

Review of the effectiveness of specialist courts in other jurisdictions

Lexicon Limited
Joyce Plotnikoff and Richard Woolfson
Consultants in Management, ICT and the Law

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The Research Unit, Department for Constitutional Affairs, was formed in April 1996. Its aim is to develop and focus the use of research so that it informs the various stages of policy-making and the implementation and evaluation of policy.

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Executive Summary

Study objective and approach

- The objective of this study was to obtain information about the operation and effectiveness of specialist courts in other jurisdictions, with a view to informing current and proposed initiatives in this country.
- The findings are based on information provided by ten specialist courts in other jurisdictions in response to questions agreed by an inter-departmental advisory group whose members represented the Department for Constitutional Affairs, Home Office and the Law Commission.
- The specialist courts were located in Australia (drugs and domestic violence courts); the US (drugs, domestic violence, community and mental health courts) and Canada (drugs and domestic violence courts). Their responses have been augmented with information from relevant literature.

Structure of the report

Chapter 2 of the report contains a profile of each of the ten courts, grouped by specialism. Chapter 3 explores the implications for the judicial role, including the need for new skills and departures from traditional practice through judicial participation in out-of-court reviewing and monitoring of the behaviour of offenders. Approaches to providing incentives for offenders to participate in specialist regimes, together with sanctions for non-compliance, are discussed in chapter 4. In chapter 5, the relationship between specialist courts and the communities they serve is examined and the direction in which such courts might develop in the future is explored. The conclusions chapter discusses approaches to measuring the success of specialist courts, the most significant cost drivers in their establishment and key ingredients likely to contribute to their success.

Implications for the judicial role

- The pro-active ‘problem-solving’ judge represents a significant departure from the normal expectation of the judicial role. However, not all specialist courts are problem-solving, in the sense of having a continuing involvement in the rehabilitation of offenders, and not all have dedicated judges.
- Specialist courts require new judicial skills and training is needed for members of the court ‘team’, including the judge.
- The principles of problem-solving courts are likely to feed back positively into the work of other courts as specialist court judges return to ordinary caseloads. The benefits may eventually extend into core judicial training,

- Judicial monitoring (oversight by the judge of the offender's progress through the court programme) is believed to contribute to offender compliance and rates of retention in court programmes. Continuity of the judge in the relationship with the offender is seen as vital by judges, court personnel and offenders.
- Monitoring requires a significant investment of judicial and court time for additional hearings.

Monitoring and measuring success

- Some domestic violence courts in this survey did not have a monitoring role with offenders and some respondents questioned the value of monitoring in respect of domestic violence courts.
- As with specialist prosecutors, defence lawyers in some specialist courts are critical to their success. They have a two-fold role: traditional defence practice and an ongoing responsibility for ensuring that the offender stays in the court programme. In some courts where there is a public defender, the defence representative is seen as a member of the court team. Tensions have arisen with this new defence role.
- Offenders may not understand programme requirements before entering the programme, and may not appreciate that involvement is voluntary.
- Courts anticipated lapses in compliance and employed a range of sanctions for minor breaches falling short of terminating an offender from the programme. These graduated in severity and some courts used a system of accumulating suspended sanctions.
- Incentives to encourage offenders to complete court programmes included the possibility of reducing or dismissing the charge. Positive reinforcement from the judge was seen as a major incentive.
- Courts need to address community expectations, which may initially regard the specialist regime as a 'soft option'.
- Some specialist courts used comprehensive information systems linked to external service providers. This was important for monitoring offenders' compliance with court orders and programme requirements and in providing data to assess programme effectiveness.
- The success of specialist court programmes can be defined broadly to include not only numbers of programme graduates and reduced recidivism rates but also social factors such as improved offender health.
- There is very little research evidence about the cost-effectiveness of specialist courts.

1. Introduction

1.1 Aims and objectives

This study took place between January and July 2004. The aim was to obtain information about the operation and effectiveness of ten specialist courts in other jurisdictions, with a view to informing current and proposed initiatives in this country.

The project was shaped in consultation with an inter-departmental advisory group whose members represented the Department for Constitutional Affairs, Home Office and the Law Commission. The advisory group requested that the project focus on English-speaking countries and in particular on specialist courts of most relevance to current initiatives in this country: drug courts, domestic violence courts and community justice. It was agreed that mental health courts would also be addressed, as they are closely associated with the development of drug and community courts.

1.2 Structure of the report

The remaining sections of this chapter describe the methodology adopted in the study, the theoretical arguments that underpin the establishment of specialist courts and the categories of specialist courts investigated during the study. Chapter 2 contains a profile of the courts about which information was obtained. The implications of specialist courts for the role of the judiciary is considered in chapter 3 and chapter 4 examines approaches to monitoring the behaviour of offenders who come before the court and the system of incentives and sanctions used to ensure their compliance with programmes ordered by the court.

The interaction between specialist courts and the communities they serve is described in chapter 5, while chapter 6 considers possible future directions for specialist regimes. The final chapter discusses approaches to measuring the success of specialist courts, the most significant cost drivers in their establishment and key ingredients likely to contribute to their success.

1.3 Methodology

The study was not a conventional literature review. We began by examining independent evaluations of the four types of specialist court, identified by means of a survey of

international organisations¹ and an Internet search of English-speaking countries (US, Eire, Scotland, Australia, New Zealand, Canada, South Africa, Cayman Islands and Bermuda). At the end of this exercise, a report was submitted to the advisory group listing 19 specialist courts and a short description of the studies evaluating them.

The second stage of the study comprised a survey of courts selected on the basis of programme features or evaluation criteria that seemed particularly relevant to this country. The preponderance of innovative specialist courts and related research was in the US. To explore relevant questions for the survey, we visited the South Boston drug court² and had a discussion with former Justice Marjory Fields, New York Supreme Court, who had been responsible for a wide range of domestic violence judicial education programmes.³ She was a helpful source of materials and relevant courts. Finally, the advisory group put together a list of specific questions, answers to which would inform current work on pilots focussing on specialist areas in this country. Pilot domestic violence courts had recently been evaluated in Cardiff, Derby, Leeds, West London and Wolverhampton, and new pilots were starting in Gwent and Croydon. Plans for a pilot Community Justice Centre in Liverpool were underway. Pilots involving specially trained panels of magistrates and continuity of benches were being conducted in Bristol and the Wirral in relation to Drug Treatment and Testing Orders (DTTOs).

The questions focused on⁴:

- the role of the judiciary
- the role of the defence representative
- sanctions and incentives
- the development of the specialist court
- combined criminal and civil jurisdiction.

In April 2004, a request for information was sent by email (together with a letter from the Department for Constitutional Affairs) to 15 of the courts of greatest interest to the advisory group, as identified in stage 1. Only nine courts responded so a tenth was added.⁵ By the

¹ For example, in Australia, the Institute of Criminology, Institute of Judicial Administration, and Capital Territory Department of Justice and Community Safety; in the United States, the National Association of Drug Court Professionals; the Bureau of Justice Assistance and the Drug Court Programme Office of the US Department of Justice; and the National Center for State Courts.

² A description of this visit is attached at Annex A.

³ She has been funded by the Abe Fellowship Program of the Social Science Research Council and the American Council of Learned Societies to compare domestic violence legal remedies in the US and Japan.

⁴ See Annex B.

⁵ The domestic violence court in Adelaide, South Australia, which was not on the original list of 19.

end of the survey, responses were received from 13 respondents in ten courts. They had been offered the choice of replying by email or participating in a phone interview; only one opted for a phone interview. Some did not answer every question.

The respondents were located in Australia (drugs and domestic violence courts); the USA (drugs, domestic violence, community and mental health courts) and Canada (drugs and domestic violence courts). In analysing the results, responses were augmented by reference to relevant literature.

We tried to avoid duplicating information that had already been provided to government departments, for example, literature reviews contained in recent reports.⁶ In January 2004, the trilateral community justice team and the Liverpool Community Justice Centre Steering Group visited and obtained material about the Red Hook community court in New York. Other visits to Red Hook have been made by ministers of the trilateral departments and by the Lord Chief Justice. There has been ongoing communication between government departments and the Center for Court Innovation in New York, for example, in relation to domestic violence courts. The Center is contracted to provide advice and assistance in relation to the Croydon pilot domestic violence court.

Note: In what follows, nomenclature (e.g. Magistrates Courts) and quotes from respondents in survey courts and from the literature retain the spelling of the original.

1.4 Theories underpinning the work of specialist courts

The roots of the specialist court approach can be traced back to indigenous and tribal justice systems and ‘a serious effort is now underway to learn from these systems and to introduce some of their perspectives and techniques into Western judicial structures’.⁷ Commentators refer to a range of theoretical models when describing specialist courts. Community courts in particular invoke the principles of Restorative Justice, a systematic response to wrongdoing that:

‘identifies and takes steps to repair harm; involves all stakeholders; and transforms the traditional relationship between communities and their governments in responding to crime’.⁸

⁶ D. Cook et al ‘Evaluation of Specialist Domestic Violence Courts/ Fast Track Systems’ (March 2004) CPS and DCA; CPS Inspectorate ‘A Research and Literature Review – Protection and Accountability: the reporting, investigation and prosecution of domestic violence cases’ and ‘Violence at Home: A Joint Thematic Inspection of the investigation and prosecution of cases involving domestic violence’ (February 2004); C. Bilby and R. Hatcher ‘Early Stages in the development of the Integrated Domestic Abuse Programme (IDAP); implementing the Duluth Domestic Violence Pathfinder’ (June 2004) Home Office Online Report 29/04.

⁷ B. Winnick and D. Wexler (2003) ‘Judging in a Therapeutic Key: Therapeutic Jurisprudence and the Courts’ Carolina Academic Press, Durham.

⁸ <http://www.restorativejustice.org/>.

Specialist courts may also see themselves as ‘problem-solving’ or ‘collaborative justice’ courts.⁹ Although targeting different problems, they shift the focus from simply processing cases to improving outcomes for victims, communities and defendants.¹⁰ Their principal characteristic is use of court authority to:

‘forge new responses to chronic social, human and legal problems that have proven resistant to conventional solutions. They seek to broaden the focus of legal proceedings, from simply adjudicating past facts and legal issues to an early intervention into the behaviour of litigants’.¹¹

The problem-solving court is increasingly likely to be described as applying the principles of Therapeutic Jurisprudence which:

‘concentrates on the law’s impact on emotional life and psychological well-being. It is a perspective that regards the law (rules of law, legal procedures and role of legal actors) as a social force that often produces therapeutic or anti-therapeutic consequences. It does not suggest that therapeutic concerns are more important than other consequences or factors, but it does suggest that the law’s role as a potential therapeutic agent should be recognised and systematically studied’.¹²

Therapeutic Jurisprudence envisages a completely new role for the judge, one that is in stark contrast with judicial tradition in the UK:

‘Judges go from being a detached, neutral arbiter to the central figure in the team... the judge is both a cheerleader and stern parent, encouraging and rewarding compliance, as well as attending to lapses’.¹³

Expansion of the judicial role has not gone unchallenged, for example:

‘When judges move out of the box of the law and into working with individual defendants, transforming them from law-breaking citizens into law-abiding citizens, we have to worry. Because what has always protected the bench has been the law. Whenever a judge is approached by a disgruntled individual saying “How could you do that?” the judge always says “That wasn’t me speaking – that was the law”. If we take the mantle of the law’s protections off the judges and put them into these new

⁹ The Collaborative Justice Courts Advisory Committee has been appointed to assist in the work of problem-solving courts in California: see <http://www.courtinfo.ca.gov/programs/collab/> and also <http://www.courtinfo.ca.gov/courtadmin/jc/comlists/coll.htm>.

¹⁰ <http://www.problem-solvingcourts.org/>.

¹¹ G. Berman and J. Feinblatt (2001) ‘Problem-Solving Courts: A Brief Primer’ Law and Policy Vol. 23, No. 2.

¹² <http://www.therapeuticjurisprudence.org/>. International Network on Therapeutic Jurisprudence.

¹³ D. Chase and P. Fulton Hora ‘The Implications of Therapeutic Jurisprudence for Judicial Satisfaction’ Court Review, Spring 2000 pp. 12-20.

[problem-solving] roles, we have to worry about judicial neutrality, independence and impartiality'.¹⁴

In 1997, the US Bureau of Justice Assistance published 'Trial Court Performance Standards', encouraging courts to look at more than the legal outcome of cases before them and to question whether social problems are also addressed. In 2000, the Conference of Chief Justices and the Conference of State Court Administrators (the policy leaders of the state court systems in the US) passed a resolution in support of problem-solving courts and the principles of therapeutic jurisprudence. It encouraged, 'where appropriate, the broad integration over the next decade of the principles and methods employed in the problem solving courts into the administration of justice to improve court processes and outcomes'.

All courts in our survey were specialist but not all described themselves as 'problem-solving'. The key difference concerned the role of the judge. In drug courts, community courts and mental health courts, judges were actively involved with the monitoring of defendants, sometimes even participating in out-of-court reviews. Judges also had a role in community liaison, particularly in community courts. With the exception of one court, the role of domestic violence court judges in this survey seemed closer to those in ordinary courts. The distinguishing feature was their specialist knowledge of domestic violence. However, the trend in the US at least seems to be for domestic violence court judges to become increasingly involved in monitoring the behaviour of offenders.¹⁵

1.5 The types of specialist court

Drugs courts

There are over 1,200 drug courts in existence or being planned in the US¹⁶ and they have now been introduced to other countries. Designed initially to deal with less serious offenders through diversion programmes in which the original charge was dismissed in exchange for successful programme completion, many now offer post-plea programmes for offenders with more serious criminal records and long-term drug use.

¹⁴ Professor R. Cappalli, Temple Law School, quoted in G. Berman and J. Feinblatt (2002) 'Judges and Problem-Solving Courts' Center for Court Innovation.

¹⁵ R. Mazur and L. Aldrich 'What Makes a Domestic Violence Court Work? Lessons from New York' (Spring 2003) *The Judges' Journal*.

¹⁶ National Association of Drug Court Professionals at <http://www.nadcp.org/whatis/>.

The National Association of Drug Court Professionals has identified ten key components of the drug court¹⁷:

- integrating alcohol and other drug treatment services with justice system case processing
- using a non-adversarial approach to promote public safety while protecting participants' due process rights
- identifying eligible participants quickly and placing them in the court programme
- providing access to alcohol, drug, and other treatment and rehabilitation services
- monitoring abstinence by frequent alcohol and other drug testing
- co-ordinating the court response to participants' compliance
- providing ongoing judicial interaction with each participant (described as 'essential')
- monitoring and evaluating the achievement of programme goals and effectiveness
- making available continuing interdisciplinary education to promote effective court planning, implementation and operations
- forging partnerships among drug courts, public agencies, and community-based organisations to generate local support and enhance drug court effectiveness.

A study for the Council of Europe identified a general problem with the methodological soundness and the nature, scope and focus of research in the area of drug courts and a lack of systematic international research.¹⁸ An overview of 37 drug court evaluations for the National Center on Addiction and Substance Abuse noted that most such studies were relatively small-scale and short to fulfil grant requirements, and varied considerably in terms of quality, comprehensiveness, use of comparison groups and the definition of key variables such as recidivism (particularly in the longer term).¹⁹ The overview noted the importance of assessing 'whether operating costs are lower than the economic benefits or avoided costs that accrue because incarceration time is reduced, or because drug treatment reduces the likelihood of relapse and recidivism'; however, only five of the 37 evaluations reviewed contained cost data.²⁰

¹⁷ Drug Standards Committee (1997) 'Defining drug courts: the key components' National Association of Drug Court Professionals.

¹⁸ P. Moyle (2003) 'International Drug Court Developments, Models and Effectiveness' Report for the Pompidou Group Drug Court Project, Council of Europe.

¹⁹ S. Belenko 'Research on Drug Courts: a Critical Review 2001 Update' National Center on Addiction and Substance Abuse, Columbia University; Pamela Casey and David Rottman (2003) 'Problem-Solving Courts: Models and Trends' National Center for State Courts.

²⁰ One of the evaluations in the survey was commended as a good model for components of drug court costs and analytical strategies: T. Martin et al (1999) 'Phase II Douglas County Drug Court Evaluation: Final Report' Institute for Social and Economic Development, University of Nebraska.

The National Center overview indicated that the proportion of participants who complete drug court programmes is generally low: in the US, 47 per cent graduate on average.²¹ Varying 'success' rates may be due to many factors including the length of time between intake and placement in a programme; whether 'multiple chances' were accorded to those experiencing early problems (recognising that relapse and non-compliance are typical parts of the recovery process) and the target population. In a study of six courts in New York State²², the county of Queens had the highest graduation rate from its programme and the largest reduction in recidivism but it worked with a client population whose primary drug was marijuana as opposed to 'hard' drugs.

Community courts

Community courts are relatively recent developments. They have a commitment to changing the lives of individual offenders and also to 'macro-level change'²³ by changing the quality of life in communities. They are described as implementing:

'a new way of doing business that imposes immediate meaningful sanctions on offenders, truly engages the community and helps offenders address problems that are at the root of their criminal behaviour'.²⁴

Characteristics of such courts include replacing fines and jail time with community service and other alternative sanctions; strict monitoring of compliance; access to treatment and social services; and mechanisms that provide ongoing communication with the community.

