
THE NEW SOUTH WALES DRUG COURT EVALUATION: A PROCESS EVALUATION

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PREFACE

Over the past three years drug courts have been adopted in several Australian jurisdictions to deal with drug-dependent offenders. The first specialist drug court to be piloted in Australia commenced in 1999 after the New South Wales parliament passed legislation governing the NSW Drug Court Trial. The NSW Drug Court was broadly modelled on the drug courts which had been operating in the United States of America since the late 1980's.

The present report is part of a series of studies conducted by the NSW Bureau of Crime Statistics and Research evaluating the NSW Drug Court Trial. Other reports in this series monitor key aspects of the Drug Court's operation, examine its cost-effectiveness in reducing re-offending compared with conventional criminal justice sanctions and investigate changes in the health and well-being of Drug Court participants. This report presents the results of a process evaluation of the Drug Court Trial designed to describe the operation of the Court, identify any problems it encountered and describe how these problems were resolved.

Process evaluations are, by definition, not directly concerned with outcomes. They are, nonetheless, generally invaluable in understanding the results of outcome studies. This is no less true in the present case. The study provides a wealth of useful information on the operation of the Drug Court obtained from interviews with members of the Drug Court Team, offenders participating on the Program, and professionals associated with various aspects of the Program. While it was not possible to canvas the views of all persons associated with the Program, most of the key players were interviewed. The results of these interviews should be of general interest to policy makers, the legal fraternity and health workers within the alcohol and other drugs field.

Dr Don Weatherburn
Director

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EXECUTIVE SUMMARY

This study is one of three evaluations of the NSW Drug Court being undertaken by the NSW Bureau of Crime Statistics and Research. The aim of this evaluation is to describe the nature of the NSW Drug Court Program, identify its strengths and weaknesses as described by those involved in its various facets, and outline how these weaknesses have been addressed.

Semi-structured interviews were conducted with 12 Drug Court Team members, three Corrections Health Service staff, two Probation and Parole officers, 18 health staff providing drug treatment services, and twenty offenders on a Drug Court program. The information obtained via these interviews, along with relevant documents and observations, formed the basis of this report.

The major findings of the study are as follows:

- While the Court experienced a number of difficulties in its first year of operation, several interviewees reported that many of these issues have been resolved or partly resolved, resulting in a much improved Drug Court Program in its second year of operation.
- Philosophical and professional differences between treatment providers and the Court were major obstacles during the early stages of the Court's operation, although the relationships have improved over time. Treatment providers reported that they were directed by the Court in areas where they had greater expertise, while the Court reported that treatment providers were failing to cooperate with their directions. Several interviewees identified a need for a senior treatment provider from the community to be a member of the Drug Court Team.
- Treatment providers reported that the requirement to inform the Court of breaches to participants' programs, such as drug use, affected their ability to develop a counselling relationship with their clients. Both the Court and treatment providers reported that they have adapted to these difficulties.
- Urine testing was a contentious issue, particularly in relation to responsibility for conducting the tests. Probation and Parole officers reported that supervising urine tests was detrimental to their relationship with their clients and outside the standard duties of Probation and Parole officers. Treatment providers were required to perform urine tests for the Court, yet had largely abandoned urine testing under the 'harm minimisation' philosophy. However, most interviewees, including treatment providers, considered drug testing to be an important component of the Program. The Court assuming responsibility for urine testing, offering multiple testing sites, was seen as the preferred and most successful system by most interviewees.
- Most interviewees suggested that alternatives to incarceration, such as community service, should be considered for breaches of a Drug Court program.
- Immediate, short-term, custodial sanctions for Program breaches were problematic for Corrections and disruptive to treatment. The current system of accumulating suspended sanctions prior to being required to serve them was preferred. However, the opportunity for abuse of the new system was raised, as sanctions are able to be reduced as a reward for Program compliance. The Court is aware of this practice and attempting to halt such abuses.

