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The NSW Drug Court: Processes, procedures & effectiveness

Presenter

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Member of the Sentencing Council of NSW

At first glance, the Drug Court appears very similar to any other Court in NSW. The Judge presides from the bench, various legal practitioners speak from the bar table, and matters are called on and heard. However, look closely and you will find some significant differences between this and other Courts.

WHAT DOES THE DRUG COURT DO?

The object of the Drug Court is to assist drug-dependent offenders in overcoming both drug dependence and the criminal offending that is so often associated with it. It is not a Court that decides guilt or innocence. All participants you see have pleaded guilty to their charges and have decided to make a serious attempt at rehabilitation by entering on to a Drug Court Programme.

WHO IS THE DRUG COURT TEAM?

The Drug Court team consists of the following members:

- The Judge
- DPP
- solicitor
- Legal Aid solicitors
- Probation and Parole coordinator
- Police representative
- Clinical Nurse
- Consultant

WHAT IS HAPPENING IN COURT?

Report Backs

When the Court opens to the public at 11am, the first thing you will see is a sequence of people called out to the front of the Court to speak briefly with the Judge and the Drug Court Team. These short matters are called 'report backs';

The first question that you will usually hear in a report back is the Judge asking the participant whether there has been any drug use. Any admitted use is then discussed with the client. Drug uses are usually dealt with by way of sanctions (discussed below).

The Drug Court Team has access to the participant's drug test results. If a participant fails to disclose any drug-taking, (i.e. there has been 'an unadmitted use') he or she is usually dealt with more harshly. This is because honesty is a crucial aspect of the programme.

Whilst the Court does not expect an immediate turnaround in drug-taking behaviour, it cannot provide effective support and intervention if the participant is dishonest about his or her drug use.

Report backs also provide an opportunity for the Court to review other aspects of a participant's programme, such as attendance at counselling, collection of methadone, work, study and living arrangements. You will often hear the Judge ask participants about other issues, such as housing, health, family and finances.

Any issue that may have an effect upon a participant's progress is of concern to the Drug Court Team.

Phases

There are three phases to a Drug Court Programme, and the frequency of a participant's court appearances depends upon which Phase they are on. Report backs occur as follows:

Phase I weekly

Phase II fortnightly

Phase III monthly

Consequently, the majority of people you see on any given day will be on Phase I of the programme.

Those participants who have progressed to Phases II and III are less visible in Court as they are entrusted to spend more time pursuing activities that lead to their reintegration into the community.

Sanctions

You will hear the term sanction used with each report back. A sanction is a one-day gaol penalty that the Court may impose for any breach of programme obligations. Sanctions are commonly imposed for drug use or missed counselling sessions or drug tests. Sanctions are suspended; that is, they are not enforced immediately. However, once a participant's sanctions total a certain amount, usually seven or fourteen days, he or she will be required to serve these days in custody. In such cases the participant will be taken into custody immediately.

Full compliance with the programme's requirements will result in a clap from the Judge and the Drug Court Team, and a public acknowledgement of good progress. Consistent compliance over weeks will result in sanctions being waived, and consistent compliance over a longer period will result in progress between phases and ultimately graduation from the programme.

Persons in the dock

Throughout the morning you will notice participants brought up from custody to the courtroom dock. This is usually for one of the following situations:

- Release from custody - When a participant has completed serving sanctions, he or she will be released back onto the programme. The Judge may use this opportunity to discuss with them what new strategies they could employ to ensure compliance with Programme obligations.
- Fresh referrals - Fresh referrals from other Courts almost always appear in custody, bail refused. The Crown will indicate its view on the eligibility and appropriateness of the participant. If found eligible, applicants will be referred to Silverwater MRRC (for men) or Mulawa (for women) to undertake an initial two week detoxification, and for Health professionals to draft a treatment and case management plan for the participant.

Legal Matters

Most report backs are completed in the period before the luncheon adjournment. The afternoon is usually the time for the strictly 'legal' proceedings. These include the following:

- Sentences: When a treatment plan is drafted and the detoxification period is complete, a successful applicant is ready for Initial Sentence. These matters proceed in much the same way as sentence matters in the Local or District Court. Initial Sentences handed down by the Drug Court are always suspended gaol terms.
- When a participant completes the programme, or is terminated from it, a Final Sentence will be conducted. The Judge will carefully consider the progress that a participant has made on the Programme this progress will be reflected in the ultimate sentence result.
- Hearings: There are a number of types of hearing matters that are peculiar to the Drug Court jurisdiction. These include the following:

- => Eligibility: Held to determine whether the applicant meets the criteria for entry onto the programme.
- => Risk: Often held as a result of allegations of further offending whilst on programme. They relate to the risk to the community of further offending if allowed to remain on a Programme.
- => Potential to Progress: Held when to examine whether an offender is unlikely to make any further progress on the programme.

Graduations

- Graduation ceremonies occur late morning, on selected days. Usually a member of the team will say some words on behalf of the team and the Judge himself will offer personal congratulations and present a Certificate.

Taking Responsibility

You also may notice that participants usually speak directly with the Judge. This is a conscious decision by the Court. Akin to the Court's insistence upon complete honesty from clients, it is a further example of the Court's requirement that participants take responsibility for their own actions. They are asked to speak and act for themselves as much as possible.

You also may notice that the Judge and the team appear to be familiar with many of the participants and know most of their names. This is partly due to the fact that there has been weekly contact with the participants, often over months. The Team takes an interested the lives of each participant in a way that a regular court would not have the time or inclination to do.

BEHIND THE SCENES

Team meeting

In the morning before Court opens, the Drug Court team will meet to discuss each of the cases listed for that day. It will review drug test results, compliance with counselling and medication, and any other relevant issues. The meeting relies heavily upon advice from members from the Clinical Nurse Consultant and the Probation and Parole Coordinator for updated information and opinion on each applicant's progress. This preparation allows open Court time to be used more efficiently.

PHASE 1 Participants attend drug tests 3 times per week and attend weekly counselling, group sessions and day programmes.

PHASE 2 and 3 Participants attend drug tests 2 times per week and attend weekly counselling, group sessions and day programmes.

Drug Court of NSW

- Commenced 8 February 1999
- Takes a therapeutic, rather than a punitive approach to sentencing
- Aim- to assist non-violent offenders to overcome both their drug dependence and their criminal offending, benefit the community by reducing drug-related crime

Agenda

- Overview of the Drug Court
- Drug Court Success
- Client Needs and Support
- Working Together

The NSW Drug Court