The community court in Midtown Manhattan opened in 1993, after two years of planning; the concept was later extended to Red Hook Community Justice Center, Brooklyn. As the longest-running community justice projects, these two have been the subject of most scrutiny. However, they were excluded from our terms of reference because, as noted above, departments here were already liaising with the New York Center for Court Innovation on these projects. As of 2003, 20 community courts or community justice centers were operational in the US and at least five others were being planned.²⁵

²¹ In this country, 28% of DTTOs terminated in 2003 were completed in full or were terminated early for good progress: 'The Drug Treatment and Testing Order: early lessons' (2004) National Audit Office.

²² M. Rempel et al, Center for Court Innovation, 'New York State Adult Drug Court Evaluation: Policies, Participants and Impacts' (2003).

²³ P. Casey and D. Rottman (2003) 'Problem-Solving Courts: Models and Trends' National Center for State Courts.

²⁴ E. Lee (2002) 'Community Courts: An Evolving Model' Bureau of Justice Assistance. Available online at <http://www.ncjrs.org/pdffiles1/bja/183452.pdf>.

²⁵ P. Casey and D. Rottman op. cit. See also <http://www.communityjustice.org/exchange.asp>, a clearinghouse maintained by the Center for Court Innovation which lists community courts and provides information on best practice.

Domestic or family violence courts

The principal objectives of the domestic violence court are victim safety and defendant accountability. In 2001, a survey conducted by the National Center for State Courts identified over 300 domestic violence courts in the US. The specialism has also spread to other countries. The survey identified differences in definitions of the offences covered, a wide variation in court processes and structures and a lack of systematic empirical evidence of their benefits.²⁶ Basic models of specialisation include those in which the domestic violence court:

- hears pre-trial conferences only (in which pleas are taken)
- hears all non-evidentiary appearances (including those where legal decisions are made by the court after arguments by opposing counsel but which do not require witnesses to testify)
- conducts all hearings from start to finish
- combines civil and criminal jurisdictions.²⁷

Findings about domestic violence courts are limited by the lack of adequate control groups and 'an acute case of unreported recidivism' but studies support some tentative conclusions: they enhance victims' and perpetrators' satisfaction with court processes and outcomes; deliver more services to victims and their families; tend to process cases faster; reduce the rate of case dismissals, increase the rate of guilty pleas; and make it more likely that perpetrators comply with judge-ordered conditions.²⁸

The different origins of family violence courts and drug courts (domestic violence has a history of under-enforcement, whereas drug laws may have been ineffective through over-enforcement) are reflected in the greater emphasis on treatment in drug courts in contrast to the focus on victim involvement in domestic violence courts.²⁹

Mental health courts

Seventy-two per cent of male and 70 per cent of female sentenced prisoners in England and Wales suffer from two or more mental health disorders.³⁰ Successive Chief Inspectors of Prisons have expressed concern about the number of prisoners in this country suffering

²⁶ S. Kelitz (2001) 'Specialisation of Domestic Violence Case Management in the Courts: A National Survey' National Center for State Courts.

²⁷ J. Helling (undated) 'Specialized Criminal Domestic Violence Courts'. See Violence against Women Online Resources <http://www.vaw.umn.edu/>.

²⁸ P. Casey and D. Rottman op. cit.

²⁹ We are grateful to Robyn Holder, Victims of Crime Coordinator, Australian Capital Authority, for this point.

³⁰ 'Psychiatric Morbidity among Prisoners in England and Wales' (1998) Office of National Statistics.

from mental illness for whom prison is unsuitable.³¹ Evaluations of drug courts in other countries have commented on the failure to anticipate the high proportion of participants experiencing mental health problems.³²

Mental health courts (to be distinguished from civil mental health tribunals) are adult criminal courts with a separate list dedicated to persons with mental illness. They are designed to divert offenders from jail to treatment programmes, monitor them during treatment and contribute to public safety. They test whether the systems of mental health and criminal justice can 'craft collaborative approaches to mental illness and in the process improve the delivery of services to defendants with mental illness and co-occurring disorders'.³³

These courts began to appear in the US in 1997. Like community courts, they grew out of the drug court model³⁴ in which links between drug use and mental health problems were acknowledged. Courts may adopt different names or acronyms in order to avoid stigmatising participants; for example, in Orange County, North Carolina, the court is called the 'community resource court'.

There is concern about the use of criminal sanctions to coerce compliance with treatment and the voluntary nature of mental health court participation:

'In drug court, there's a certain logic to sending offenders to jail for dirty urine because they're violating the law. When a mentally ill defendant stops taking his medication, he may have violated the court's order, but no law has been broken'.³⁵

The US National Mental Health Association has set out mental health court guidelines which include:

- timely and accurate mental health screening pre-charge
- meaningful diversion, i.e. either no charges are filed or if filed, dismissal is guaranteed after a set period of successful treatment participation
- no guilty plea is required for entry into a mental health court programme
- participation is voluntary, and the proposed treatment plan has been fully discussed and documented

³¹ For example, 'Inspector urges action on mentally ill prisoners' The Guardian 20 January 2003; HM Chief Inspector of Prisons Annual Report 2002/3.

³² For example, S. Taplin (2002) 'New South Wales Drug Court Evaluation: A Process Evaluation' New South Wales Bureau of Crime Statistics and Research; see also D. Denkla and G. Berman (2001) 'Rethinking the Revolving Door: A Look at Mental Illness in the Courts' Center for Court Innovation.

³³ D. Denkla and G. Berman op. cit.

³⁴ In this country, those with mental health problems are less likely to be found suitable for DTTOs: 'The Drug Treatment and Testing Order: early lessons' (2004) National Audit Office.

³⁵ D. Denkla and G. Berman op. cit.

- a process to review treatment refusals so that any decision to reinstate charges is made in an informed manner after all reasonable alternatives have been exhausted
- in addition to competent legal representation, an experienced counsellor independent of any treatment facility is available to help the accused reach an informed decision
- persons with co-occurring disorders, especially substance abuse, receive integrated treatment.³⁶

Around 80 mental health courts have been established in the US or are in the planning stages; over 30 are funded by a federal government development programme.³⁷ A study funded by the Bureau of Justice Assistance³⁸ compared eight courts which had already been the subject of research with seven more recently established courts. Qualitative analysis indicated that:

- the newer courts and most of the older courts now accepted felony cases, not just misdemeanours
- all but one of the newer courts only allowed for post-plea enrolment, compared with half of the older courts
- six of the eight older courts reported rarely using jail as a sanction. Although there was flexibility in regard to non-compliance, the newer courts seemed to use jail 'with discretion' but 'with more regularity'
- newer courts more commonly used criminal justice professionals to supervise participants rather than mental health personnel.

³⁶ Mental health courts policy, US National Mental Health Association (2004).

³⁷ <http://www.mentalhealthcourtsurvey.com/>. For mental health courts publications, see http://consensusproject.org/infocenter/research/research_courts.

³⁸ A. Redich et al 'The Second Generation of Mental Health Courts' (in draft) Psychology, Public Policy and Law. Analysis of quantitative data is underway. The authors are planning a mental health outcomes study.

2. Profile of specialist courts in the survey

2.1 Introduction

This section describes each of the ten courts responding to the survey, names the respondents and summarises relevant research findings concerning these courts.

2.2 Drug courts

NEW SOUTH WALES DRUG COURT, SYDNEY, AUSTRALIA (established 1998)

Respondent: Senior Judge Milson, Drug Court

This was the first drug court to be evaluated in Australia. The pilot has been continued into 2004. Unlike many US drug courts, this court targets drug-dependent recidivist offenders otherwise facing a jail sentence ('high end' offenders, most of whom use heroin daily).

Eligibility is based on:

- indication of a guilty plea after which sentence is suspended
- exclusion of violent and sex offenders (the prosecutor can exclude others based on their prior record)
- referral by the local or district court in their catchment area.

Features of the programme, which may last up to 12 months, include:

- a two week remand without bail for detoxification and assessment
- monitoring by a multi-disciplinary team, including the judge
- a three-phase treatment programme with rewards and sanctions tailored to the individual.

Research³⁹

Karen Freeman *'Drug Court Evaluation: Health, Well-being and Participant Satisfaction'* (2002) New South Wales Bureau of Crime Statistics and Research

Stephanie Taplin (2002) *'New South Wales Drug Court Evaluation: A Process Evaluation'* New South Wales Bureau of Crime Statistics and Research

Karen Freeman *'New South Wales Drug Court Evaluation: Health, Cost Effectiveness'* (2002) New South Wales Bureau of Crime Statistics and Research

Karen Freeman *'Evaluating Australia's first drug court: Research challenges'* (2003) New South Wales Bureau of Crime Statistics and Research.

³⁹ See <http://www.lawlink.nsw.gov.au/bocsar>.

These reports represent the components of a single evaluation exercise. A group of 309 participants in the New South Wales drug court programme were compared with a randomised control group of 191 offenders deemed eligible for the programme but who were sentenced in the usual way (most were imprisoned). Random allocation was integral to the cost-effectiveness element of the study but raised some concerns among court staff. In the final design, random allocation was controlled through the court's intake procedures and occurred only when there were more people eligible to process to the detoxification and assessment stage of intake than there were beds available in the detoxification unit. Only those who remained in the programme were followed up by researchers because of the difficulties in locating the others. Findings include the following:

- a lower rate of re-offending among drug court participants than the control group
- an intense level of supervision, if removed too soon, resulted in an increased likelihood of relapses
- there was a high drop-out rate from the programme and the criteria for graduation were considered to be too onerous
- there was a need for a senior treatment provider from the community to be a member of the drug court team
- drug tests were not conducted randomly therefore drug use could continue undetected
- the ability of participants to change the type of drug treatment they received was a positive factor
- the level of activities required by the programme resulted in difficulties for participants with primary responsibility for childcare
- significant improvements in health were achieved for those who remained in the programme
- immediate, short-term custodial sanctions for programme breaches were problematic for supervision and disruptive to treatment. As drug use in the programme resulted in a custodial sanction, it was hard to obtain research information about continued drug use through self-reporting, even when confidentiality was promised
- the programme was at least as cost-effective as conventional sanctions
- measures for improving cost-effectiveness included introducing a system of suspended sanctions and alternatives to custody for programme non-compliance.

Marian Shanahan et al (2002) '*New South Wales Drug Court Evaluation: Cost Effectiveness*' (2002) New South Wales Bureau of Crime Statistics and Research.

In relation to costs:

- more than half of the expenditure related to individuals terminated from the programme
- health care treatment and court attendances were the single most important contributors to overall costs, but the cost of sanctioning those placed on the programme was also significant
- the cost per day for an individual in the drug court programme was slightly less than the cost per day for offenders in the control group and sanctioned by conventional means
- there was little difference between the drug court and conventional sanctions in terms of their cost-effectiveness in increasing the time to the first offence
- there was a larger difference between the alternatives in terms of the cost-effectiveness of reducing the rate of offending.

DRUG COURT, ADELAIDE, SOUTH AUSTRALIA, AUSTRALIA
(established 1999)

Respondent: *Stipendiary Magistrate Tony Newman, Adelaide Drug Court*
(he also sits in Family Violence Court)

The drug court operates in the Adelaide Magistrates Court. It is designed to create an environment with clearly defined rules that encourage offenders to accept responsibility for their own rehabilitation. Police officers, any magistrate from the metropolitan area, legal representatives, prosecutors or defendants themselves can make referrals. Those eligible for participation in drug court must fulfil all of the following criteria:

- be 18 or older on the date of the offence
- live within the metropolitan area at a residence suitable for electronically monitored home detention bail
- be charged with an offence related to their drug use (but not necessarily a drug offence) for which they are likely to be imprisoned
- be dependent on illicit drugs/ have a previous dependency due to an involuntary or forced abstinence and a high probability of returning to drug use
- be willing to participate in the programme and comply with the case management plan developed for them
- plead guilty to both the most serious offence and the majority of offences with which they have been charged.

Persons are not eligible if either they are charged with a major indictable offence, an offence of violence or have a history of violent offences. Court personnel include a clinical assessment team, a part-time psychologist and case managers (employed by Community Corrections). Features of the programme include the following:

- initially, all participants are required to be on electronically monitored home detention bail
- typical bail conditions include treatment and support, the need for random but regular urinalysis and strict supervision
- breaches of bail conditions, further use of drugs or re-offending may lead to sanctions, expulsion from the programme or imprisonment
- case managers prepare regular reports to drug court magistrates.

The 'Initiation and Stabilisation' Phase 1 of the programme lasts 12 weeks. Participant goals are to reduce drug use; stabilise physical health; and stop criminal activity.

'Consolidation' Phase 2 lasts 22 weeks. Goals are to strive to remain drug free and crime free; stabilise the social and domestic environment; develop life skills and job skills; address major life issues; and maintain good health. The 'Re-integration' Phase 3 lasts 18 weeks, with the goals of accepting a drug-free and crime-free lifestyle; continuing to stabilise the social and domestic environment; gaining/ keeping employment; and being fiscally responsible.

Successful completion of the programme, which typically lasts for up to twelve months, will be taken into consideration at the time the offender is sentenced. The penalties and orders imposed on successful completion are designed primarily to encourage future abstinence and to support the offender in a constructive way.

Research

An evaluation of the first years of the operation of the Adelaide drug court programme is being undertaken by the South Australia Office of Crime Statistics and Research and is due for completion in September 2004.⁴⁰

⁴⁰ See <http://www.ocsar.sa.gov.au/>. For other related studies, see the Australian Institute of Criminology: <http://www.aic.gov.au/research/drugs/context/courts.html>.

CLARK COUNTY DRUG COURT, LAS VEGAS, NEVADA, USA
(established 1992)

Respondent: Kendis Stake, Drug Court Manager

This is one of the longest established drug courts in the USA. Although often referred to as the Las Vegas drug court (the term used in this report), Clark County covers a much larger area. In the first years of its operation, the court functioned primarily as a diversion court, targeting first-time felony offenders. Successful completion of the year-long programme resulted in dismissal of charges. It is now a post-adjudication court (i.e. defendants must plead guilty to be eligible) available to gross misdemeanour or felony cases, dealing with drug-related offences and not just drug charges.

During one to three days of orientation to the programme, the defendant attends an initial treatment appointment for assessment and agreement of a treatment plan with a counsellor. The court has one external provider whose services have been designed and adapted entirely in response to the needs of the court. Treatment consists of a structured four-phase outpatient programme lasting a minimum of one year. The regimen consists of the following basic components:

- urinalysis (initially required every other day)
- compulsory attendance at three types of counselling: group, individual and educational
- acupuncture (required through Phase 1 – detoxification - and encouraged throughout the remainder of the programme to lessen depression, anxiety and insomnia; reduce or eliminate withdrawal symptoms; and assist with stress reduction and relapse prevention).

Participants must meet a variety of criteria before graduation:

- they must make up any missed sessions
- all financial obligations must be fulfilled (participants are required to pay fees at a weekly rate set by the judge, based on financial status)
- an individual pre-graduation conference must be completed (including an aftercare plan and relapse prevention plan)
- the participant must be 'clean' for a minimum of six months (increased from three months in 1998) and have no unexcused absences within three months
- participants are expected to be employed or in an educational or vocational programme.

Evening sessions of the court are held in addition to daily court hearings. Weekly sessions are offered for family members or significant others to introduce them to their role in recovery. Graduates of the court operate an Alumni Association that meets weekly, with the service provider acting as liaison. It is notable that the judge responsible for setting up the court remained there for over eight years, ensuring stability in its operations.

Research

John Goldkamp et al (2000) *'Retrospective Evaluation of Two Pioneering Drug Courts: Phase 1 Findings from Clark County, Nevada and Multnomah County, Oregon'* Crime and Justice Research Institute, for US National Institute of Justice.

John Goldkamp et al (2001) *'From Whether to How Drug Courts Work: Retrospective Evaluation of Drug Courts in Clark County (Las Vegas) and Multnomah County (Portland)'* Crime and Justice Research Institute, for US National Institute of Justice.

The findings from both jurisdictions support the view that drug courts fulfil their promise as a crime control tool. Phase I and II evaluations examined implementation and development of Portland (1991-98) and Las Vegas (1992-98) drug courts from their inception, in a retrospective longitudinal design. The research examines justice and treatment outcomes for one, two and three year periods, compares the courtroom workload of the two courts and analyses the relative influence of key drug court components. It formulates a causal model of drug court impact.

The studies highlight the need to look at the experience of the individual court year-on-year as these can be influenced by different factors and events. About 100 drug court cases were randomly sampled for each year between 1993-97 inclusive (total n = 499) and 100 comparison group defendants entering the judicial process at the district court arraignment stage (total n = 510). The comparison group defendants were identified from felony drug cases and included mainly defendants who were not made aware of the drug court option and were processed in the normal manner.