- Several interviewees suggested that the time served in prison on sanctions should not be deducted from the participants' initial sentence, as this encouraged some to 'work off' their sentence via 'periodic detention'.
- Many interviewees suggested that people who should have been excluded from the Drug Court Program on the basis of the crimes they committed are being accepted. Legislative changes made need to be considered in order to define 'violent conduct' (Drug Court Act s. 5 (2)) and resolve this issue.
- The failure to anticipate the high proportion of participants experiencing multiple health problems, most notably mental health problems, was raised. Several interviewees suggested that issues relating to the ongoing needs and management of participants with mental health problems need to be addressed.
- Aboriginal offenders were considered to be disproportionately excluded from entry onto the Program because of their 'antecedents' or having committed some 'violent' offence in the past under *Drug Court Act 1998* (NSW) s. 7 (2).
- The criteria for graduation were considered to be too onerous, resulting in the small number of graduates from the Program to date. Substantial, sustained improvements are achieved by some participants who are unlikely to ever achieve the current criteria for Program graduation.
- The current 'no useful purpose' argument as the criterion for program termination was considered to be in need of clarification or revision. Most interviewees considered a serious offence committed while on a Drug Court program warranted termination from the Drug Court Program.
- The facilities and services available to women in the Detoxification Unit at Mulawa Correctional Centre were considered to be inferior to those for men, and in need of improvement.
- Suggestions were made that the level of activities required on a Drug Court program resulted in difficulties for participants with the primary responsibility for childcare, the majority of whom are women.
- Several interviewees considered that there should be additional follow-up or aftercare for graduates, as the intensive supervision was removed too soon for many, resulting in an increased likelihood of relapses.

A number of positive aspects of the Drug Court Program were also highlighted by interviewees:

- The ability of participants to change the type of drug treatment they were receiving was seen as advantageous in a program of this type.
- The high level of supervision and the intensity of the Program was seen as one of its greatest benefits over other programs.
- The intersectoral approach adopted has led to some breaking down of barriers between professions and a better way of dealing with these offenders.

Several interviewees commented that many of the benefits of the Drug Court Program would not become evident immediately. However, introducing these offenders to treatment, addressing some of their long-term problems, requiring them to reduce their drug use and offending while remaining in the community, and improving their attitudes towards the court and police systems, were all suggested as benefits of the Drug Court Program.

1. INTRODUCTION

The New South Wales (NSW) Drug Court is a specialist court which aims to reduce 'the level of criminal activity resulting from drug dependency' (*Drug Court Act 1998 (NSW)*, s. 3). The Court targets drug-dependent adult offenders who are facing a custodial sentence, using 'the threat of imprisonment as an incentive for treatment entry and the fear of return to prison as a reason for complying with drug treatment while on parole or probation' (Hansard 27/10/1998, p. 9031).

1.1 EVALUATION OF THE NSW DRUG COURT TRIAL

The Drug Court Act 1998 s. 35 requires that 'the Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives'. Throughout the development of the legislation and its debate and passage through Parliament, evaluation was recognised as a crucial aspect of the trial. The NSW Bureau of Crime Statistics and Research, (BOCSAR), was asked to conduct a comprehensive and independent evaluation. As a result, BOCSAR was closely involved in planning various aspects of the NSW Drug Court trial.

Three evaluation studies were originally intended as part of the evaluation by BOCSAR. These studies had the following aims:

- to assess the extent to which placement on the Drug Court Program affects the health and well-being of participants, and participant satisfaction;
- to monitor key aspects of the Drug Court's operation; and
- to evaluate the cost-effectiveness of the NSW Drug Court in reducing re-offending.

In early 2000 the BOCSAR decided to supplement the studies just referred to with a qualitative study of the NSW Drug Court. The objectives of this study were to:

- describe the nature of the NSW Drug Court Program;
- summarise the features of the Program over its first two years of operation;
- identify the strengths and weaknesses in the operation of the Program from the vantage point of those involved in the various facets of it; and
- identify how these weaknesses have been addressed.

This study commenced in the second half of 2000, the results of which are the subject of this report.

1.2 STRUCTURE OF THE REPORT

The focus of this report is to describe the way the NSW Drug Court operates, the problems that have been encountered over its first two years of operation and the changes that have been made over this period.

The methods used in undertaking this study are described in Chapter 2. Chapter 3 provides the background to the establishment of the NSW Drug Court. Chapter 4 describes the admission process for the Drug Court, while Chapter 5 outlines the components of the Program once admitted. Chapter 6 describes the methods to ensure compliance, such as rewards, sanctions and drug testing. Chapter 7 outlines the ways in which a program can be ended, either by termination or graduation. Structural issues are addressed in the following two chapters with Chapter 8 describing the roles of Drug Court Team members

and Chapter 9 describing each of the agencies providing services to the Court. Chapter 10 outlines administrative procedures and issues that have arisen over the past two years. Chapter 11 discusses the overall assessments of the Program and recommendations for the future as provided by the interviewees.

