

A Background Paper

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WORKING TOGETHER TO BREAK THE CYCLE: A COMPREHENSIVE TREATMENT SYSTEM FOR OFFENDERS WITH SUBSTANCE ABUSE PROBLEMS

METHODOLOGY

In preparing this report, the author relied predominately upon literature review, websites, government reports and information gained from discussions with staff from both the Banyule Community Health Service and the West Heidelberg Community Legal Service whilst on placement at the West Heidelberg Community Legal Service.

INTRODUCTION

This report has been compiled in order to draw attention to the need to combine the objectives of the criminal justice system with the objectives alcohol and drug treatment to provide a more coherent treatment system for offenders with substance abuse issues.

The connection between criminal activity and substance abuse has begun to influence reform on the sentencing of offenders with a drug or alcohol dependency. Recent studies have shown that between 50 and 80 per cent of Australian detainees are in prison for drug-related offences or were drug-affected or dependent at the time they were arrested.¹ These statistics imply that more needs to be done to break the cycle of drugs and criminal behaviour by addressing the underlying issues of substance abuse by offenders. Participation in criminal activity is often stimulated by the need to fund a drug dependency or as a result of intoxication.²

¹ Makkai, T., & McGregor, K., Drug Use Monitoring in Australia: 2002 Annual Report on Drug Use Among Police Detainees, Research and Public Policy Series No. 47, Canberra, Australian Institute of Criminology, 2003.

² Makkai, T., Linking Drugs and Criminal Activity: Developing an Integrated Monitoring System, Trends and Issues in Crime and Criminal Justice No. 109, Australian Institute of Criminology, Canberra, 1999.

However, even though there exists a relationship between substance abuse and criminal behaviour, the two factors may be connected in various ways depending on the circumstances of the offender. Four main categories that are involved in drug-related crime have been identified.³

1. Individuals who possess and use drugs on a small scale but are not involved in criminal activity;
2. People who engage in drug dealing, trafficking and manufacturing but are not often users of drugs;
3. Substance abusers who commit crimes to support their drug habit; and
4. Individuals who use drugs and commit crimes but their activities are not causally related.

Therefore it becomes a task for Alcohol and other Drug (AOD) treatment workers to discover the extent to which substance abuse is the reason for the criminal activity by the offender. This information is important in that it determines the treatment plan that is most appropriate for each offender.

For substance abuse treatment to be at its most effective, there needs to be an understanding by the criminal justice system of the self-perpetuating, cyclical nature of drug use and crime in offenders. The focus needs to be not simply on the drug use, but must also address the issue of offending behaviour in order to lower the rate of relapse and recidivism.

A TALE OF TWO SYSTEMS: AOD TREATMENT AND CRIMINAL JUSTICE

The criminal justice system and AOD treatment services seem to be operating under different frameworks and maintaining different objectives. This is due to the fact that the two systems are focused on different areas. The responsibility of the criminal justice system is to ensure public safety and achieve justice. In contrast, the AOD treatment system is responsible for supporting each client to overcome their substance abuse issues.⁴ These differences in responsibility and focus can inhibit the capability of the two systems working together towards a common goal.

The treatment of offenders with substance abuse issues creates a tension between the competing policies of punishment and rehabilitation: on the one hand, the AOD treatment system is dedicated to the recovery of drug users; on the other, the offender must be disciplined for their criminal behaviour. This tension can impact upon the effectiveness of the partnership between the justice system and the AOD treatment services.⁵

From discussions with a drug and alcohol counselor at the Banyule Community Health Service, the author has identified some issues that continue to undermine the relationship

³ McGregor, K., & Makkai, T., *Drugs and Law Enforcement: Winter School in the Sun Conference*, Australian Institute of Criminology, Canberra, 2001.

⁴ Australian Community Support Organisation, *Forensic Drug and Alcohol Treatment Handbook*, Melbourne, 2000.

⁵ Fitzroy Legal Service, Inc., "Drugs, the Law and the Sentencing of Offenders: A Community Discussion of Future Directions – Parts 1 and 2," Fitzroy Legal Service, 2003, p 33.

between the two systems. The criminal justice system seems to lack an appreciation for the complexities of alcohol and drug treatment. This is a serious issue in relation to the unrealistic demands placed upon offenders that can have the inadvertent effect of setting them up to fail. The impractical requirements of orders placed on offenders can conflict with treatment and put pressure on an already dysfunctional lifestyle. The criminal justice system often fails to acknowledge that the little steps taken in a chaotic life are a significant accomplishment for an offender undertaking treatment.⁶

While the criminal justice system is focused on community safety and punishing offenders, the two systems will continue to function based on very different concerns. Although varying attitudes exist, there needs to be a strong alliance between the two systems which can be developed by education and training.