When the data for 1993 to 1997 were considered together and the cohorts for 1993, 1994 and 1995 were examined separately, Clark County drug court participants recorded lower rates of arrest for any offence at one, two and three years from the point of entry into the drug court compared to a similar, contemporaneous comparison group of drug defendants who did not enter drug court. However, these favourable findings did not extend into the

1996-1997 period. The study considers that a shift in prosecution policy from diversion to (guilty plea) conviction-based entry into the drug court removed the incentives of dismissal and expungement that attracted unconvicted felony drug candidates until 1996. A change in the law in 1995, generally ensuring probation as the typical sentence in these cases, removed the threat of a jail sentence. At the same time, the conviction requirement changed the enrolled population to higher risk participants with more extensive criminal records (by 1997, over one-third of cases in drug court did not involve drug charges, reflecting the increased participation of offenders charged with drug-related property crimes).

TORONTO DRUG TREATMENT COURT, ONTARIO, CANADA

(established 1998)

Respondents: *Judge Bentley, Drug Treatment Court*

Richard Coleman, Drug Treatment Court Coordinator

Shellie Addley, Drug Treatment Court defence counsel, Legal Aid of Ontario

This was the first Canadian drug treatment court. It differs from many American drug courts which are based on abstinence from all drugs by requiring that participants work towards abstinence from illegal drugs and incorporating methadone maintenance into the treatment programme. It aims to reduce the social and economic cost of substance abuse through partnership between the criminal justice system and drug addiction treatment services (a primary treatment provider and over 50 community organisations). Features include the following:

- eligible non-violent offenders addicted to cocaine/opiates and charged with simple possession can voluntarily opt for pre-plea diversion where charges are withdrawn or stayed if they complete treatment
- those with a prior record or facing more serious charges can opt for a post-plea programme where they receive a non-custodial sentence on completion of treatment
- the court sits twice-weekly with pre-court team meetings which include the judge
- participants are referred on for other issues including unemployment, housing, violence and family discord, and mental and physical health
- graduation from the programme is not necessarily the primary indicator of success, which can also be assessed in relation to improvements in the health and social circumstances of the offender.

Research

Brenda Newton Taylor *'Interim Project Evaluation Findings'* (2001) Centre for Addiction and Mental Health

Client data was divided into experimental and comparison groups:

- the comparison group (n = 50) included those who were accepted into the programme, attended a clinical assessment, but then chose not to re-attend court or treatment
- the experimental clients (n = 234) were those who were accepted into the programme, attended a clinical assessment, and then continued to attend court and treatment.

Qualitative analysis focused on:

- strengths and weakness of the drug treatment court
- differences between the drug treatment court and traditional courts
- perceptions of the client selection process and levels of client commitment
- suggested changes or improvements to the court process.

Preliminary quantitative results indicated that, of the experimental group:

- 18 per cent were still in the programme, 67 per cent had been expelled and 14 per cent had graduated
- retention rates in treatment were higher than in other treatment programmes without judicial supervision
- recidivism rates (defined by re-arrests) were low for drug treatment court participants compared to similar offenders in the traditional court system
- graduates had significantly fewer re-offences
- the drug treatment court was treating more complex and difficult offenders who had been unsuccessful in previous attempts at treatment
- drug use by participants remained low compared to similar participants not in drug treatment court.

Interim reports concluded that there was a need to develop different measures of success to capture the success of drug treatment court participants who do not meet the graduation criteria of complete abstinence, stable housing, education or training and employment but who have significantly reduced drug use and ceased criminal activity. There was insufficient data about drug treatment court outcomes and the data did not enable comparison of

programme participants with non-participants with similar characteristics. The final evaluation report is due towards the end of 2004.

2.3 Domestic violence courts

FAMILY VIOLENCE COURT, CANBERRA, AUSTRALIAN CAPITAL TERRITORY, Australia (1998)

Respondents: *Coordinating Magistrate Karen Fryar, Family Violence Court Robyn Holder, Victims of Crime Coordinator⁴¹*

The capital of Australia is a self-governing city-state: Canberra, Australian Capital Territory (ACT). It has two levels of court – Magistrates Court and Supreme Court.

The ACT Family Violence Intervention Programme (FVIP) aims to improve victim safety and increase accountability of offenders. It has concentrated on work within the Magistrates Court where nearly 90 per cent of family violence matters are settled. No formal liaison/co-ordination on family violence issues has yet been conducted with the judiciary in the Supreme Court.

The FVIP has created a closer operational relationship between the police, prosecution, courts and corrections and key adjunct non-government services. The 24-hour Domestic Violence Crisis Service provides support and advocacy to victims (male and female) and works in partnership with the Australian Federal Police to attend family violence incidents. Relationships Australia, under contract to Corrective Services, provides a mandated group programme for adult men convicted of an offence against a female partner or ex-partner. Corrective Services also provide one-to-one programmes for other family violence offenders such as sibling violence or those in same-sex relationships.

The court established a specialised Family Violence List in 1998 but it was not until 2000 that a Practice Direction was instituted and a magistrate was appointed to manage the list.

Features of the court include:

- mechanisms to flag, fast-track and monitor criminal cases
- case management by the court
- facilities for victim support

⁴¹ This independent position (victim's ombudsman and system reform office) was established by the Victims of Crime Act 1994 and has primary responsibility for coordination and strategic direction of the ACT Family Violence Intervention Program.

- specialised prosecutors in a Family Violence Team
- exchange of information among co-operating agencies.

Defendants make their first appearance in the normal criminal bail and mention list. All family violence matters are then next listed for mention or plea in the dedicated family violence list which is held once a week. Mentions and pleas of guilty are heard in the morning and hearing matters are listed for case management in the afternoon. The case management hearing is generally listed six weeks after the plea of not guilty is entered. These processes are managed by the specialist Magistrate responsible for all mentions and case management hearings of “tagged” criminal family violence matters. A ‘mention brief’ for early appearances, and a subsequent full brief of evidence are prepared and provided to the defence beforehand. As a result of the quality of the evidence presented to the defence at an early stage and the preparation of specialist prosecutors, matters are often resolved in an early plea without the need to allocate hearing time. If the matter requires a hearing, any Magistrate other than the Family Violence Magistrate can try a contested matter.

Research

Urbis Keys Young (2001) *‘Evaluation of the ACT Family Violence Intervention Program Phase II’* Department of Justice and Community Safety, Canberra, ACT.

Robyn Holder and Nicole Mayo *‘What Do Women Want? Prosecuting Family Violence in the ACT - Current Issues in Criminal Justice’* Journal of the Institute of Criminology (July 2003) Vol. 15 No. 1, pp. 5-25.

Only part of the Urbis Keys evaluation relates to the court process. Relevant aspects of the methodology include a survey of 39 victims of family violence whose cases were prosecuted and finalised between May 2000 and February 2001 (about 20 per cent of the victims dealt with in this period); interviews with 30 key informants from participating agencies; and a comparison of 1999-2000 criminal justice data on family violence offences with 1998-99 benchmark data. Findings include:

- an eight per cent increase in the number of defendants charged
- the proportion of cases finalised by early guilty plea increased from 24 per cent to 40 per cent
- a 68 per cent increase in the number of convictions (1998/99 to 2000) and then a further 126 per cent increase (2000/01)
- fewer cases were withdrawn due to lack of evidence and/or victim’s reluctance to proceed

- reduced time to get cases through the courts
- most cases were resolved without the need for a full hearing
- referrals to perpetrator programmes increased
- savings were achieved in court time and witness attendance
- initial problems were identified in coordinating the approach to victim support and the supply of information
- there were difficulties in collecting accurate data to assist with programme monitoring and evaluation.

Funding has not been available to continue the independent evaluation but trends continue to be monitored through data collection.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, WASHINGTON DC, US
(established 1996)

Respondent: Paul Roddy, Director, Domestic Violence Unit

The Superior Court of the District of Columbia is a court of general jurisdiction in which cases involving criminal prosecutions for domestic violence and related civil matters are heard by a team of judicial officers. They meet weekly to discuss cases and decisions. The domestic violence division of the court has three interrelated components:

- centralised intake (Domestic Violence Intake Centres)
- a specialised clerk's office unit (Domestic Violence Co-ordination Unit)
- dedicated domestic violence courtrooms and judicial assignments (Domestic Violence Unit).

The Domestic Violence Intake Centres are located at the courthouse and at a local hospital, where requests for temporary protection orders are heard through video-conferencing.

The Domestic Violence Unit handles criminal misdemeanor cases in which the penalty is less than one year in jail and/or \$1000, protection order cases, divorce, custody, visitation, paternity and child support cases i.e. all related cases except for abuse or neglect of children and criminal felony cases. Petitions, service of process, motions etc. are free. Services to victims are co-located with the court.

Research

M. Steketee et al *'Implementing an Integrated Domestic Violence Court: Systemic Change in the District of Columbia'* (2000) State Justice Institute

L. Levey et al (2001) *'Lessons learned in implementing an integrated domestic violence court: the District of Columbia experience'* National Center for State Courts.

The research was a collaborative initiative of government departments, university, community agencies and service providers. It took place between 1998-2000 and studied domestic violence court intake procedures and the co-ordination of criminal and civil cases. Case files were reviewed and interviews were conducted with about 250 clients from Domestic Violence Intake Centres, as well as for an additional sample of 250 petitioners who used the services of the Centres and Domestic Violence Unit between August and October 1998. The study also involved court observation and interviews with professional participants. Findings included the following:

- 89 per cent of victims coming to the Intake Centre said that staff really listened to their concerns
- 78 per cent said that staff helped them understand what the process would be like
- 78 per cent said staff expressed concern for their safety
- 67 per cent said staff helped them make decisions about what to do
- case processing had become more streamlined and waiting times had been reduced
- more information was shared between civil and criminal cases but there was a need for software to facilitate communication
- orders issued were more consistent
- judges were more sensitive to domestic violence issues; however, there was a need for multi-disciplinary and discipline-specific ongoing training for all involved in the Domestic Violence Unit.

PROVINCIAL COURT OF MANITOBA, WINNIPEG, MANITOBA, CANADA

(established 1990)

Respondent: *Karen Fulham, Executive Assistant to Chief Judge Raymond Wyant*

Manitoba was the first jurisdiction in Canada to introduce a specialist court for family violence cases. The domestic violence court was created to deal with spousal, child abuse (including historical abuse reported by adults and children abused by non-family members) and elder abuse cases where the victim was in a relationship of trust, dependency or kinship with the accused. It consists of two trial courts, a bail court, a resolution court, a plea court and a disposition court. The goals of the court are to:

- increase victim-witness information and improve co-operation
- reduce case attrition
- process cases expeditiously, aiming at a three month average disposition time
- provide more consistent and appropriate sentencing.

The specialisation is provided at provincial court level only, not superior court. The court has specialist staff who are sensitive to the difficulties that arise where the victim-witness is dependent upon the accused. However, there are no specialist judges.

The courtrooms used are modern and user-friendly, permitting close contact between the judge and those present. Witnesses face the judge rather than the accused or counsel. Victim witness assistance facilities are in the courthouse and a child witness advocate is located in the prosecutors' office in an adjacent building. The Women's Advocacy Centre (part of the Department of Community Services) is next door.

Research

E. J. Ursel (1994) *'The Winnipeg Family Violence Court'* Juristat, Canadian Centre for Justice Statistics.

E. J. Ursel (2003) *'Using the justice system in Winnipeg'* Chapter 5 in Family Violence in Canada: A Statistical Profile, Canadian Centre for Justice Statistics.

The 1994 study was based on analysis of just over 4,000 cases entering the court during the first two years of its operation.⁴² Cases were followed up for six months (for a maximum study period of 18 months), capturing approximately 90 per cent of all cases handled in court. However, this data set may underestimate the number of child abuse cases by as much as 20 per cent because the processing time for child abuse trials frequently exceeded 18 months. Findings of the 1994 study included the following:

- the overwhelming majority of cases concerned spousal abuse, of which the majority concerned couples in an ongoing relationship
- at least 2/3 of accused persons in all cases had a prior record for offences against the person

⁴² At that time, the specialised prosecution unit consisted of six Crown attorneys; by the time of the 2003 study, this had increased to 13.

- the court achieved its objective of an average three month processing time by allocating increased court time, but the processing time for child abuse cases frequently extended beyond 18 months
- the most frequent outcome for all cases was a guilty plea (54 per cent) followed by a stay of proceedings (27 per cent). A total of 60 per cent proceeded to sentence, compared with 53 per cent prior to setting up the court
- spousal abuse cases had a higher attrition rate (28 per cent) than elder abuse (23 per cent) or child abuse (17 per cent)
- spousal abuse cases had a higher rate of dismissal for want of prosecution (39 per cent) than elder abuse (38 per cent) or child abuse (17 per cent)
- prior to setting up the court, the most frequent sentences were conditional discharge, suspended sentence and probation. In family violence court, the most frequent sentences were probation, followed by suspended sentence and incarceration
- the court provided a much more intensive programme of monitoring and treatment for offenders: 90 per cent of probation sentences required supervision. The court mandated treatment for the offender in 53 per cent of all sentences
- there was a clear pattern of more severe sentencing in child abuse cases.

The 2003 study analysed 20,406 cases of spousal abuse dealt with in the Winnipeg domestic violence court in the seven-year period between 1992 and 1999. Findings of the 2003 study included the following:

- the most frequent disposition was probation (49 per cent) followed by incarceration (37 per cent)
- the proportion of accused with a prior record for offences against the person had risen to 80 per cent
- 62 per cent of all convicted offenders had supervised probation and 68 per cent of these were sentenced to mandated treatment groups
- 98 per cent of those sentenced to custody were sentenced to less than two years, making them eligible for a special domestic violence unit in the local correctional facility. Since opening in 2000, 395 out of 400 offenders had completed the short-term (five day) programme and 126 out of 148 had completed the long-term 12 week programme.

Jane Ursel is a professor of sociology at the University of Manitoba and continues to be involved in longitudinal studies of the court. Other publications referring to the work of the court include:

- (2002) *'His Sentence is My Freedom: Processing of Domestic Violence Cases in The Winnipeg Family Violence Court'*, in *'Reclaiming Self: Issues and Resources for Women Abused by Intimate Partners'*, eds Leslie Tutty and Carolyn Goard, Fernwood Publishing (co-author Kelly Gorkoff)
- (2001) *'Court Processing of Child Sexual Abuse Cases: The Winnipeg Family Violence Court Experience'* in *'Pieces of the Puzzle: Perspectives on Child Sexual Abuse'* eds (editors? In full?) D. Hiebert-Murphy & L. Burnside, Fernwood Publishing
- (2001) *'Reflections on The Development of Family Violence Services'*, Manitoba Journal of Family Matters, Vol. 1, No. 1, Winter 2001.
- (2000) *'Winnipeg Family Violence Court Report'* in *'Family Violence in Canada: A Statistical Profile 2000'* Canadian Centre for Justice Statistics, Chapter 6, July 2000.

2.4 Community courts

COMMUNITY COURT, MINNEAPOLIS, HENNEPIN COUNTY, MINNESOTA (established 1999)

Respondent: *Deborah Eckberg, Principal Research Analyst, Minneapolis Community Court, with input from Judge Hopper*

The community court aims to increase community satisfaction with the handling of low-level quality of life offences in the third precinct, such as prostitution, theft and a small number of 'nuisance abatement' cases from the civil housing calendar. The court is based on restorative justice principles to victims and the community. It aims to make offenders more accountable and have them fulfil their sentence by combining punishment with meaningful services. The latest development is to co-ordinate a mental health criminal court as part of community court, with a mental health screener becoming a permanent court position.

Research

Deborah Eckberg *'Hennepin County Community Justice Project: short-term evaluation'* (2001) Hennepin County District Court Research Department.

This study compared 371 community court cases heard between June 1999 and July 2000 in the Third Precinct (38 per cent prostitution and 30 per cent theft) with two groups: non-Third Precinct cases in the same time frame, and the other comprising all Minneapolis cases involving similar offences from the previous year. An attempt to measure outcomes over a longer period of time 'failed at the implementation stage' because of the way that

probation staff randomly assigned community court defendants to tracks: 'In short, probation made choices regarding their business practices that were necessary for their own ethics but collided with the needs of the research design'. The outcome evaluation found that:

- the average number of days from filing to disposition was 36 per cent less for community court than for non-community court cases
- defendant compliance with community service was 25 per cent higher for those in community court
- the average number of hearings for community court cases rose as compared with comparison groups (a function of increased pre-disposition hearings required for community court defendants)
- fewer community court defendants received warrants, had their orders revoked or were imprisoned for non-compliance.

The study also involved 405 phone interviews with Third Precinct residents. The process evaluation found that:

- community residents' perceptions of safety had risen
- nearly 20 per cent of residents were aware of the court
- a majority of residents were willing to pay slightly increased taxes or transfer tax money from other criminal justice agencies to fund continuation of the court.

Robert Weidner and Chuck Davis (2000) *'Benefits and costs of the Hennepin County Community Court – a preliminary analysis'* Institute on Criminal Justice, University of Minnesota Law School.