Chapters 4 to 9 begin with descriptions of the policies and procedures of that particular aspect of the NSW Drug Court Program and the changes that have occurred over the two years since the Court was established. This is followed by the opinions of the interviewees on the strengths and weaknesses of that particular aspect of the Program.

2. METHODOLOGY

The major method of data collection undertaken for this qualitative study was interviewing. A description of the interviewees and the interviews are outlined in the following sections.

2.1 INTERVIEWEES

The people approached to be interviewed as part of this study were those who were directly involved in the provision of services to the NSW Drug Court at the time the interviews were being conducted, or were on a Drug Court program. Those whose only role involved the provision of policy input to the Drug Court were not included as interviewees.

A total of 55 individuals were interviewed for the study. The interviewees comprised 12 Drug Court Team members, three Corrections Health staff, two Probation and Parole officers, 18 staff providing drug treatment services, 19 people on a Drug Court program at the time of the interviews and one Drug Court graduate.

All Drug Court Team members incumbent in their positions in late 2000 were asked to complete an interview; all those approached, except for one officer, agreed. Team members interviewed included: the Drug Court judiciary; the Senior Judges' associate; the Registrar; prosecutors; defence lawyers; a police officer; a Probation and Parole staff member; and a Corrections Health staff member. The 12 members of the Drug Court Team interviewed had been employed at the Drug Court for substantial periods of time, the majority since its commencement. A number have since left the Drug Court. Senior officers at the Detoxification Unit at the Metropolitan Reception and Remand Centre (MRRC) and the Director of Women's Health (Corrections Health Service) were interviewed, all of whom had been involved with the Drug Court since its commencement. Of the ten Probation and Parole officers managing Drug Court participants, two officers who had been working with the Program for a substantial length of time were interviewed.

Only treatment providers who were providing services to larger numbers of Drug Court participants were interviewed as part of this study. This means that all three Area Health Services (AHS) in Greater Western Sydney were included, but only three non-government treatment providers. Not all staff providing services to Drug Court participants were interviewed. Those who spent the majority of their time in Drug Court activities, or had been heavily involved at the commencement of the Program were interviewed. Eighteen people providing drug treatment services to the Drug Court were interviewed as part of this study. The majority had been involved since the commencement of the Drug Court.

A full list of the persons' names and positions of persons interviewed (with the exception of Drug Court participants) is provided in Appendix A.

In order to obtain the opinions of the Drug Court participants on the Drug Court Program, a sample of people currently on a Drug Court Program and one graduate were interviewed. Fourteen participants enrolled in the 'Day Program' at either South Western Sydney AHS or Western Sydney AHS (a course attended by all new Drug Court participants) were interviewed during visits to these services. The psychologists conducting these programs asked for the participants' agreement to be interviewed. The interviews were then conducted in a group setting with no staff from the AHS present.

Four participants receiving treatment at a residential rehabilitation program were interviewed. The residential program coordinator asked for the participants' agreement to be interviewed. Two of the participants had started on the Drug Court Program in the last six months and the other two had been on the Drug Court Program, and attended the same residential program, for approximately one year.

In addition, one long-term Drug Court participant and another who had recently graduated were approached by their Probation and Parole case manager and agreed to an interview.

Table 1 shows the characteristics of the 20 Drug Court participants interviewed.

Table 1: Characteristics of participants interviewed

Gender	
Male	18
Female	2
Time on the Drug Court	
< 4 weeks	5
4-7 weeks	6*
8-11 weeks	3
12+ weeks	6
Drug Court phase	
Phase 1	16
Phase 2	1
Phase 3	2
Graduated	1
Current treatment	
Methadone (community)	11
Naltrexone (community)	2
Abstinence (community)	3
Abstinence (residential)	4

* Includes people on the Drug Court Program for 12 weeks, 5, 6, 11, 19 months and 2 years.

