a mandatory requirement that drug courts be properly evaluated, including the collection and follow-up data on program participant's criminal recidivism and, to the extent feasible, follow-up data on drug use relapse for a minimum of three years.

---

### Issues

---

There is no one model of the US drug court that Australia could initially adopt. Instead we need to take on board the key components of successful courts and blend these into an appropriate mix for different jurisdictions throughout Australia. There are a number of potential problems in establishing drug courts that policy makers need to take into account. Some of these include:

The drug court needs to be integrated into a range of government and non-government agencies in order to provide treatment, and other support services such as employment training, counselling and mental health services.

The role of the judge, magistrate or presiding officer would need to be reassessed: they can no longer remain a neutral arbiter of the legal process; their aim is to cure the offender (Bean 1996). In addition, the judge, the prosecutor and the defence lawyer need to work together to achieve the best outcome for the client's and the community's wellbeing.

The drug court will occasionally impose a tougher sentence on the offender than if they had progressed through the traditional court process. The prosecutor and the defence need to

collaborate to ensure that both the community's and the individual's wellbeing is placed first.

Treatment-oriented courts signal a radical shift in the role of courts. No longer are they simply adjudicative institutions but they also have "a legitimate role in shaping policy with respect to social problems that impact the court's effectiveness as an institution" (Mahoney 1994, p. 130).

Treatment agencies had traditionally only been concerned with reducing drug dependence while the court is concerned to reduce criminal behaviour that is often driven by drug dependence (Goldkamp 1994). The court needs to be sensitive to the tensions between these outcomes.

Selecting clients will differ between treatment agencies and the court. The court will use the type of offence and prior record in making a decision — this is irrelevant to treatment agencies.

There is also a practical problem in distinguishing users from pushers/dealers or users/dealers. Often users will deal in drugs as a way of making enough money to purchase more drugs. Excluding dealers will result in many users being excluded from drug courts. Given the real world of drug users, those who are eligible for drug courts must include all offenders who are also drug dependent that the courts are prepared to divert.

If the court was to focus on "first-time drug offenders" these would tend to be marijuana users. As our society is ambivalent in its views on marijuana (Makkai & McAllister 1997) offenders, particularly young persons, are less likely to participate in diversionary programs or be willing to enter treatment (Prendergast & Maugh 1995, p. 11).

There is a possibility of net-widening with changes in police practices. Focusing on repeat offenders rather than first time offenders will diminish greatly this possibility.

The question arises as to whether non-drug using offenders would have lower recidivism

rates if placed in a structured and intensive style of court that provides the same support services. If the answer is yes, the issue of equity arises.

Alcohol-related disorder is a significant problem in Australia (Makkai 1997; 1998). Illicit drugs cannot be considered without including alcohol into the treatment regime. Two-thirds of drug courts surveyed in the US reported "moderate to severe alcoholism" amongst their clients (Cook 1997, p. 4).

Given that many offenders begin their criminal and drug using careers at a relatively young age, drug courts need to incorporate juveniles into the program.

To evaluate drug courts, policy makers should be clear about what is being measured, why it is being measured, and what research measures are being employed, before the drug court begins operation.

---

### Conclusion

---

If a new pharmaceutical was being used in the United States to treat a medical problem but it had not been thoroughly evaluated, would we allow it to be used in Australia? Both the medical profession and politicians would demand that the pharmaceutical be evaluated in the Australian context using a scientific experimental design with appropriate levels of funding. In fact, such evaluations are mandated by law.

The same sort of cautious approach to the introduction of drug courts is required. We need to establish a number of pilot sites in different jurisdictions, allocate enough funding for the program to be adequately resourced and put in place an evaluation team with the expertise in criminal justice and treatment issues. An evaluation of the pilot sites over the next 2 to 5 years in terms of a range of agreed short and medium term outcomes should be undertaken.

Evaluation goals: some possibilities

During the program	Post program	Organisational effectiveness
Percent of clean urines	Reduced recidivism	Time between arrest and entering the program
Program attendance — both court status hearings and treatment	Increased coping skills and stable living conditions	Increased judicial supervision of offenders and swiftness of sanctions
Number of relapses	Reduced drug abuse	Availability of treatment options
Frequency of new arrests	Maintaining/obtaining employment	Improved coordination of justice system and social and health services
Percentage complete skills training	Improved health	Reduction in court congestion and case processing time
Percentage complete the program	Reduction in drug overdoses	Reduction in overall costs to the criminal justice system
Treatment provider satisfaction with program	Client satisfaction with program	Criminal justice agencies satisfaction with program

If the outcomes are not achieved then drug courts are not the solution to the problem of drug-related crime. If they succeed there will be evidence upon which politicians can make the public policy decision as to whether drug courts should become a regular part of our criminal justice system in Australia.

In the United States the drug court model is now being used to develop other specialised community courts dealing with issues such as domestic violence. Thus, in the long term, the drug court experience could have far reaching implications for our criminal justice system. Instead of the traditional adversarial nature of the criminal justice system courts which seek to balance public safety and the defendant's rights could produce a new form of jurisprudence called "therapeutic jurisprudence" (Hora & Schma 1998, p. 124). In this reshaped criminal justice system "community policing, community prosecuting and restorative justice principles are employed by a community in cooperation with the local courts" (Hora & Schma 1998, p. 125). Such a coalition will do much to restore public confidence in the institutions of the criminal justice system. On face value, drug courts are likely to produce more positive results than the existing arrangements but any pilot projects or experiments need very careful and thorough evaluation so we can pursue the positives and exclude the negatives.