The researchers used case processing data as well as other criminal justice system data, feedback from the community satisfaction survey and interviews with community court defendants and service providers. They reported that the community court had required few capital costs as it is housed in the Government Center in downtown Minneapolis. The net extra cost per case at community court was around \$700. Benefits included the following:

- community service work conducted by defendants came to the equivalent of over \$11,000 in fiscal year 2000
- faster processing bolstered defendant accountability
- service providers and defendants who received social services via community court saw the court as having the potential to facilitate positive and meaningful life changes among some low-level offenders.

The authors noted the limitations of the study due to the restricted time frame: '*Time must pass before the impacts of the community court can be more thoroughly assessed*'.

COMMUNITY COURT, HARTFORD, CONNECTICUT, USA
(established 1998)

Respondent: Judge Jorge Simon, Hartford Community Court

This court is an adaptation of the Midtown Manhattan prototype, tailored to meet local needs and deal with quality-of-life nuisance offences such as public drinking, theft, prostitution, graffiti and excessive noise. It is committed to restorative justice for the community and the defendant. This is accomplished through an in-house social services team that responds to the needs of a defendant and a community service programme. The court opened after two years of planning, which gradually became more judge-driven.

The court is centralised (serving the entire population of 130,000 people) but has links to 17 neighbourhoods. Each neighbourhood has developed an on-line connection to the court via community-based computer terminals housed, for example, at libraries and centres for the elderly. These enable members of problem-solving committees to provide regular feedback about community conditions to the court.

Unlike the Midtown experience, Hartford planners lobbied for legislation to allow the court to impose alternative sanctions for ordinance violations which had previously been dismissed outright or resulted in a small fine. There is a focus on community restitution. Other features are as follows:

- the special prosecutor has discretion to offer a plea agreement (the majority of cases are resolved quickly following a conditional plea)
- the case is dismissed if the defendant completes an alternative sanction (e.g. community service or attendance at dispute mediation)
- cases can be held over several appearances until disposition or trial (unlike Midtown which handles only arraignments)
- the development of a custom-designed management information system
- 'human service mandates' can require the offender to attend substance abuse treatment. The court also serves as a gateway to other services for offenders, for example parenting groups, employment orientation, distance learning, nutritional education and a good citizenship class
- cases can be referred to mediation.

Research

Robert Weidner *'Hartford Community Court: origins, expectations and implementation'*
Center for Court Innovation (1999).

This was an independent analysis of the development and start-up of the court based on interviews with the professionals involved with the court and a projection of the number and type of quality of life crimes expected to be dealt with (the study took place too early for evaluation of outcomes).

The length of community service sanctions was determined by human services staff based on a review of defendants' problems. The report saw this practice as raising questions about the proportionality of sentencing low-level offenders to long-term interventions and the appropriate response to non-compliance.

The court is concerned to strike a balance between distributing 'payback' to neighbourhoods where offences occur and providing less disorderly areas with some minimal level of help. There was a need to assess whether monthly advisory board meetings provide a sufficient forum for sharing information between the court and residents about project accomplishments and developing neighbourhood problems. The study concluded that the Hartford project will be of national significance as it tests the extent to which a centralised court can respond to neighbourhood-specific problems and the implications of changing the court system's approach to ordinance violations that affect the community's way of life.

John Goldkamp et al *'Developing an evaluation plan for community courts: assessing the Hartford Community Court Model'* (2001) U.S. Department of Justice Bureau of Justice Assistance.

This report provided an evaluation plan specifically designed for Hartford but developed with the broader purpose of providing a model for evaluation of other community court programmes. The report sets out implementation and outcome goals; the data collection strategy; and descriptive and comparative analysis.

2.5 Mental health courts

KING COUNTY DISTRICT COURT MENTAL HEALTH COURT, SEATTLE, WASHINGTON, USA

(established 1999)

Respondent: *Fredese Whitsett, Mental Health Court Coordinator*

The court aims to increase effective co-operation between two systems that have traditionally not worked closely together: the mental health treatment system and the criminal justice system. Its objectives include:

- faster case processing time
- improved access to public mental health treatment services
- improved well-being
- reduced recidivism
- improved public safety.

The court offers misdemeanor defendants with mental illnesses a single point of contact with the court system. Defendants participate in court-ordered treatment plans and successful participation may result in dismissed charges, early case closure or reduced sentencing.

Defendants may be referred from a variety of different sources. In-custody defendants are often referred by jail psychiatric staff who screen for mental health issues. Defendants may also be referred for consideration by police, attorneys, family members, or probation officers. A defendant may be referred by another district court at any point during regular legal proceedings if the judge feels the defendant could be better served by the mental health court.

The court reserves the right not to accept cases into its jurisdiction if a person does not meet eligibility criteria. Participation in the programme is voluntary, as defendants are asked to waive their rights to a trial on the merits of the case and enter into a diversion or plea agreement with a community-based treatment emphasis. The exception, however, is that cases in which competency issues have been raised are always eligible for transfer to mental health court.

The defendant works with a dedicated team including the judge, prosecutor, defender, treatment court liaison and probation officers. Defendants are placed on probation and the case is assigned to a mental health specialist probation officer. These officers have mental

health backgrounds and carry substantially reduced caseloads in order to be able to provide a more intensive level of supervision and expertise to this traditionally high-needs population. A court liaison to the treatment community is present at all hearings and is responsible for linking the defendant with appropriate services and developing an initial treatment plan with the treating agency.

Research

John Neiswender *'Evaluation of Outcomes for King County Mental Health Court'*
Washington State University (2004)

A study conducted over the three-year period 2001 to 2003 compared 126 graduates of the court programme with 126 who opted out.⁴³ Graduates were followed up for one year and opt-outs for two years. The study found that the mental health court provided an alternative to prison that was cost effective and significantly reduced recidivism. Findings included the following:

- over half of all graduates were chronic recidivists prior to opting into the programme
- over 75 per cent of court graduates had not committed an offence one year after graduation
- graduates spent on average 15 days in jail one year prior to opting into the programme. Following completion, graduates spent an average of less than two days in jail
- over half of graduates had committed violent offences prior to entering the programme. Following completion, over 90 per cent had not committed a new violent offence
- 61.5 per cent of participants described the court as 'very good' and 38.5 per cent rated it as 'good'
- in five years of operation, no formal complaints had been made to the court.

⁴³ Detailed figures for 1999, the first year of the court's operation, showed that a total of 199 defendants had been referred: 54 decided not to enter the court treatment program and were transferred back to normal criminal calendars; 33 were undecided; the cases of 43 defendants had been closed, dismissed or screened out as inappropriate for mental health court. Of the 69 defendants who entered mental health court, 35 pled guilty, 8 received stipulated orders of continuance, and 6 were granted deferred prosecution status. The 20 remaining participants were referred from other courts, either having already been placed on probation, or having pled and had the sentencing transferred to mental health court. As of the end of the year, 63 participants were on 'active probation'.

3. The evolving role of the judiciary

3.1 Judicial selection

Specialist courts can present formidable challenges for the judges involved:

‘Judges are being pushed to unprecedented extremes with new responsibilities, [which] raises the question of whether all judges are capable of fulfilling these new roles’.⁴⁴

All respondents noted that specialist court judges were appointed by the chief judge of the jurisdiction. Willingness to take on a specialist role was mentioned by nearly all survey courts as a crucial criterion for judicial appointment, for example:

‘Judges can submit their names when there is an opening. That weeds out any judge who doesn’t have the personality or the will to take on the challenges of the court’ (Fredese Whitsett, Coordinator, King County mental health court). There was usually no specific period of tenure, with the exception of the District of Columbia Superior Court where judges were assigned to divisions of Superior Court, including domestic violence court, for a one year term. Some judges in survey courts had been in post for eight years. Judge Simon, who had served the Hartford community court for four years, considered that two to three years was about the right length of tenure ‘in order for the judge to impose his personality over time’.

All responding courts had specialist judges with the exception of the domestic violence courts of Manitoba, Canada, in which any Provincial Court judge could preside.

3.2 Judicial skills

The ability to ‘talk straight’ to defendants was seen as a core skill which was important from the outset:

‘The time of admission to the program is an important chance to engage the participant and give the participant a clear understanding of the program. I welcome them to the program. I point out that many resources will be made available to assist them. Having done that, I make it quite clear, however, that the hard decisions have to be made by them; that no one else can make them’ (Magistrate Newman, Adelaide drug court).

⁴⁴ A. Freiberg ‘Therapeutic Jurisprudence in Australia: Paradigm Shift or Pragmatic Incrementalism’ (2003) December 20 No. 2, Law in Context.

Other important judicial attributes for specialist work mentioned by respondents included:

- organisational skills
- an ability to work with defendants presenting multiple problems
- an understanding of personal development
- an understanding of addiction
- an understanding of the role of social services
- acceptability to both prosecution and defence
- patience
- a sense of humour.

Judge Bentley, Toronto drug treatment court, emphasised the importance of 'empathy, respect, an ability to listen and employing therapeutic jurisprudence in everything you do on the Bench'. Judge Simon, Hartford community court, noted the shift in the judicial approach required by assignment to a specialist court:

'You can't treat "quality of life" crimes too strictly. This is a pro-active role. Most judges are reactive in nature. In this court we have a more preventative role - we see the problem and try to prevent an escalation of crime. This is a non-adversarial process with the judge as mediator'.

He took the view that appointments to specialist courts should come early in the judicial career, 'before judges get too set in their judicial role. Train them before they get too indoctrinated'. In contrast, the King County mental health court preferred appointees to be senior level judges.

A few courts noted the importance of additional professional qualifications. In addition to his legal qualifications, Judge Simon of the Hartford community court had a Masters degree in social work. Fredese Whitsett, Coordinator, King County mental health court, commented that all team members, including judges, received training in mental health as it related to the criminal justice system but added that

'most of us have graduate degrees in Psychology or Social Work and have worked many years in the mental health field. Even our attorneys have Masters degrees in mental health'.

3.3 Judicial education

Although some commentators argue that ‘therapeutic jurisprudence is what good judges do anyway on a daily basis’⁴⁵ others consider that:

‘a traditional legal background alone is ineffective training for judges playing an active role in the problem-solving process that requires, in addition to analytical skills and legal knowledge, effective communication and creative thinking’.⁴⁶

In a survey of domestic violence courts, the National Center for State Courts recommended that judicial training should be both mandatory and ongoing.⁴⁷ The approach to judicial education varied across countries and between types of specialist court. Drug courts had a higher training profile than other specialist courts in the survey although even for drug courts in the survey, judicial training was not mandatory. For example, judges of the Las Vegas drug court were encouraged to attend drug court training at the National Judicial College in Reno, Nevada; annual training conferences of the National Association of Drug Court Professionals; and sessions for new judges organised by the court manager and treatment provider.

In a significant departure from conventional judicial training, there was an emphasis in some courts on training judges and other members of the ‘court team’ together. The New South Wales drug court conducted regular inter-disciplinary education programmes for judges and all staff associated with the court. Judge Paul Bentley reported that the Toronto drug treatment court held quarterly staff ‘retreats’ to facilitate greater understanding between team members from the various disciplines:

‘Specific issues that have arisen in day-to-day court operation are also discussed. This is how we have developed most special policies and procedures. These retreats are attended by all court and treatment staff (case managers, therapists, various managers, clerks, defence counsel, prosecutors, and judges) and are either one-half day, or a full day in length, depending on the items on our agenda. These events go a long way towards creating a “team” atmosphere within our programme’.

Community courts in the survey, unlike other American specialist courts, were not the subject of tailored judicial education.⁴⁸ Judge Simon, Hartford community court, said that he pursued training on his own through organisations of problem-solving courts such as the National Conference for Drug Courts, which he saw as ‘a good starting point for any judge’.

⁴⁵ R. Fritzler and L. Simon in D. Rottman ‘Does Therapeutic Jurisprudence Require Specialized Courts (and Do Specialized Courts Imply Specialist Judges?)’ (2000) Spring 37 Issue 1 Court Review.

⁴⁶ A. Freiberg op. cit.

⁴⁷ S. Kelitz op. cit.

⁴⁸ The California Administrative Office of the Courts is developing a pilot programme entitled *California Collaborative Courts Judicial Education Project* designed to promote education of judges implementing collaborative justice programs. This curriculum will be used at the AOC’s Continuing Judicial Studies Program in 2005.

Some of the other specialist judges had, on their own initiative, sought to broaden their expertise through conferences and study tours.

The District of Columbia Superior Court was the only survey court to report that training was provided for court judges before they took the assignment. These domestic violence judges also attended ongoing training on best practice with other courts.⁴⁹ However, magistrates of the Adelaide family violence court and the Canberra family violence court had not received professional education on family violence. Magistrate Fryar in Canberra described the lack of ongoing judicial education as a problem for all judicial officers, but particularly in relation to family violence:

‘As my knowledge in this area has grown, I have attempted to assist in passing it on to my colleagues both informally, by circulating materials, and arranging briefings and seminars. I also feel compelled to take every opportunity to re-educate practitioners who appear in the list before me, not only about procedures but also about attitudes and language’.

Although Manitoba domestic violence courts were not served by specialist judges, Provincial Court judges had participated in education programmes addressing violence against women and the impact on children; myths on spouse assault; the victim’s perspective of the aftermath of sexual offences; the cycle of violence; and how the court should deal with a reluctant witness who is a spousal abuse complainant.

3.4 The team approach and its impact on judicial discretion

Specialist courts applying ‘problem-solving’ and therapeutic jurisprudence’ principles emphasise the development of a team approach led by the judge:

‘The judge is the central figure in a team effort that focuses on sobriety and accountability as the primary goals. Because the judge takes on the role of trying to keep participants engaged in treatment, providers can effectively focus on developing a therapeutic relationship with the participant. In turn, treatment providers keep the court informed of each participant’s progress so that rewards and sanctions can be provided’.⁵⁰

Building the team approach is not without problems: research has revealed the potential for philosophical and professional differences to arise between treatment providers and specialist courts. An early study of the New South Wales drug court’s operation described

⁴⁹ In another example, the State of New York Unified Court System, Family Violence Task Force, delivered nine judicial seminars entitled ‘Domestic Violence 2003: Confronting Challenges, Avoiding Pitfalls’. Materials included vignettes for discussion and suggested questions for a protective order hearing.

⁵⁰ Drug Standards Committee (1997) ‘Defining drug courts: the key components’ National Association of Drug Court Professionals.

such initial differences as a 'major obstacle'.⁵¹ Treatment providers reported that they were directed by the court in areas where the providers had greater expertise, while the court reported that treatment providers were failing to co-operate with their directions. Both groups adapted to these difficulties and relationships improved over time (see section 4.5 below).

No such tensions were reported in this survey, although there were significant differences in the allocation of team members' responsibilities across courts. Community courts felt that judicial discretion was needed to tailor programme requirements to defendant needs:

'I have all the flexibility I need: if I am not happy with the programme or someone is taking advantage I can have them come back every two weeks and I get progress reports. We have in-house social workers who specialise in the treatment of addiction, alcoholism, etc. – everyone sees them whether they think they need it or not. As a result of my previous experience with the drug court, I can see where extended treatment would be appropriate in the community court, so I impose more conditional treatment orders than the previous judge here. In about 10 per cent of cases we extend supervision for up to six months. Our jurisdiction includes "possession of marijuana" cases. About 80 per cent of these involve individuals who are substance abusers so I see many of the same people who would face more serious charges in ordinary court' (Judge Simon, Hartford community court)

'Judicial discretion is important. There is no uniform way to deal with defendants who all have multiple issues such as chemical dependency, mental health problems, brain damage, etc.' (Deborah Eckberg, Principal Research Analyst, Minneapolis community court).

Judge Bentley, Toronto drug treatment court, thought that American judges had greater flexibility than Canadian judges. However, some American drug courts with intensive outpatient treatment gave judges little discretion to vary the programme:

'We select participants based on their ability to succeed in the one year program. When a participant requires a more intensive level of treatment (inpatient/residential), they are referred to community programs, regular status checks are held, and once that program is completed, the participant returns to drug court and treatment with our contracted vendor. [In contrast] our new mental health court utilises the state mental health system which determines what services are required, and is more tailored to the individual' (Kendis Stake, Manager, Las Vegas drug court).

Domestic violence court judges were also less involved in supervision or treatment programme decisions. The Domestic Violence Unit, District of Columbia Superior Court, reported that the judge 'orders the person into a programme and generally leaves the treatment and counselling up to the specialist's discretion'. Similarly, Magistrate Newman

⁵¹ S. Taplin op. cit.

described judicial discretion in the Adelaide family violence court and drug court as ‘very limited’. While judicial powers were used to grant bail on conditions⁵², he noted that ‘these courts are all “judge driven” in that we have at present no legislative backing for any of them’. In the Canberra family violence court, the sentencing magistrate retained authority to determine the most appropriate sentence. Robyn Holder, Victims of Crime Coordinator, had observed a change in sentencing pattern ‘from fines and community orders to greater use of the perpetrator program and other options’.