SUPPORTING OFFENDERS: THE CREDIT BAIL SUPPORT PROGRAM

The rehabilitative focus of AOD treatment services represents a significant shift away from retribution as the major sentencing goal for offenders with substance abuse problems. This may be difficult for some members of the criminal justice system to adjust to, primarily those who believe in a more disciplinary regime.⁷ Further, rehabilitation of offenders through programs such as the Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) may be seen as conflicting with the primary tasks of the criminal justice system which include policing illicit drug use and reducing crime.

The CREDIT program began as a nine-month pilot program in the Melbourne Magistrates' Court in November 1998. The initiative represented an effort from the criminal justice system to address the cycle of substance abuse and criminal behaviour.⁸ In 2000, the National Illicit Drug Strategy (NIDS) Diversion Initiative invested in early intervention, education and diversion of drug users to drug treatment. CREDIT was expanded in response to the ongoing challenges of sentencing people whose offending directly relates to substance use issues.⁹

The Bail Support Program was launched at the Melbourne Magistrates' Court in January 2001. This program is intended to break the cycle of re-offending by providing early intervention and access to drug treatment, legal, welfare and housing. This holistic approach is targeted at ensuring that clients complete their bail period successfully.¹⁰

⁶ Discussion with Alcohol and Drug Counselor on 26th October 2006 as part of clinical placement with co-located Banyule Community Health Service.

⁷ McLeod, J., Stewart, G., "Evaluation of the Drug Diversion Pilot Program" Department of Human Services, September 1999, Melbourne, p 18.

⁸ Mackinnon, I., McLachlan, S., & Popovic, J., "Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT), Magistrates' Court of Victoria, Melbourne, 1999, p 1.

⁹ State Government of Victoria, "The CREDIT Bail Support Program – A guide to working with the CREDIT Bail Support Program", Department of Human Services, Melbourne, August 2005, p4.

¹⁰ Ibid

In December 2004, the CREDIT Program was combined with the Bail Support Program to provide services to offenders on bail. Currently, this program is available at Ringwood, Melbourne, Sunshine, Heidelberg, Broadmeadows, Dandenong, Frankston, Ballarat and Geelong Courts. The CREDIT Bail Support Program focuses on an approach of harm minimization when working with offenders in an effort to break the cycle of contact with the criminal justice system.¹¹ Further, by addressing substance abuse as an underlying cause of crime and redirecting offenders into the health system, CREDIT places importance on treatment rather than punishment.

THE DRUG COURT: PROVIDING AN ALTERNATIVE TO INCARCERATION

Research has shown that imprisonment for drug-related offences does not necessarily result in a reduction of the crime rate. Moreover, research suggests that imprisonment raises the likelihood of recidivism.¹²

The introduction of the Forensic Community Treatment Initiatives as part of the national drug policy in Australia has gone some way towards tackling the drug-crime cycle from a health perspective by recognizing the importance of making public drug treatment services available to offenders.¹³ An important part of the approach that offers an alternative to incarceration includes the combination of therapeutic interventions and diversion programs to lower alcohol and drug use.

Diversion programs such as CREDIT view substance abuse as a health issue instead of a criminal justice issue and are therefore based on the principle that society should be concerned with the welfare of alcohol and drug users that find themselves in the criminal justice system.¹⁴ Diversion programs aim provide a holistic approach in meeting the needs of the individual. This includes cautioning programs, referral programs and the Drug Court.

The Drug Court was enacted as a pilot program in the Dandenong Magistrates' Court under the *Sentencing (Amendment) Act 2002* (Vic). The Victorian Drug Court represents a fundamental change in the way in which the criminal justice system deals with offenders. It endeavours to protect the community by providing rehabilitation of offenders with an alcohol or drug dependency with the objective of creating some stability in the chaotic lives of offenders and offering them a chance to reconnect with the community.¹⁵

¹¹ Ibid

¹² O'Callaghan, F., Sonderegger, N., & Klag, S., 'Drug and crime cycle: Evaluating traditional methods versus diversion strategies for drug-related offences' *Australian Psychologist*, 39(3), 1998, pp 188-200.

¹³ Ministerial Council on Drug Strategy, *National Drug Strategic Framework 1998-1999 to 2002-2003*, Australian Government Publishing Service, Canberra, 1998.

¹⁴ Note 11

¹⁵ Downloaded from Magistrates' Court of Victoria, www.magistratescourt.vic.gov.au, downloaded 15 October 2006.