References

Australian Bureau of Criminal Investigations 1997, *Australian Illicit Drug Report 1996-1997*, ABCI, Canberra.

Australian Bureau of Statistics 1996, *Prisoners and Australia*, AGPS, Canberra.

The Alcohol and Other Drugs Council of Australia (ADCA) 1996, *Best Practice in the Diversion of Alcohol and other Drug Offenders*, ADCA, Canberra.

Bean, Philip 1996, "America's drug courts: A new development in criminal justice", *Criminal Law Review*, pp. 718-21.

Belenko, Steven, Fagan, Jeffrey & Dumanovsky, Tamara 1994, "The effects of legal sanctions on recidivism in special drug courts", *The Justice System Journal*, vol.17, no.1, pp. 53-82.

Bennett, Trevor 1998, *Drugs and Crime: The Results of Research on Drug Testing and Interviewing Arrestees*, Home Office Research Study No. 183, Home Office, London.

Brown, James 1997, "Drug diversion courts: Are they needed and will they succeed in breaking the cycle of drug-related crime?", *Criminal and Civil Confinement*, vol. 23, pp. 63-99.

Cook, Caroline 1997, *1997 Drug Court Survey Report: Executive Summary*, Justice Programs Office American University, Washington.

Deschenes, Elizabeth, Turner, Susan & Greenwood, Peter 1995, "Drug court or probation?: An experimental evaluation of Maricopa County's Drug Court", *The Justice System Journal*, pp. 55-73.

Dobinson, Ian & Ward, Peter 1985, *Drugs and Crime: A Survey of NSW Prison Property Offenders 1984*, NSW Bureau of Crime Statistics and Research, Sydney.

Drug Court Clearinghouse and Technical Assistance Project 1997, *Summary Assessment of the Drug Court Experience*, American University, Washington.

Finigan, Michael 1998, *An Outcome Program Evaluation of the Multnomah County S.T.O.P. Drug Diversion Program*, Report prepared for Multnomah County Department of Community Corrections.

Goldkamp, John 1994, "Miami's dreatment drug court for felony defendants: Some implications of assessment findings", *The Prison Journal*, vol. 72, no. 3, pp. 110-66.

Goldstein, Stanley 1996, "The drug court", *Policing Today*, pp. 32-3.

Graham, John & Bowling, Benjamin 1995, *Young People and Crime*, Home Office Study 145, Home Office, London.

Hall, Wayne 1996, "Methadone maintenance treatment as a crime control measure", *Crime and Justice Bulletin*, vol. 29, pp.1-12.

\_\_\_\_\_ 1997, "The role of legal coercion in the treatment of offenders with alcohol and heroin problems", *Australian and New Zealand Journal of Criminology*, vol. 30, no. 2, pp. 103-20.

Hall, Wayne, Bell, James & Carless, J. 1993, "The history of criminal convictions among applicants for an Australian methadone maintenance program", *Drug and Alcohol Dependence*, vol. 31, pp. 123-9.

Hora, Peggy & Schma, William 1998, "Legal strategy" in *Addiction Intervention: Strategies to Motivate Treatment-Seeking Behaviour*, eds Robert White & Deborah White, The Haworth Press, London.

Inciardi, James, McBride, Duane & Rivers, James 1996, *Drug Control and the Courts*, Sage Publications, Thousand Oaks.

\_\_\_\_\_ *International Police Review* 1997, "\$30m Federal funding for rehabilitation strategy on drug addiction and crime", *International Police Review*, vol. 47.

Leukefeld, C. & Tims, F. (eds) 1988, *Compulsory Treatment for Drug Abuse: Research and Clinical Practice*, US GPO, Washington.

Lipton, Douglas 1996, *The Effectiveness of Treatment for Drug Abusers Under Criminal Justice Supervision*, National Institute of Justice Research Report, Washington.

Mahoney, Barry 1994, "Drug courts: What have we learned so far?", *The Justice System Journal*, vol.17, no.1, pp. 127-33.

Makkai, Toni 1997, *Alcohol and Disorder in the Australian Community: Part I - Victims*, Australian Institute of Criminology, Trends and Issues, No 76, Australian Institute of Criminology, Canberra.

\_\_\_\_\_ 1998, *Alcohol and Disorder in the Australian Community: Part II - Perpetrators*, Trends and Issues, No 77, Australian Institute of Criminology, Canberra.

Makkai, Toni & McAllister, Ian 1997, *Marijuana Use in Australia: Patterns and Attitudes*, AGPS, Canberra.

Office of Justice Programs 1997, *Defining Drug Courts: The Key Components*, US Department of Justice, Washington.

Prendergast, Michael & Maugh, Thomas 1995, "Drug courts: Diversion that works", *The Judge's Journal*, Summer, pp.10-17.

Steering Committee for the Review of Commonwealth/State Service Provision 1998, *Report on Government Services*, vol. 1, Melbourne.

United States General Accounting Office 1997, *Drug Courts: Overview of Growth, Characteristics and Results*, US General Accounting Office, Washington.

Ward, James, Mattick, Richard & Hall, Wayne 1992, *Key Issues in Methadone Maintenance*, University of New South Wales Press, Sydney.

ACKNOWLEDGMENTS

A special thanks to staff of the AIC J.V. Barry Library for obtaining materials at short notice. The paper was significantly improved by the informed comments received by colleagues and referees.