3.5 The impact of specialist courts on judicial attitudes

As noted earlier, in 2000 the Conference of Chief Justices and the Conference of State Court Administrators encouraged the integration of problem solving court principles into the wider administration of justice. In 1989, judges in America had ‘generally favoured a hands-off approach to problems like drug addiction and domestic violence; in contrast, a survey of more than 500 US state court judges in 2001 found that ‘a surprisingly large percentage’, whether they knew about problem-solving courts or not, ‘were eager to assume a larger role in addressing the many underlying issues that bring offenders to court’.⁵³ Over 80 per cent thought judges should be involved in helping to reduce drug abuse among defendants, play a role in protecting domestic violence victims from continued violence and help get mentally ill defendants into treatment; and over 60 per cent said they should work with community groups on neighbourhood safety and quality-of-life concerns.

There is the potential for the principles of therapeutic jurisprudence to ‘move away from the margins’ when specialist judges take the benefit of their experience with them on their return to civil and criminal work. This ranges from treating defendants with respect and speaking in simple terms⁵⁴ to using judicial praise as a technique to further defendant compliance.⁵⁵ Almost all respondents thought that presiding over specialist courts had affected judicial attitudes over time:

‘As each specialty court in our district has been developed, it has met initial resistance from the rest of the judiciary. As the community court has achieved success, there has been greater acceptance among the bench’ (Deborah Eckberg, Principal Research Analyst, Minneapolis community court)

‘Judicial attitudes have changed through their experience concerning the dynamics of domestic violence and power and control issues. The overall culture of “it’s a family issue” is changing, both in relation to criminal cases and holistic approaches

⁵² See http://www.austlii.edu.au/au/legis/sa/consol_act/ba198541/s11.html.

⁵³ G. Berman and J. Feinblatt (2002) *op. cit.*

⁵⁴ D. Chase and P. Fulton Hora *op. cit.*

⁵⁵ Natash Bakht (2003) ‘Problem Solving Courts as Agents of Change’ for Justice Paul Bentley, Ontario Court of Justice, on behalf of the National Judicial Institute.

for dealing with perpetrators and victims' (Paul Roddy, Director, Domestic Violence Unit, District of Columbia, Superior Court)

'Judges who have been involved in specialty courts tend to use therapeutic techniques when returning to regular work. Therapeutic jurisprudence becomes more important in other types of caseloads. Approximately 80 per cent of people coming into our court system have some substance abuse. Our judiciary have recognised that, without treatment, these people will not be successful in any aspect of their lives, be it child support, child custody, or criminal matters' (Kendis Stake, Manager, Las Vegas drug court)

'The presence of a successful specialty court has most definitely changed judicial attitudes. In the US, there is a progressively stronger trend towards the development of specialty courts because the old system of processing cases without regard for outcome doesn't work at resolving the issues that lead to crime' (Fredese Whitsett, Coordinator, King County mental health court).

There was some indication that the lessons from specialist courts were entering general judicial education:

'All members of the bench (whether or not involved in a problem-solving court) are aware of the alternative approaches available. Judicial education reflects this shift by focusing on these courts as part of nearly every judicial education programme' (Judge Paul Bentley, Toronto drug treatment court).

Two respondents also mentioned the influence of the specialist court on court management and procedures elsewhere in the system:

'The work of the family violence court has had very significant impact on other areas of specialisation/administration of justice such as case tracking and case management, inter-agency coordination, data collection and analysis, victim participation, involvement of victims in offender management, and evolving relationships between prosecution and police, between prosecution and the court, between prosecution and defence, and between prosecution and probation' (Robyn Holder, Victims of Crime Coordinator, Australian Capital Territory)

'Lessons learned from implementing domestic violence courts have been used to establish new procedures in other divisions, such as a holistic approach toward helping families and not necessarily breaking them up; a 'one family, one judge' approach to family cases so that no conflicting orders are entered and the judge has the best, most recent family information available; and a central intake center for one-stop shopping – the person can file different kinds of cases in one place instead of going to different offices or buildings to get the help they need' (Paul Roddy, Director, Domestic Violence Unit, District of Columbia, Superior Court).

However, Magistrate Fryar, Canberra family violence court, took the view that:

'Much more work needs to be done here, and especially with Supreme Court judges. That is a delicate issue in such a small jurisdiction as this. I am not entirely sure how

to approach it. Perhaps more work can be done within the framework of the newly created National Judicial College’.

3.6 Judicial job satisfaction

There is always a risk that specialist court work may result in burn-out for judges and other court personnel.⁵⁶ It is striking that no respondent to this survey referred to this as a problem. Indeed, enthusiasm for the judicial role was evident from responses.

A recent survey of 194 judges compared the experiences of those working in drug courts and family courts.⁵⁷ It reported that judges who worked therapeutically in drug courts experienced increased job satisfaction. It quoted one drug court judge who said:

‘It’s a passion and working with passion is more energizing and worthwhile... My leadership skills have sharpened. Best of all, I am a happier person because I believe that what we are doing in our drug treatment court is making a difference’.

Another judge said:

‘My involvement with drug court is the most meaningful contribution I have made... I am part of a solution rather than part of the problem’.

Self-selection for the drug court assignment, regular reviews of participants’ progress and perception of participants’ gratitude were seen as factors contributing to judicial job satisfaction. Drug court studies generally conclude that the therapeutic effect on the participant is dependent on the relationship with the judge. Interestingly, the judicial survey suggested that the judges’ satisfaction in their work is also a product of the closer relationship with participants. It concluded that judges ‘cannot help but be changed by this process’.

⁵⁶ There is believed to be a risk of secondary trauma for those working in domestic violence courts:: R. Mazur and L. Aldrich op. cit.

⁵⁷ Survey of 96 judges from drug courts and 98 from family courts: D. Chase and P. Fulton Hora op. cit.

4. Monitoring, sanctions and incentives

4.1 Judicial monitoring of defendants

The Community Justice Judge for the forthcoming Liverpool Community Justice Centre will be the first in this country to have the monitoring of offenders (namely, oversight by the judge of an offender's progress throughout a court programme) as a formal part of the job description. The judge is expected to 'show active interest in offenders' progress on treatment programmes and community penalties through monitoring their progress personally, establishing real offender accountability and promoting individual responsibility' and tailor their approach to encourage offenders' commitment to behavioural change.⁵⁸

Evaluation of the Toronto drug treatment court showed that retention rates in treatment were higher than in other treatment programmes without judicial supervision.⁵⁹ Judicial monitoring was a key characteristic of the drug courts, community courts, mental health courts and one of the three domestic violence courts in the survey:

'Judicial supervision of participants is crucial. Status reviews are held weekly, bi-weekly, every three weeks, and then monthly, depending on the treatment phase and how participants are complying' (Kendis Stake, Manager, Las Vegas drug court)

'Judicial supervision and monitoring is essential. We see clients frequently, averaging 15 hearings per year per client. Initially, after they opt in, we can see them three to four times per month and then less frequently as they start to comply with their treatment. Without the clients knowing that they must come back regularly for review hearings to update the court on their progress, I suspect that their compliance would drop off. As long as the clients know that they will be held accountable in court, they generally comply' (Fredese Whitsett, Coordinator, King County mental health court).

'In post-plea but pre-sentence situations, bail conditions require the defendant to return to court on a regular basis. Post-sentence, the offender is often required to report back to the court and relate progress on dealing with issues that led to criminal behaviour. [Judicial monitoring] is one of the key components of a successful problem-solving court. Accountability is enhanced. The best example of this approach is drug treatment court, which employs ongoing judicial monitoring for periods in excess of a year' (Judge Paul Bentley, Toronto drug treatment court)

The judge speaks directly to each participant in court during regular reporting sessions and invites the participant to respond to matters that have been raised in the team meeting. 'It is the view of this court that judicial involvement is a key ingredient of the success of the program. This is supported by the views of the

⁵⁸ Department for Constitutional Affairs appointments advertisement, July 2004: <http://www.dca.gov.uk>.

⁵⁹ Brenda Newton Taylor 'Interim Project Evaluation Findings' (2001) Centre for Addiction and Mental Health.

psychiatrist who works with the participants, based on his observations and discussions with participants. It is also consistent with much of the literature on drug courts' (Senior Judge Milson, New South Wales drug court).

Magistrate Newman described reviews in the Adelaide drug court taking place fortnightly during Phase 1 of the programme, every three weeks during Phase 2, and monthly during Phase 3. More frequent reviews could be ordered but these significantly affected the workload of the court and case managers if required to do a full report each time a participant is before the court.

Hartford community court also monitored progress in court with both counsel present. In the Minneapolis community court, in-court post-disposition reviews attended by defendant's case managers were described as 'both essential and meaningful'. Initially, reviews were scheduled every two weeks, then every 30 or 60 days, depending on defendants' progress. It was thought that women charged with prostitution often benefited from increased hearings where they were required to check in with the judge and report on their progress in pre-disposition court requirements for conditional release. Men charged with soliciting were also required to attend pre-disposition reviews:

'as it often takes these defendants several times before the judge to acknowledge their behaviour and benefit from the restorative justice programs offered' (Deborah Eckberg, Principal Research Analyst).⁶⁰

4.2 Continuity of judge involvement with the offender

Where judicial monitoring is a feature of the specialist court, continuity of judge is seen as a vital factor in successful outcomes. In a retrospective drug court study where analysis suggested that court appearances before the drug court judge did not affect the probability of later re-arrest, it was stressed that in one of the two study courts 'two strong drug court judges were succeeded by a non-judge [a referee] and a rapid rotation of numerous judges for short stints'.⁶¹

As noted in the previous section, most respondents saw tangible benefits as a consequence of the ongoing relationship between judge and defendant:

⁶⁰ Deborah Eckberg 'Hennepin County Community Justice Project: short-term evaluation' (2001) Hennepin County District Court Research Department.

⁶¹ John Goldkamp et al (2001) 'From Whether to How Drug Courts Work: Retrospective Evaluation of Drug Courts in Clark County (Las Vegas) and Multnomah County (Portland) Crime and Justice Research Institute, for US National Institute of Justice.

‘Judicial supervision is both desirable and achievable. Judges who accept the principles of therapeutic jurisprudence ‘buy in’ to the role of assisting the defendant through court coercion. The individual judge has objectives that only he or she can deliver. Conversely, the defendant becomes accustomed to the individual judge’s expectations and then begins to meet these expectations. Defendants more than anyone pick up on an individual judge’s personality and modify their behaviour accordingly. It is a key motivating source. It is very different where a defendant is told by a probation officer to do something. I tell defendants “Your life is going to be controlled by me and there will be severe consequences if you do not obey”’ (Judge Simon, Hartford community court)

‘Continuity of judicial supervision is a key piece of community court. It is very desirable and appears to contribute to successful outcomes’ (Deborah Eckberg, Principal Research Analyst, Minneapolis community court)

‘Continuity is critical. Participants know they will be held accountable by “their judge”. We have had participants ask to delay graduation from the program when the judge was out of town. The relationship between judge and participant definitely contributes to a successful outcome’ (Kendis Stake, Manager, Las Vegas drug court).

4.3 Judicial participation in out-of-court reviews

Judges were sometimes involved in out-of-court reviews, although these were not invariably *ex parte*. In the Toronto drug treatment court, such reviews were not attended by defendants and generally not by individual defence counsel either, although lawyers were not prohibited from doing so:

‘As there is always a duty counsel lawyer in attendance, that lawyer can and should advise private counsel of any issues that could have a serious impact on their individual clients continued involvement in the drug treatment court’ (Shellie Addley, drug treatment court defence counsel, Legal Aid of Ontario).

Adelaide drug court held routine case conferences⁶² in the absence of the defendant but in the presence of counsel and the drug court team (clinical advisors and sometimes case managers). Magistrate Newman felt strongly about the presence of defence advocates and was not prepared to engage in pre-court reviews to discuss a participant’s case in their absence. In the New South Wales drug court, Judge Milson reported that the judge is involved in a daily pre-court team meeting in which the offender’s weekly achievements are discussed in the offender’s absence. These were held weekly, fortnightly or monthly, depending on the stage of the programme the participant had achieved. The judge also participated in a monthly review of progress against program goals for each participant.

⁶² A review of the New South Wales Drug Court describing the value of the case conference process can be found at http://www.lawlink.nsw.gov.au/bocsar1.nsf/pages/drug_court.

In mental health courts, such pre-hearing conferences are seen as a way to minimise stigma because they avoid detailed discussion of the defendant's diagnosis and treatment in hearings open to the public where such information would be entered into the court record. While some see such information-sharing as critical to the mental health court process, others argue that such conferences are a potential source of judicial bias.⁶³

4.4 The role of judicial monitoring in domestic violence courts

Some domestic violence courts have monitoring hearings where they bring defendants back to court with regularity: the 'compliance court' helps the judge to reiterate the conditions of the order of protection.⁶⁴ Of the domestic violence courts in our survey, only the District of Columbia Superior Court routinely utilised judicial monitoring to 'confront perpetrators with their cognitive distortions that minimise their own behaviour or blame the victim'.⁶⁵ Paul Roddy, Director of the Domestic Violence Unit, reported that:

'Judicial monitoring is a feature of our process. The judiciary sets interim hearing dates to review the status of probation, treatment and counselling. A review or report card is issued assessing the individual. The judiciary relies heavily on the probation officer or social worker assigned to the case for updates. The court sees a "success" rate of about 75 per cent of those who attend the program completing the program. We can't tell if the perpetrators have learned anything but at least they have heard what we feel is necessary. There is an old saying that "you can bring a horse to water but you can't make him drink... but if you hold his head down long enough he's bound to swallow something".'

Manitoba domestic violence courts, which did not assign dedicated judges, had no formal judicial monitoring programme. Judicial supervision was rare except where a community sentence with conditions had been imposed and the offender returned to court before the sentencing judge to advise of progress. Magistrate Newman, who sat in both the Adelaide family violence court and drug court, agreed that ongoing judicial monitoring was 'critical' for the drug court but was less of a factor in the family violence court.

Similarly, Magistrate Fryar, Canberra family violence court, did not wish to see her role expanded to include ongoing monitoring of offenders:

'Once a matter is finalised (or an offender found guilty and sentenced) the court's role is finished. We tend to get carried away with the possible good that we can do.'

⁶³ E. Trupin et al (2001) 'City of King County, Seattle Municipal Court Mental Health Court – Evaluation Report' University of Washington.

⁶⁴ For example, R. Mazur and L. Aldrich op. cit.

⁶⁵ L. Levey et al (2001) 'Lessons learned in implementing an integrated domestic violence court: the District of Columbia experience' National Center for State Courts.

But the court cannot perform miracles... it is constrained by the law and legislation. It is only in the sympathetic and hopefully wise application of that law that we have a role. [Judicial monitoring] is a matter of great debate, but essentially magistrates are lawyers, and not trained as social workers/drug and alcohol counsellors. It is a difficult and dangerous area for us to stray into. I must say that some of my colleagues find it very tempting, but it has ramifications for the slow resolution of matters. My view is that family violence is an area that is not particularly suited to that type of management, particularly where the relationship is continuing as it maintains high resentment levels. It is much better that monitoring is done by Corrective Services’.

Robyn Holder, Victims of Crime Coordinator, considered that the shift of case management oversight to judicial officers had huge resource implications. She suggested that assumptions about the authority of the judge and the statutory probation regime should be examined more closely. Former Justice Marjory Fields, New York Supreme Court, also questioned whether the cost of judicial monitoring in domestic violence cases was fully justified, given the significant impact for judicial time and additional court hearings. She saw little merit in ongoing judicial involvement where intensive supervision and positive reinforcement could be delivered by probation officers with restricted caseloads.

4.5 Non-compliance

Attitudes to non-compliance with programme requirements can reveal tensions between members of the court team. Most professionals involved with drug courts, including treatment providers, consider drug testing to be an important component of the programme. In a study of the early stages of the New South Wales drug court⁶⁶, treatment providers reported that the requirement to inform the court of defendants’ breaches, such as drug use, affected their ability to develop a counselling relationship with their clients. Urine testing was particularly contentious. Treatment providers were expected to perform urine tests for the court but largely abandoned such tests under the ‘harm minimisation’ philosophy. Probation officers considered that supervising urine tests was detrimental to their relationship with their clients and outside their standard duties. These difficulties were resolved over time as clarity about the responsibilities of team members was achieved.

In several survey courts, judges were responsible for deciding non-compliance tolerance levels (albeit with varying degrees of consultation). In others, non-compliance was managed by the service provider.

⁶⁶ S. Taplin (2000) ‘New South Wales Drug Court Evaluation: A Process Evaluation.

In Minneapolis community court, the judge set non-compliance tolerance levels in consultation with the probation officer. In the King County mental health court, the judge determined the appropriate sanction, usually following the recommendation agreed before court by the prosecutor and defence lawyer. Judges were involved in a more collaborative team approach in the drug courts:

‘Non-compliance is handled similarly but uniquely by each drug court judge. The drug court team has established policy over time on compliance, sanctions, and incentives. Each judge applies these according to his/ her own discretion’ (Kendis Stake, Manager, Las Vegas drug court).