The Drug Court sentences offenders to a 2 year Drug Treatment Order (DTO). The DTO comprises of two components, a custodial element and a treatment and supervision element. The custodial sentence is suspended to allow for the treatment of the offender. The treatment and supervision entails conditions being imposed on the offender which aim to address the offender's substance dependency. Incarceration only becomes an issue if the offender breaches the conditions of the DTO. In that event the DTO is cancelled the offender is sentenced to serve the remainder of the 2 year sentence.¹⁶

It is possible for offenders suitable for DTO's who have charges listed at other Magistrates' Courts to have the charges transferred to Dandenong Drug Court. However the transfer must be completed before the offender enters the plea of guilty.¹⁷ As a result, the author believes that consideration should be given to expanding the availability of the DTO as a sentencing option to other Magistrates' Courts around Victoria. The expansion of the approach taken by the Drug Court would provide an alternative to imprisonment for more offenders with a drug or alcohol dependency.

SENTENCING: THE MEANING BEHIND THE SANCTION

The criminal justice system seeks to ensure that penalties meet the purpose of sentencing offenders. In considering relationship between the AOD treatment system and the criminal justice system, it is important that the objectives of sentencing are understood. AOD services must identify what the court is trying to accomplish for the offender by imposing a certain sanction. Without determining the intention of the sentence, the AOD treatment services and the criminal justice system will realize at some stage down the track that they were working based on different expectations.¹⁸

The objectives of sentencing are relevant in two respects. Firstly, it is important that AOD treatment services appreciate all of the terms and conditions of the sentence in relation to each offender. In this regard, it would be of value if the court could articulate their expectations of the offender in some detail, so as to give the AOD services a framework upon which to build their treatment plan in order to meet those expectations.

Secondly, members of the criminal justice system must recognize the complexities of substance abuse treatment and its limitations. These constraints should to some extent be reflected in the expectations of offenders in the criminal justice system. For example, AOD counselors view relapse as a step in the process of recovery. To community corrections officers, relapse could be perceived as breach of the conditions of a sentence. The criminal justice system needs to be realistic as to the capabilities of treatment programs and what they can accomplish.

¹⁶ Ibid

¹⁷ Section 10 *Sentencing (Amendment) Act 2002* (Vic)

¹⁸ Note 5

RECOMMENDATIONS

1. A collaborative partnership should be created between the criminal justice system and the AOD treatment providers so that the two systems can work together to break the cycle of substance abuse and crime. This will go a long way towards reducing relapse and re-offending by offenders undergoing substance abuse treatment.
2. Implementation of an education initiative for members of the criminal justice system and alcohol and drug treatment services which emphasizes the complexities of substance abuse treatment and the criminal justice system, its limitations in order to avoid unrealistic demands being imposed on offenders.
3. The availability of the DTO as a sentencing option should be expanded across all Magistrates' Courts in Victoria to give offenders with a substance dependency an alternative to incarceration.
4. There should be a strong focus on ensuring that members of the AOD treatment system appreciate the purpose of each sentence and its terms and conditions so that a treatment plan can be tailored to meet the expectations of the individual offender.
5. The State Government's commitment to the funding of drug and alcohol and drug services currently in place should be upheld and not reduced. Forensic Community Treatment Initiatives such as the Community Offender Advice and Treatment Service (COATS) has provided support to people who face significant barriers to accessing other services. These need to be adequately resourced and realistic support opportunities need to be constructed.

CONCLUSION

It appears that there is conflict between the criminal justice system, which sees the issue of substance abuse in black and white, and the AOD treatment providers, dealing with the often grey areas of alcohol and drug dependency.

For the two systems to work effectively, it must be acknowledged that offenders with a substance dependency are not identical. There are variations among offenders, even those of the same age, gender and socio-economic background. These differences include personality, patterns of alcohol and drug abuse, health and mental functioning. Generally, it is these characteristics that determine whether the offender is at risk of involvement in the criminal justice system. These factors can also create obstacles to engaging the offender in treatment and often determine the success of the offender's progress.

Offenders that have alcohol or drug problems tend to have considerably more experience with failure than with success in comparison with those that undergo treatment as volunteers. Therefore, AOD treatment providers and community correction officers need to work together to create small success opportunities for offenders in order to build their confidence and maintain motivation as they complete their treatment plan. This can be such things as attending appointments or having a negative drug test. Treatment plans that recognize the small achievements of an offender are more likely to be successful in rehabilitation and breaking the cycle of substance abuse and criminal behaviour.