Richard Coleman, Coordinator, Toronto drug treatment court, described non-compliance as a ‘very complex’ issue. It was generally dealt with on a case-by-case basis, recognising that some individuals, particularly those with long histories of drug use and criminal behaviour may take longer to adapt to the demands of the programme:

‘Usually, the entire team (from treatment and the court) are involved in discussion of each individual prior to court. The judge is involved in these discussions, and any final decision rests with the judge. The most serious non-compliance issue is dishonesty about drug use. We tolerate relapses and drug use, especially in the early stages of the program, but only if the participant tells us about it before the urine screen results make it obvious. There are numerous other non-compliance issues, including failure to attend court or treatment sessions, chronic lateness, boundary violations etc. Each court team will need to develop basic guidelines and should expect to develop more as situations necessitate. These are generally governed by “acceptable community standards”, and may therefore be different from one jurisdiction to another’.

In contrast, Paul Roddy, Director, Domestic Violence Unit, Superior Court of the District of Columbia, reported that those responsible for treatment, counselling or probation set non-compliance tolerance levels:

‘The government agency hires persons with the education and background to handle domestic violence intervention, counselling and treatment and also trains each for this court’s needs and procedures. They keep in contact with the prosecutor’s office and judicial officer particularly if the defendant/respondent is not in compliance. Written violations are forwarded to the prosecutor and judiciary for action’.

There was a similar judicial distance from setting non-compliance levels in the Canberra family violence court. Robyn Holder, Victims of Crime Coordinator, noted that in general, it was the responsibility of Corrective Services to manage this risk.

‘The “tolerance of non-compliance” rests on formal risk analysis, the nature of the alleged breach, the seriousness of the original offence, and any issues relating to the

safety of the victim/the public. The magistrate is not involved at this level' (Robyn Holder, Victims of Crime Coordinator).

Robyn Holder went on to observe that, on occasion, non-specialist magistrates dealing with breaches of probation 'appear not to have responded to the seriousness of that action'. The specialist magistrate had recently implemented a change in procedure so that all breaches of sentences in family violence matters were returned to and dealt with in the family violence list.

4.6 Sanctions

Some drug courts employ a 'zero tolerance' approach towards any drug use; others adopt a 'harm reduction' approach in which sanctions increase in severity for repeated drug use. Sanctions for programme infractions were seen as 'tools for program compliance to enhance treatment and recovery. Sanctions provide the external structure needed until participants can develop their own internal structure to be able to maintain sobriety'.⁶⁷ This more open-ended, discretionary approach to sanctioning was common to courts in our survey⁶⁸, some of which published their sanctions policy on the Internet.⁶⁹

Where court orders were terminated for non-compliance, survey courts (like mainstream courts) returned the defendant to court for sentence, often with the possibility of imprisonment. With the exception of the domestic violence courts, survey courts also made use of a range of sanctions for non-compliance (including custody) falling short of terminating the order. Sanctions have been described as 'very rare' in Canadian drug treatment courts: 'In Toronto, relapse is an anticipated part of the recovery process and continued drug use will not lead to expulsion from the drug program'.⁷⁰

'We have a number of jail-alternative programs. We usually give our clients several attempts to "get it together" before we order a sanction. We seldom incarcerate our clients unless they have committed a serious felony' (Fredese Whitsett, Coordinator, King County mental health court)

'The first low creatinine⁷¹, insufficient quantity of urine, positive urine sample, or missed group results in a warning being issued. Second defaults result in a sanction ranging from writing assignments, community service, increase in weekly fees, relapse programming and more frequent court appearances. More frequent

⁶⁷ D. Chase and P. Fulton Hora op. cit.

⁶⁸ A report for the Council of Europe said this approach was reported by participants to be more effective: Paul Moyle (2003) 'International Drug Court Developments, Models and Effectiveness' Report for the Pompidou Group Drug Court Project..

⁶⁹ See for example, New South Wales Drug Court <http://www.lawlink.nsw.gov.au/drugcrt/drugcrt.nsf/pages/index>.

⁷⁰ N. Bakht op. cit.

⁷¹ A form of urine test.

occurrences result in those sanctions and/or detention time' (Kendis Stake, Manager, Las Vegas drug court)

'Sanctions graduate in severity. They can involve increased attendance at court or treatment, community service hours, periods of incarceration from an afternoon in the court cells to several days in jail, ending in expulsion from the program and sentencing in the regular court system' (Richard Coleman, Coordinator, Toronto drug treatment court)

'Sanctions are difficult, particularly as we have no legislative backing, but they include moving back a phase, increase in urine testing, reinstatement of electronic monitoring, remands in custody for detoxification and ultimately termination from the program. So far all successful participants have received suspended sentences with supervision orders' (Magistrate Newman, Adelaide drug court).

Research has indicated that immediate, short-term custodial sanctions for programme breaches can be problematic and disruptive to treatment. The New South Wales drug court abandoned this practice and adopted instead a system of accumulating suspended sanctions prior being required to serve them:

'The most common sanction is to impose a day or days of custody, which are suspended. Suspended sanctions are waived for subsequent good behaviour or goals achieved. When these sanctions accumulate to about seven days the court may require some or all of them to be served' (Senior Judge Milson).

Magistrate Newman reported that the Adelaide drug court had also recently introduced an accumulating 'points' system.

4.7 Incentives

As noted above in the profile of specialist courts in the survey, in some courts successful completion of the programme could result in the defendant not receiving a conviction. Other incentives were available as offenders progressed through court programmes:

'Less frequent court appearances, less time at the clinic, less frequent drug testing and positive affirmation and recognition from the judge, drug court team and peers. Longer term incentives include "sealing" the case, the state accepting a plea to a lesser charge, reunification with children and termination of wardship' (Kendis Stake, Manager, Las Vegas drugcourt)

'Moving to the next phase of the programme, removal of home detention, easing of curfew etc.' (Magistrate Newman, Adelaide drug court)

'Day reporting, work crew, community service, educational programs, etc.' (Fredese Whitsett, Coordinator, King County mental health court).

Supportive comments from the judge to the offender at status conferences have been linked to greater likelihood of the offender's success in programme participation e.g. fewer failed urine tests.⁷² Some judges may organise their hearings to encourage offenders who are observing:

'Thus, offenders who are doing well in treatment are often the first called – not merely to reward them for their achievement, but to let the successful participants serve as an example for other offenders'.⁷³

Several respondents mentioned the importance of positive reinforcement in restoring the self-esteem of programme participants:

'The most common incentive is the applause and congratulations of the court. This is a valued incentive, and participants take pride in being able to report to counsellors and treatment providers that they were applauded. Another common incentive is the waiving of sanctions or the relaxation of program conditions, such as curfews' (Senior Judge Milson, New South Wales drug court)

'Incentives range from a commendation from the judge (our research indicates that the participants respond extremely well to this), decreased court attendance and relaxation of drug court bail conditions to donated movie passes and tickets to sporting events' (Richard Coleman, Coordinator, Toronto drug treatment court)

'Other incentives include "Sentence to Service", organised work crew community service⁷⁴, in lieu of fines; reduced level of supervision if the defendant is making progress; and eventual discharge. Discharge from probation is announced by the judge in open court and the defendant receives a round of applause' (Deborah Eckberg, Principal Research Analyst, Minneapolis community court).

Deborah Eckberg pointed out that many other incentives come from the defendants' personal lives such as getting their children back out of care and securing housing. This point was picked up by other respondents who said that measures of 'success' were not limited to reduced recidivism rates and numbers graduating from court programmes but included improvements in participants' health and a reduction in deaths from substance abuse.

4.8 The evolving role of the defence representative

The assignment of a dedicated prosecutor is a characteristic of most specialist courts. For example, in Canberra the Director of Public Prosecution's Family Violence Team⁷⁵ had built

⁷² S. Senjo and L. Leip (2001) 'Testing Therapeutic Jurisprudence Theory: An Empirical Assessment of the Drug Court Process' *Western Criminology Review*. See <http://wcr.sonoma.edu/v3n1/senjo.html>.

⁷³ G. Berman and J. Feinblatt (2001) *op. cit.*

⁷⁴ Also reported as a sanction.

⁷⁵ A senior and two junior prosecutors, witness assistant and administrative support.

up knowledge of cases, worked closely with independent victim advocates and provided advice to the police and other prosecutors.⁷⁶ Studies emphasise that the contribution of the defence lawyer is also critical in furthering the objectives of the specialist court:

'The defense attorney must step away from the adversarial mindset in which the best interests of the defendant is getting a case dismissed, or getting a client released without restrictions or winning a case on technicalities or appeal... The effective defense attorney seeks to help the defendant succeed over time [and] to help the client achieve a more successful life, avoiding as much as possible any future, additional interactions with the criminal justice system'⁷⁷

The defense attorney, after analysing the legal issues and clarifying all options for the client, shifts focus from minimising a client's exposure to criminal sanctions to ensuring that the addicted client stays in treatment and recovery'.⁷⁸

The importance of bringing the defence 'on board' has been recognised in setting up the Liverpool Community Justice Centre, where the judge is expected to 'lead collaborative working across CJS agencies... specifically with defence solicitors'.⁷⁹

Commentators have identified tensions between this new role and traditional defence practice, and challenge the concept that defence and prosecution are now members of the same 'team'. Some question whether advocacy in specialist courts is less zealous and whether the defendant's consent to participate in the court programme is fairly and freely given.⁸⁰

Such tensions were not evident in survey responses supporting a two-fold role for the defence representative:

'First, [the defence role] involves traditional legal advice and information about options, including whether to participate in the problem-solving court. If a client chooses to enter the court program, the second part of defence counsel's role is to ensure that the client remains in it. Clients who voluntarily enter the program have given up many of their usual rights, such as the right to have the Crown prove the case against them, the right to a speedy trial, etc. Defence counsel is then obliged to make every effort to ensure the client is able to complete the requirements of the court. This requires defence counsel to be actively involved in all aspects of the client's involvement in the program' (Shellie Addley, drug treatment court defence counsel, Legal Aid of Ontario)

'The New South Wales drug court is a post sentence program. The defence solicitors fulfil the usual role in the initial sentencing hearings. These sentences are

⁷⁶ Robyn Holder, Victims of Crime Coordinator, observed that they were 'much more active than is traditional in representations to the magistrate on issues like bail, bail variations, and sentencing'. Magistrate Fryar described the specialist prosecution team as 'integral to the success of the program'.

⁷⁷ E. Trupin et al op. cit.

⁷⁸ D. Chase and P. Fulton Hora op. cit.

⁷⁹ Department for Constitutional Affairs appointments advertisement, July 2004, <http://www.dca.gov.uk>.

⁸⁰ G. Berman and J. Feinblatt (2001) op. cit.

suspended, and when the program is terminated, either successfully or otherwise, the initial sentence is set aside and a new sentence determined. Again, the role is that of a lawyer in a sentencing environment. However, whilst the program is running participants are informed that their legal aid (i.e. defence) lawyer is a member of the drug court team whose responsibility is first to the court. Thus any breach of a drug court program condition that is revealed to the lawyer must be reported to the court. The lawyers assist the participants when difficult issues arise, and appear to help them in the informal hearing which take place during the currency of the program, including those hearings which are aimed at determining whether the program should be terminated or not (section 10, Drug Court Act 1998)' (Senior Judge Milson, New South Wales drug court)

'Defense attorneys can make or break a specialist court. If the defense attorney does not consider the mental health issues first before they consider the legal case, then the mental health court could not persuade many clients to opt in' (Fredese Whitsett, Coordinator, King County mental health court).

Defence representatives were involved from the outset in planning the Canberra family violence court in order to retain the confidence of the community and the profession in the observance of due process.⁸¹ However, their court role did not extend beyond the normal scope of plea negotiation and representations on behalf of their client at sentencing.

Most specialist courts in the survey reported continuity of defence representation through the period of supervision. Continuity was made easier through use of public defenders or duty lawyers funded by Legal Aid or other local or national funding. Continuity of defence representation through the probation/ treatment period was reported by the Minneapolis community court; Toronto drug treatment court; the domestic violence unit, Superior Court of the District of Columbia; King County mental health court; Adelaide drug court; and the New South Wales drug court.

4.9 The views of offenders

In a survey of drug court participants, 50 per cent indicated that the opportunity to talk over their progress and problems with a judge was 'very important'; 27 per cent thought it was 'somewhat important' and only 12 per cent thought that it was not important.⁸² Sixty-five per cent thought they would have been unable to complete the programme if they had appeared before a judge less frequently and 34 per cent said they would not have completed the programme. Seventy-three per cent said they would not have completed the programme if they had not appeared before the same judge throughout.

⁸¹ They have been an important conduit of communication with the profession on controversial provisions which were misunderstood e.g. the police 'pro-arrest' policy and operation of the Bail Act. The Legal Aid representative helped promote a Practice Note to the profession on contact with Victims of Sexual and Family Violence.

⁸² C. Cooper and S. Bartlett (1996) 'Drug Courts: Participant Perspectives' State Justice Institute National Symposium on the Implementation and Operation of Drug Courts.

Survey courts varied as to whether such feedback from defendants had been sought. Some had not attempted to collect such information. The Minneapolis community court said that although no systematic data had been collected, 'anecdotally, defendants consistently reported to the judge and probation officer that their belief in the defendant is what helped them make significant changes in their lives'.

The treatment provider for the Las Vegas drug court conducted exit interviews with every graduate to gather information on the effectiveness of the programme. The information obtained was taken into consideration when modifying programme rules.

A study published in 2002 drew on interviews of 202 participants before their entry to the New South Wales drug court programme and the 51 who remained in the programme⁸³ and completed three follow-up interviews at four-month intervals.⁸⁴ Strong support was found for sustained improvements in health, social functioning and drug use. Participant satisfaction was very high.

Concerns have been expressed about what prospective candidates understand about court programmes and their voluntary participation. It is noteworthy that, while 85 per cent of participants in the New South Wales drug court study described above stated that they had a 'good' or 'very good' understanding of its requirements before entering the programme, on reflection after 12 months only 26 per cent of remaining participants still held this view. Studies of the Broward County, Florida, mental health court showed that although participants perceived the court as very non-coercive, the issue of voluntary participation was explicitly discussed in only 16 per cent of court transcripts and only about half of participants knew the programme was voluntary at the enrolment interview.⁸⁵

4.10 Information systems

Some specialist courts are in the forefront of developing comprehensive information systems and employing information managers:

⁸³ Over 60 per cent were terminated prior to being on the programme for 12 months.

⁸⁴ K. Freeman (2002) 'New South Wales Drug Court Evaluation: Health, Well-being and Participant Satisfaction' New South Wales Bureau of Crime Statistics and Research http://www.lawlink.nsw.gov.au/bocsar1.nsf/pages/drug_court.

⁸⁵ J. Petrila (2002) 'The effectiveness of the Broward Mental Health Court: An evaluation'. Available at <http://www.fmhi.usf.edu/institute/pubs/newsletters/policybriefs/issue016.pdf>; R. Boothroyd et al (2003) 'The Broward Mental Health Court: process, outcomes and service utilization' *International Journal of Law and Psychiatry*, 26, pp. 55-71.

‘As a result, problem-solving court judges are better placed to assess risks, to order appropriate services to address the defendant’s specific needs and to calibrate sanctions when offenders relapse... the focus on information raises the bar for all courts in terms of what is possible’.⁸⁶

In some courts, the use of technology has gone beyond linking courts to other criminal justice agencies to integrating communication with external service providers. Such computer applications have been designed for community courts such as Midtown, New York and Hartford, Connecticut. In domestic violence courts in particular, it is recognised that failures in communication could have a serious impact on the lives of victims. In developing combined civil and criminal domestic violence courts in New York, Chief Judge Judith Kaye ‘wanted to see how a technology application could help fulfil the domestic violence court model’s principles of victim safety, defendant accountability and swift judicial response’.⁸⁷ In the system used by these courts, off-site partners can file updates and compliance reports directly from their offices and a red signal alerts the court if a non-compliance report has been filed. The application runs on a closed system. A proprietary Intranet tool that runs on Microsoft’s Internet Information Server establishes the first layer of security. Outside partners access a pre-set Internet address that connects securely to the court’s internal network. Once connected, each user enters a personal login and password, providing a second layer of security. Different users have different levels of access to data depending on their roles in the system.

However, some jurisdictions have noted that monitoring is ‘compromised by the absence of integrated justice information systems’ which also impacts evaluation of specialist courts and related initiatives.⁸⁸

⁸⁶ P. Casey and D. Rottman op. cit.

⁸⁷ P. Young (2001) ‘An Informed Response: An Overview of the Domestic Violence Court Technology Application and Resource Link’ Center for Court Innovation.

⁸⁸ 2001 Review of the Framework for Action against Family Violence, Province of Nova Scotia Department of Justice, Canada.

5. Liaison with the community

5.1 Judicial involvement

The Center for Court Innovation observed that:

‘have made working with people and organisations outside the courthouse a basic part of their work... for reasons of dissatisfaction with their jobs, with the tools at their disposal and with the “revolving door” that returns the same offenders to their courtrooms again and again’.⁸⁹

The judge to be appointed for the Community Justice Centre in Liverpool is expected to be the public face of the Justice Centre and have a high profile in the community.⁹⁰ The judge will lead collaborative working across criminal justice system agencies and solution providers; show active commitment to the community by leading the Centre and court staff in discovering local concerns and priorities, and by engaging the community in the criminal justice system; ensure that a dialogue is maintained with the community about their priorities for community penalties; participate in non-court community activities designed to knit court and community together or to divert people from crime (‘evidence from Red Hook has shown this to be a critical aspect of the role of the judge’); and ensure that the Community Justice Centre is seen as integral to the community.

Both community courts in the survey involved judges directly in consultation. The judge in the Minneapolis community court routinely attended community meetings. Judge Simon, Hartford community court, said:

‘The judge must have a good relationship with community leaders. A lot of time is spent building a relationship with them. This is a departure from the normal judicial role, but judges with an understanding of the new therapeutic jurisprudence know why this is important’.

While the New South Wales drug court had no formal community consultation, Senior Judge Milson said that ‘the most common interaction is through the public speaking roles of judge and team members’. The presiding judge of the domestic violence court in the District of Columbia met monthly with groups and agencies involved in tackling domestic violence. The court also obtained community feedback through town meetings and surveys.

⁸⁹ G. Berman and J. Feinblatt (2002) *op. cit.*

⁹⁰ Department for Constitutional Affairs appointments advertisement, July 2004, <http://www.dca.gov.uk>.

5.2 Committee structures

Other courts explained that community input was obtained primarily through committee structures. Comprehensive arrangements were described by the Toronto drug treatment court which worked with a Community Advisory Committee (CAC) consisting of around 50 representatives from mental health and addiction clinics, hospitals, community health centres, housing providers, employment agencies, neighbourhood organisations, the Toronto Police Service, and agencies providing advocacy and support to offenders. The CAC was described as a 'key partner' because of its functions:

- assisting the court with advocacy, evaluation, policy and programme development
- contributing to service delivery by providing court clients with a network of relevant resources
- identifying service needs and gaps for court clients
- acting as a vehicle for communication about the court programme with the community.

Richard Coleman, Coordinator, Toronto drug treatment court, reported that community stakeholders had been significantly involved since the court's planning stages:

'A governance structure evolved⁹¹ to support opportunities for the community to challenge, support and inform the program so as to improve service delivery, thereby increasing the likelihood of successful outcomes for the program's target group. This feature makes the Toronto drug treatment court unique and sets it apart from the American model'.

Mr Coleman reported that the CAC had been instrumental in creating the position of drug treatment court Coordinator who supports the court, facilitates the CAC and 'ultimately assists in filling gaps in resources for clients'.

In Canberra, membership of the Family Violence Intervention Programme Coordinating Committee included defence representatives and specified non-government agencies. Evaluations and surveys including the views of victims and offenders were presented to this Committee. The Victims of Crime Coordinator, as facilitator of the Family Violence Intervention Program, conducted meetings with refuge representatives and other domestic violence practitioners to ascertain views and obtain feedback about the operation of the programme.

Other courts in the survey did not seek community input or limited it to the relevant advocacy groups.

5.3 Managing community expectations

Specialist courts have the potential to play a significant role in increasing public confidence in the justice system. However, there is always a danger that they will be perceived as ‘soft on crime’. As one community court judge has said ‘The truth is that problem-solving courts always have to fight the knee jerk reaction people have to throw everyone in jail’.⁹²

Managing the expectations of the community, and indeed of other criminal justice groups, was seen as important by several survey courts:

‘When the judge attends [community] meetings, he explains the limitations of the court system in managing these offenders. For example, “locking them up and throwing away the key” is not feasible or constitutional, based on the low-level of offences these defendants have committed’ (Deborah Eckberg, Principal Research Analyst, Minneapolis community court).

Consultation often went beyond ‘awareness raising’ to involving key groups as stakeholders:

In the beginning, there was concern on the part of some prosecutors and police that drug court was an “easy out” for people. After involving them in the planning and implementation process, they now understand that the program is much harder than any other sentence received’ (Kendis Stake, Manager, Las Vegas drug court)

‘We try to operate in as co-operative a way as possible. This has resulted in not only greater understanding between the various stakeholders, but also in a more balanced approach overall. Our project was developed with community consultation as a cornerstone of the program, but the understanding from the start has been that the intent of the program is to create opportunities to reduce recidivism amongst substance dependant offenders by making qualitative improvements in their lives. “Punishment” has never been a focus of the program’ (Richard Coleman, Coordinator, Toronto drug treatment court)

‘The court has set up a committee of stakeholders to review and implement new processes or procedures. The committee is comprised of 10 to 12 different agencies of the community: some are government and some are private (court, police, prosecutor, defence counsel, advocates, emergency room doctors, law schools, legal aid society, armed forces representative, treatment and counselling agencies, probation and parole). We get together to discuss “best practices” incorporated in other communities/states and discuss their benefit or negative side. We don’t “buy” everything brought to the group: some ideas are too draconian (punitive) so they may be considered and rejected. Each agency has its own process and controls it. The committee makes each process known so that we as a group can discuss process impact and suggest changes for the better. Individual agencies, including the court, do not have to implement the change. The court also has a community outreach program where it goes to community meetings to convey what the court does and how it fits into the branches of government. At times a citizen will demand “more jobs” or “more housing”’: the court isn’t in that

⁹¹ The CAC has various working sub-committees created over the years to deal with specific issues, including Diversity, Women’s and Children’s Issues, Housing, Employment, Communication, Evaluation, Retention and Conference Planning.

⁹² Judge Norko, Hartford community court, quoted in G. Berman and J. Feinblatt (2002) op. cit.

business. The public doesn't always know what a court does or doesn't do so its good to get out and put a face on the court'. (Paul Roddy, Director, Domestic Violence Unit, District of Columbia Superior Court).

Some respondents referred to the role of the media. The Las Vegas drug court noted that, although it did not seek feedback from the community, it was important to receive 'positive media on a regular basis'. Robyn Holder, Victims of Crime Coordinator, Australian Capital Territory, emphasised specific strategies employed by the Family Violence Intervention Program Co-ordinating Committee to manage public and political expectation: 'Critically, this involves publishing data in accessible forms, providing briefings and establishing communication with key opinion formers'.

6. Other issues

6.1 The continuing development of specialist courts

Every respondent in the survey described court practice as ‘still evolving’, although only one, the New South Wales drug court, still considered itself a pilot. The District of Columbia described the domestic violence court as ‘still in its infant stage and evolving, but any process needs to be re-engineered every so often to implement best practices’.

Those working in the specialist court environment appeared particularly willing to tackle new challenges. In addition to its drug court, Las Vegas had recently added a mental health court, a ‘re-entry’ drug court for inmates within one year of their probable release and a child support drug court for non-custodial parents who were not complying with their child support orders. The Manitoba Provincial Court was investigating the establishment of a drug court and a mental health court, drawing upon its experience in the domestic violence court. It had also initiated a case management pilot aimed to cut the ‘front end’ processing time for domestic violence cases in half. Administrative functions are handled by senior court personnel called pre-trial Coordinators who are limited-jurisdiction Justices of the Peace.⁹³ Others courts also mentioned current challenges: for example, Canberra family violence court was addressing the question of juveniles alleged to have committed a family violence offence, and offenders or victims with mental health problems.

The Australian courts mentioned the problem of lack of a legislative framework for their operations. However, the New South Wales drug court was consulted by the government in annual reviews of the legislation which had been modified several times to meet the evolution of the court’s practices and policies.

In the US, specialist courts have proliferated in an era of generous funding for criminal justice and a robust economy but one commentator warns that an economic downturn could be fatal: ‘One of the defining features of the new specialised courts is the ease with which they can be dismantled’.⁹⁴ Two respondents warned of the need to safeguard special courts’ budgets. The Connecticut community court, funded out of the general courts’ budget, was the fifth busiest out of 25 courts in the state. The court receives between 700-750 new cases monthly. Judge Simon said that courts with comparable caseloads would have six to seven prosecutors, seven

⁹³ Domestic Violence Front End Pilot Project. See <http://www.manitobacourts.mb.ca>, “Announcements”, and the Chief Judge’s First Annual Report of the Provincial Court of Manitoba also under “Announcements”.

⁹⁴ D. Rottman (2000) op. cit.

to ten public defenders and five to seven judges, whereas the community court had one judge, one prosecutor and one public defender:

‘The work would be more expensive if the community court was swallowed up. You would end up with twice as many cases and they would not be handled as appropriately’.

Magistrate Fryar, Canberra family violence court, also expressed concern about sustainability:

‘Special courts involve dedicated resources that can easily be syphoned off in today’s budgetary climate. If we see value in this system my view is that we must be vigilant’.

However, a different view was put forward by former Justice Marjory Fields, New York Supreme Court, who warned of the need to scrutinise the cost of specialist courts in the context of their wider impact on general jurisdiction courts:

‘Staff and equipment diverted to make domestic violence courts look good can bleed the courts continuing to do the bulk of court business. Additional work is shifted onto the judges and staff left behind, causing a loss of morale and longer delays in reaching dispositions in comparison to the model courts which have reduced caseloads. The total operation is degraded by the loss of resources’.

6.2 Combining the criminal and civil jurisdiction

The project advisory group expressed an interest in courts exercising combined criminal and civil jurisdictions⁹⁵ or those addressing ‘problem clusters’.⁹⁶

Community courts

In addition to its criminal caseload, the Minneapolis community court also dealt with ‘nuisance abatement’ cases from the civil housing calendar. (The ‘defendant’ is property where criminal activity is alleged to take place, for instance ‘crack’ houses or massage parlours). Because they were relatively few in number, the community court handled all such cases in Minneapolis rather than just those in the third precinct. The court was also in the process of co-ordinating a mental health criminal court (part of community court) with the civil commitment court, as well as co-ordinating the community court with the child protection system (run out of juvenile court).

⁹⁵ Lord Falconer, Secretary of State for Constitutional Affairs, expressed interest in integrated domestic violence courts combining criminal and civil jurisdictions at the ‘New Initiatives in the Criminal Justice System – Domestic Violence’ conference 22.3.04.

⁹⁶ Described by P. Pleasence et al (2004) ‘Causes of action: civil law and social justice’ Legal Services Research Centre.

Domestic violence courts

The decision to combine civil and criminal domestic violence jurisdictions in a single specialised court is complex. Concerns have been raised about the implications for the rights of the defendant and the pressure that it may exert on victims to testify in order to receive civil remedies or even to deter them from accessing the system.⁹⁷ Nevertheless, Judge Fritzler of the Clark County domestic violence court (Vancouver, Washington) has described combining the jurisdictions as ‘the single best thing’ about the creation of his court⁹⁸ and a recent study concluded that the benefits of a combined model ‘seem to outweigh the detriments to the extent that it has become the preferred model for both developing already established specialist domestic violence courts and opening new ones in the US’.⁹⁹

Magistrate Newman observed that the Adelaide family violence court deals with civil restraining/intervention/apprehended violence orders in the nature of injunctions as well as the criminal charges that result from breaches. However, he noted that ‘unfortunately’ his court cannot deal with civil maintenance matters because of the separation between Federal and State courts: maintenance is dealt with by the Family Court or the Federal Magistrates Court.

Of the courts in the survey, only the domestic violence court, Superior Court of the District of Columbia, had a combined criminal and civil jurisdiction. Different judges hear civil and criminal cases¹⁰⁰ but due to integrated intake procedures, each judge has access to related case files. Paul Roddy, Director, reported:

‘The Unit communicates constantly with the criminal, civil and family divisions of the court in order to retrieve all the information and cases. The court uses an integrated case management system in which individuals and families get an identification number. When a new case is initiated, the clerk searches the database for other cases involving this person or family and links the related cases. Thereby, whenever a clerk or judge inquires about that case, all the other related case numbers will “pop up”. The domestic violence court keeps the dual cases together and generally handles the civil matter first, as it usually is ready sooner and does not impact the criminal case. This court allows respondents to enter into a consent agreement for a protection order without admitting to having done anything wrong’.

The Canberra family violence court was exclusively criminal although, within the Crimes Act 1900, there was provision for a magistrate to make a protection order as part of criminal

⁹⁷ S. Kelitz op. cit.

⁹⁸ J. Helling op. cit.

⁹⁹ D. Cook et al op. cit.

¹⁰⁰ In New York, combined courts allow a single judge to oversee criminal cases, orders of protection, custody, contact and divorce matters for one family: R. Mazur and L. Aldrich op. cit.

proceedings. However, this did not appear to have been used in the family violence court.

Robyn Holder, Victims of Crime Coordinator, said that when the issue was discussed:

‘There is some caution because the magistrate may not have all the relevant information at the relevant time, and we prefer civil orders to be directed by the parties. However, this is an area that is kept under watch. We have had to find ways of ensuring that the prosecutor (and sometimes the probation officer) is aware of existing orders and their conditions. Recent law reform will enable Australian Capital Territory Corrective Services to access protection orders so as to ensure consistency with the directions they give offenders’.

This court had weekly case meetings where all charged and summonsed family violence matters were ‘tracked’. Matters raised at these meetings included issues affecting the safety of the victim (or any child), or the effectiveness of the prosecution or compliance with a court order. The family violence magistrate was not involved in any of this. Robyn Holder continued:

‘Recently we reviewed our case tracking process and firmed up what we call our ‘audit capacity’; that is the recording of information exchange and agreed actions across the participating agencies (strictly nominated because of privacy). Apart from the protections and transparency that this involves, it is also about ensuring that key information is properly conveyed to relevant decision-makers. This may be the investigating officer, or the prosecutor or the probation officer. Information sharing is a critical area. We constantly run up against the absence of a legal framework around the sharing of victim information within the criminal jurisdiction and with the non-government sector. A feature of the Family Violence Intervention Program is the high level of communication between key practitioners – police family violence sergeant, family violence prosecutors, domestic violence and victim advocates and probation. It would depend upon the circumstances of the offence and the particulars of the charge whether information about other court orders was presented to the magistrate. Of critical importance is the prosecutor receiving information e.g. about family court orders or child protection orders. Equally, there may be good reasons why independent victim advocates may not provide or may not obtain the victim’s consent to communicate certain information to the prosecutor or probation officer’.

The Provincial Court of Manitoba reported some co-ordination between the criminal domestic violence courts and the process for seeking protection and prevention orders, but did not appear to have gone as far as the Canberra court in respect of information-sharing. Evidence or information regarding civil proceedings or civil court orders could be raised by legal counsel in criminal proceedings:

‘For example, applications for a protection order are made to a magistrate of the Provincial Court, and the record of proceedings from these hearings becomes a record of the superior trial court, the Manitoba Court of Queen’s Bench, where further proceedings, such as setting aside the granting of a protection order, may be taken before a judge of the Court of Queen’s Bench.¹⁰¹ There would not be a combined order,

¹⁰¹ For more information see Manitoba’s domestic violence and stalking legislation at: <http://web2.gov.mb.ca/laws/statutes/ccsm/d093e.php>.

but two court orders which should have consistency of terms. It is the responsibility of the parties and/or their legal counsel to ensure that the relief requested and granted by both the civil court and the criminal court are clear and consistent' (Karen Fulham, Executive Assistant to Chief Judge RaymondWyant).

6.3 Boundary concerns

The project advisory group enquired whether any specialist court in the survey had encountered difficulty in relation to the boundaries of its jurisdictional subject matter. This did not appear to have been a problem. Paul Roddy, Director, Domestic Violence Unit, reported that jurisdictional boundaries had been eliminated within the Superior Court of the District of Columbia by means of an Administrative Order requiring all cases in which domestic violence was a significant issue to be certified to the Unit. Only Robyn Holder, Victims of Crime Coordinator, reported difficulties with boundaries. She noted that Canberra family violence court, which was strictly a criminal court, had encountered some jurisdictional issues involving child protection and, occasionally, the family court, but observed that 'these difficulties related more to the complex content of issues facing the parties revealed through a criminal prosecution rather than difficulties about where the boundaries actually lay'.

The project advisory group also wanted to know whether specialist courts had difficulty in relation to the boundaries of the geographical communities they served. The community court in Portland, Oregon survived challenges to its programme on the grounds of equal protection (lawyers argued that it was unavailable to their clients by virtue of geography) by demonstrating that the communities served by the court wanted it in their neighbourhoods and that community court boundaries were rational and based on definite crime statistics and criminal justice goals.¹⁰²

Three survey courts also reported problems. The New South Wales drug court reported that the court could only accommodate about 60 per cent of referrals from within its geographical boundaries. The jurisdiction of the Las Vegas drug court covered a large geographic area and there were limitations in terms of access to treatment and to the court. It was not possible to admit offenders who lived outside the metropolitan area. The Adelaide drug court had also had difficulty accepting defendants who lived just outside its catchment area.¹⁰³

¹⁰² <http://www.communityjustice.org/exchange.asp>.

¹⁰³ The community court in Portland, Oregon has survived challenges to its programme on the grounds of equal protection by lawyers who argued that it was unavailable to their clients by virtue of geography.

7. Conclusions

7.1 The survey courts

This study presents a 'snapshot' of views from a survey of ten specialist courts in three countries, against the background of related research and other studies. All the courts surveyed were characterised by changes in process that began well before cases reached the courtroom and were based on strengthened inter-agency collaboration between criminal justice system agencies and with new community partners.

7.2 Measures of 'success'

There has been much discussion about how the success of specialist courts should be measured. Most courts had reduced re-offending, the most obvious criterion for success, as an objective but other factors cited included:

- reduction in delay in case processing
- an increase in the number of individuals charged with an offence and in the proportion of guilty pleas
- increased satisfaction and safety of victims of domestic violence
- fewer cases discontinued due to the reluctance of witnesses to testify
- a higher proportion of convictions
- greater consistency in sentencing
- greater compliance with the terms of community sentences
- increased public confidence in the justice system.

Some courts also included in the definition of success broader social factors such as:

- improvements in the physical and mental health of offenders and reduced deaths from drug overdoses
- offenders who enter employment or education and obtain accommodation
- more stable family relationships, including the return of children from the care system.

Commentators note a general problem with the methodological soundness and the nature, scope and focus of much of the research, particularly in relation to drug courts; community courts and mental health courts are relatively recent developments and the body of research is still slim.

Many studies of specialist courts (including three in our survey) report reduced recidivism compared with traditional approaches. Recidivism data is crucially dependent on the length of time over which offending behaviour is measured. It is also vital to take external factors into account: evaluation of one of the survey courts linked an interruption to lower re-offending rates in one year of a longitudinal study with a shift in prosecution policy and a change in the law.

Survey courts also referred to positive results in relation to the other success factors listed above. Improvements in public confidence may be hard to achieve without effective communication about programme objectives: courts point out that the first reaction of community members may be to interpret treatment and community sentences as a 'soft option' for offenders.

7.3 Costs

There can be significant costs associated with the establishment and operation of specialist courts. The sums involved depend on scale and the model adopted, with problem-solving courts requiring greater investment than those operating on traditional lines but with specialist personnel.¹⁰⁴ The most significant cost drivers are likely to be:

- set-up costs for recruitment of staff and the physical and organisational infrastructure, including IT systems
- offender programmes
- training
- demands on the time of professional participants, especially the judiciary
- extended representation of defendants throughout the period of supervision to enable defence lawyers to attend status hearings and out-of-court reviews
- the 'knock-on' effect on the rest of the system due to diversion of resources
- communication with the public and others about the purpose and work of the court
- the higher level of victim/witness liaison and support required in family violence courts.

The potential cost benefits of the specialist approach stem primarily from any reduction in re-offending which results. The sums involved are difficult to quantify but they relate to avoiding the cost of incarceration or supervision of community sentences and the benefits to the community of reduced criminal activity. It is even harder to put a price on some of the

¹⁰⁴ The Courts Innovations Branch, Criminal Justice Delivery Unit, Department for Constitutional Affairs, confirms that the introduction within the general run of magistrates' courts work of special sessions focussing on anti-social behaviour and domestic violence has not required significant extra resources.

success factors listed above concerning the social context of the offender. However, higher costs to the courts may be offset by greater efficiencies in other areas of the criminal justice system. In the Canberra family violence court, for example, the higher rate of early guilty pleas save over 800 police days at court per year, and around 250 to 300 witnesses are not required to attend court.

Few specialist courts have undertaken a comprehensive analysis of the cost-effectiveness of their operation. Published evaluations were available for nine of the ten courts in our study (evaluation of the remaining court was expected later in 2004) but only two had examined costs in any detail. In general, specialist courts were judged to be cost-effective compared with more traditional approaches although some cautionary notes were struck. These included the need to monitor the proportion of operational costs attributable to offenders who were terminated from the specialist process and the costs of increased referrals of offenders to health care and perpetrator programmes.

Quantifying potential savings can be difficult. It is relatively easy to calculate the cost differential when offenders receive intensive supervision as an alternative to jail-time. However, it is harder to put a value on the longer-term benefits expected to accrue when specialist courts impose intensive supervision or treatment for offences which previously were dealt with by fines or relatively inexpensive dispositions.

7.4 Key ingredients that make specialist courts work

The report illustrates the broad spectrum of potential benefits achievable to offenders, victims and the community through the establishment of specialist courts. It is evident, however, that problem-solving courts represent a major departure from the current operational structures of the judicial system in England and Wales. The challenge their creation presents to court culture cannot be overestimated.

The most conspicuous distinguishing factor for many survey courts concerned the role of the judge. Eight courts had adopted the 'problem-solving' model characterised by active judicial involvement in the ongoing monitoring of offenders: these were drug courts, community courts, a domestic violence court and a mental health court in the US; and drug courts in Canada and Australia. In the other two domestic violence courts in Canada and Australia, the role of the judiciary was closer to the norm. In the Australian court, a specialist magistrate handled pre-trial case management, uncontested pleas and sentence breaches, but was not involved in the conduct of trials or offender monitoring; in the

Canadian example, court personnel, lists and services were specialised but the court had no dedicated judges.

There was a degree of consensus on at least some of the features likely to be associated with success, namely:

- a flexible judicial attitude with a willingness to experiment with new 'team' approaches to diverting offenders from criminality; participate in the on-going monitoring of offender behaviour; and communicate to others the benefits of the work they do
- an adequate pool of committed and trained professionals – in particular lawyers, administrators, probation officers and others supervising court programmes - who are sympathetic to the ethos of the specialist court and its operational methods
- budget holders with vision who are willing to invest resources in an enterprise that is likely to deliver tangible benefits only in the longer term.

ANNEX A: South Boston District Court Drug Court

On 16 January 2004, we met with Judge Robert P. Ziemian, founder of the South Boston drug court and Head of the New England Conference of Drug Courts, and Diane Barrett-Mueller, Probation Officer in charge of the drug court programme in the South Boston Court and member of the Massachusetts Drugs Advisory Board.

We did not observe drug court which is held only once a week but we did observe Judge Ziemian's court in which the drug court programme was discussed in relation to a number of offenders.

Background

This drug court (the first in Massachusetts) was started by Judge Ziemian in 1999 because of the high proportion of heroin users in the community (a poor, mostly white area). The aim of the programme is to re-educate substance abusers and for them to achieve a life-style change. There are between 60 and 90 offenders in the programme at any time. About 70 per cent of the probation caseload is in drug court although the remainder are also likely to have drug problems.

Drug courts in Massachusetts appear to operate only on the commitment of individual judges and therefore the geographical coverage is not universal. Not all judges 'buy in' to these programmes and there is no such court in the City of Boston. The State Commissioner of Probation is not in favour of drug courts. As this court is run by probation officers, it makes the State's commitment to the programme uncertain.

Judge Ziemian has spoken to judges about getting programmes underway in eight other local courts but there does not appear to be any overview or systematic approach to ensure consistency.

Objectives

Unlike other drug court programmes with specific time-determined stages, it is considered important that this programme is fluid. It is designed to avoid confronting offenders with failure – they may slip and be brought back to court but need not drop out altogether. Probation contracts may be redrafted at any point.

As part of the contract, the offender progresses through detoxification, to a half-way house (from 3 to 24 months) to 'sober' housing. The length of each stage of the programme varies according to the needs of the offender.

Defendants see their probation officer three times a week and are screened for drugs and alcohol three times a week at the outset (specimens are sent to labs providing overnight results); 'instant' cups are also used. Getting speedy feedback on tests is seen as vital. They are also tested on the day they attend drug court.

A crucial element is judicial involvement. Defendants appear fortnightly in person to report to Judge Ziemian on their progress. They have to bring AA slips confirming attendance; verification of treatment; and also verification of address and income. In court, they must report to the judge on what they have learned in the programme (sometimes in writing). The judge describes his presence as demonstrating that the entire system is invested in their recovery: 'Problem-solving courts can change the dynamics between the prosecution and defence'.

Three months before the end of the programme the defendant progresses to a stage unsupervised by probation (although external counselling may continue), unique to this court, because otherwise experience has shown that the sudden change at the end may trigger a relapse. Eligibility for this stage depends on the results of a hair sample sent to a federal laboratory in California. This analysis (paid for by the defendant) shows whether drugs have been used in the previous 90 days. If the result is negative, the offender agrees the details of a life plan about how they will maintain sobriety over the next three months (even covering what to do if a tragedy happens in their lives). They are still expected to attend drug court to report to the judge and all those attending about how they are doing. During this period they are still subject to random drug tests (each is assigned a colour and told to phone in regularly: if 'their' colour is drawn on the day they call, they have to give a urine sample).

At the end of the unsupervised stage, another hair test is conducted. If it is negative, the defendant attends drug court for graduation: everyone applauds.

Jurisdiction and eligibility

The court deals with the lower end of offending. It has the power to sentence for up to two and a half years in custody.

Participants need not have committed a drug-related offence. Judge Ziemian describes this as a 'high risk court' and wishes to focus the programme on 'dyed-in-the-wool' repeat offenders who are long-term substance abusers or alcoholics who have been 'written off'. He considers that they benefit most from treatment and provide 'more bounce for the buck'. Some drug courts take those abusing marijuana but this court does not. Joining the programme requires the offender's consent.

Those charged with a driving offence are referred to a different programme.

The drugs programme is for adults only (17 and over). Ages range from older teenagers to some offenders in their 60s. There is no equivalent programme in this area for juveniles and there is a shortage of appropriate treatment beds for those between 17 and 21.

A history of substance abuse is identified by the police and/or probation. (Offenders are not subject to urine-tests when in custody at the police station.)

The programme focuses on repeat offenders and first offenders were not originally eligible. Diane is now experimenting with including in the programme some first offenders with a serious drug problem.

Sentence breaches

If the offender fails to provide a urine sample or fails such a test (drinking alcohol constitutes failure), or does not attend any part of the programme, this constitutes a breach. Diane has the court issue a warrant which she or the police can execute. The offender is brought back to court and can be jailed for a few days as an immediate penalty and then re-join the programme (moving back a stage) if the judge agrees. This flexibility is seen as important so that failure does not necessarily mean automatic removal from the programme.

Access to treatment

There is a waiting list for beds. Detoxification often occurs in jail and then the person is released to the street instead of, as preferred, to a residential placement in a half-way house. It may take six weeks to place someone. In the interim, they are required to attend a half-way house for a daily programme from 9am until 2pm or attend twice daily for a meeting. If they fail to attend, they lose their place in the waiting list and have to go back to court. These measures are not as good as being able to give a residential place immediately.

Case reviews

The judge acknowledged that one procedure is controversial because it occurs without the presence of the offender. Before the drug court convenes, a meeting is held attended by the judge, probation officers who review the paperwork brought by those attending, treatment providers and defence attorneys (for those who have not yet been sentenced or who are before the court for a breach). The local district attorney (prosecutor) is invited but does not attend. (In some other drug courts, though not here, the prosecutor is more involved in identifying suitable candidates for referral.)

Diane explained that defendants consent to this ex parte procedure but acknowledges it is a 'legal sticking point'. However, the judge said he finds the meeting helpful, particularly as lawyers may be more frank about the treatment needs of their client without breaching client confidentiality. He says he is careful not to indicate his decision in the meeting.

Agencies involved

As noted, probation is the prime mover. There are six probation officers attached to the court and all take drug court cases (to specialise, as happens in bigger courts, was considered to lead to burn out). Officers do not write pre-sentence reports. They do not have computers or voice-mail.

Diane also works closely with treatment providers (both in and out of state, according to need) and the local jail's substance abuse unit where she meets staff monthly. The jail has lost specialist positions but still has a caseworker who can start programme referrals, for example obtaining the psychiatric and social reports and TB tests which are a pre-requisite for placement (she was unsure whether an HIV test was also required).

Many offenders in the programme have mental health problems and Diane tries to liaise with their doctors. It is a requirement of involvement that participants in the programme take only non-addictive medication (even those receiving dental treatment must not receive narcotics). She obtains signed medical releases and will ask a doctor to explain in writing to the court why a participant has been prescribed an addictive drug e.g. anti-depressant rather than a non-addictive alternative. She may even ask the court to subpoena the doctor to attend and explain the prescription policy.

Training

Joint training to a national standard is provided in week-long programmes by the National Association of Drug Court Professionals (<http://www.nadcp.org/>). These sessions are

attended by judges, defence attorneys, district attorneys (i.e. prosecutors) and treatment providers. Ninety per cent of the training is done in inter-disciplinary groups with the remainder conducted in groups by profession.

Both Diane and the judge emphasised the importance of the judiciary being trained alongside other professionals (he said that 'judges especially need to know they do not know it all' and 'everyone's boundaries get pushed on this'). However, the judge noted that some of his colleagues would never accept information from non-judges.

The judge said that the most effective way to get the judiciary on board was for them to see a drug court in operation, in which 'offenders really pay attention'. Otherwise, 'you have to just start, because you won't get everyone to agree up front'.

Measures of success

We were not provided with any written statistics but Diane reported that recidivism rates were low (around 20 per cent). However, she noted that local crime rates went up when the number of hostel placements was cut back.

Diane compared measures of success with college students who may receive grades from A to D but all still graduate. She considers success covers not just ceasing offending but also whether mothers are able to get their children back out of care (there are a few programmes for mothers and infants) and whether defendants gain employment and their own housing (someone with a drugs conviction in this State is not eligible for public housing and will be evicted; nor can they get a student loan). She also noted that since drug court began, there have been no deaths due to drugs of those participating in the programme or in jail, compared with over 120 deaths in the community.

Funding

This court receives part of the services of a treatment specialist (shared with four other courts) funded by a federal grant. In other States, drug courts rely on federal grants but this was described as too fragile to be a sole source.

The drug court itself does not receive any special funding and the probation element is resourced by probation (as noted above, there is not a political commitment to drug court work from the Probation Commissioner). Budget cuts have reduced funding for local 'holding' beds by 60 per cent and detoxification beds by 40 per cent. This means that most detoxification occurs in jail which is not considered ideal (detoxification takes about 17 days for heroin, around the time it takes to produce someone for a hearing).

ANNEX B: Questions posed to specialist courts

The evolving role of the judiciary

1. How are judges selected for the specialist court? What is their length of tenure there?
2. What judicial skills are sought for the specialist court?
3. Is any specific judicial education/guidance provided? Is there inter-disciplinary education for those involved in the court? Does this include the judiciary?
4. Do you think involvement in the specialist court has changed judicial attitudes? Have any changes in judicial attitudes been fed back into judicial education?
5. If judicial monitoring is a feature of the court, what form does it take (e.g. judge continuity in supervising offender progress; participation in out-of-court reviews)?
6. To what extent is continuity of judicial monitoring of individual offenders desirable/achievable? Is it seen as contributing to 'successful' outcomes (e.g. programme completion and reduction in repeat offending)?
7. Does the judge have flexibility to tailor a programme to the offender's needs?

The role of the defence representative

1. What is the role of the defence representative in a problem-solving court? (e.g. in relation to the plea and defence lawyer participation in developing the treatment plan)
2. Is there continuity of involvement by the defence lawyer through the period of supervision or treatment, and if so, how is this funded?
3. Is there defence involvement at pre-court reviews? Is the defendant's lawyer present or is there a defence representative with a 'watching brief' for defence issues?

Sanctions and incentives

1. How are non-compliance tolerance levels set, by whom (is the judge involved?) and what are they?
2. What sanctions are available when tackling non-compliance that do not involve terminating the order; and what sanctions are available when non-compliance has gone too far and the order has to be terminated?
3. What incentives are available?
4. Is information available on the views of offenders (what early interventions, sanctions and incentives helped)?

The views of the community

1. How is community input obtained?
2. How are community expectations managed e.g. if the community view is considered to be too punitive?

Development of the specialist court

1. Is the specialist court still considered to be a pilot? Is its practice still evolving?
2. Are lessons from the specialist court influencing/being fed back into:
 - a) other specialist courts?
 - b) general jurisdiction courts?
3. Has the specialist court encountered any difficulty in relation to the boundaries of:
 - a) its jurisdictional subject matter (e.g. between criminal and civil issues, or if the specialist court covers pre-trial issues only) or
 - b) the geographical community it serves?

Combined criminal and civil jurisdiction (this may be most relevant to domestic violence)

1. Is the jurisdiction of your specialist court exclusively criminal or a combined criminal and civil jurisdiction?
2. If the jurisdiction *is* combined, how far does the civil jurisdiction extend? In England and Wales if a woman leaves home as a result of domestic violence, a local authority may rule that she is 'voluntarily homeless'. The resulting dispute is treated as a housing matter. Would this kind of case be covered by a combined jurisdiction domestic violence court?
3. Where the jurisdictions are *not* combined, is there any interface between the civil and criminal jurisdictions on related matters?
 - a) is the specialist court made aware of related matters pending in another court (e.g. is a domestic violence court notified of an application for contact in family court) and if so, how?
 - b) does the specialist court co-ordinate the order in which related criminal and civil matters are heard?

DCA Research Series No. 3/05

Review of the effectiveness of specialist courts in other jurisdictions

The United Kingdom has recently begun experimenting with courts that specialise in particular types of problem facing modern communities. In some other countries, the development of problem-solving legal structures has a long history, derived in some instances from indigenous and tribal justice systems. This study explores the lessons, in particular the implications for the judiciary, legal profession and court process, that have emerged from the experience of ten courts in Australia, the United States and Canada specialising in drugs, domestic violence, community and mental health problems. The findings should assist in developing corresponding approaches that are appropriate to the needs of the justice system in this country.

For further copies of this publication or information about the Research Series please contact the following address:

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