2.2 INTERVIEW SCHEDULES

Exploration of the available literature about the NSW Drug Court and drug courts in general enabled a number of issues to be identified and questions designed prior to the commencement of interviewing. Questions relating to the role of each staff interviewee in the Drug Court process, issues relating to the changes in Drug Court Program policies and practices, their opinions about the major policies and their opinions as to the success of the Program were designed. Interviewees were also given the opportunity to raise issues that concerned them.

While following the general themes, interview schedules were modified slightly for each category of interviewee so the issues in which they were predominantly involved could be the focus of the discussions. For example, Drug Court Team members were asked predominantly about legal issues as they were unaware of many of the issues regarding the provision of treatment. Some different issues were raised as the interviews progressed although the major themes remained.

Huberman and Miles describe this methodology in the following way: 'Unlike experimental studies, changes in observational protocols or interview schedules in a field study usually reflect a better understanding of the setting, thereby heightening the internal validity of the study' (Huberman & Miles 1994, p. 431). The focus of much of the data collection is on emergent themes or constructs while still collecting additional data. Typically, the more one investigates, the more layers of the setting one discovers.

Drug Court participants were predominantly asked to detail what they liked and disliked about the Program. Examples of questions asked can be seen in the interview schedules for the Police Inspector on the Drug Court Team, the AHSs, and the Drug Court participants in Appendix B.

2.3 THE DATA COLLECTION PROCESS

2.3.1 The interview procedure

Interviews were conducted between September 2000 and May 2001 by one interviewer. Drug Court Team members were interviewed between September and December 2000, while treatment providers and other interviewees not in the Drug Court Team were interviewed in the first four months of 2001. Drug Court participants were interviewed in February and March 2001. The Registrar was interviewed in May 2001 in order to obtain information on the more recent changes in Drug Court policies and practices.

Interviews were conducted at the Drug Court, prison, or treatment centre where staff members worked. Interviews with staff were conducted on an individual basis, except on three occasions when two counselling staff at each AHS were interviewed together. Interviews with Drug Court participants were conducted in a group setting at the AHS, and in pairs at the non-government residential rehabilitation centre. One participant interview was conducted outside the Drug Court Registry and another over the telephone. All interviews were conducted in private.

Interviews with Drug Court Team members and other service providers took between 45 minutes and 2.5 hours to complete. Interviews with Drug Court participants took approximately 30 minutes.

2.3.2 Verification of interviewee responses

As there was only one interviewer, verification of interview responses was undertaken with each interviewee except for the Drug Court participants. Notes taken by the interviewer were typed-up, edited and organised in a very minor way, then forwarded to the Drug Court, treatment and other staff interviewees for verification of their accuracy. Three staff interviewees who left the Drug Court soon after the interviews were not sent interview notes on which to comment. Only eight of the 31 recipients of interview notes returned any comments or amendments, the majority of which were minor in nature. These comments were then incorporated into the interview notes.

The fact that the amendments returned were fairly minor in nature or no comments or changes were returned at all, confirms that the researcher's interview notes were reasonably accurate records of the interviewees' views.

2.3.3 Organisation and analysis of interviewee responses

A cross-case analysis methodology, as described by Huberman and Miles (1994), was used in the analysis of the interviewees' responses. Once interview notes had been revised, where necessary, notes were edited, coded and organised into topics. Most of these topics and issues had been identified prior to the study commencement, but naturally a number of others emerged during the course of the interviews. All interviewees' comments relating to particular issues were then grouped and organised into chunks according to the themes to be discussed in the study report. This code and retrieve method allowed for all the comments on each issue to be reflected on together.

Once all the interviewees' comments had been grouped it became possible to gauge where there were similarities and differences between respondents. Comments were inspected to see if they fell into clusters that shared certain patterns or configurations. Opinions and comments have been included in the report. Differences of opinions are indicated where they occur, as are issues about which there is general agreement.

2.3.4 Observations

Three visits were made by the researcher to observe the NSW Drug Court sitting in the Parramatta Court complex. The researcher also visited the Detoxification Units at the Metropolitan Reception and Remand Centre (MRRC) and the Mulawa Correctional Centre, the three AHSs' Drug and Alcohol Units providing treatment services to the NSW Drug Court, and three other residential rehabilitation services. Much of the information obtained on these visits enhanced or confirmed the data obtained via interview and documents.

2.3.5 Other documentation used

A number of documents were also used in the production of this report. These documents included the Drug Court Act, *Drug Court Amendment Act 1999* (NSW), *Drug Court Amendment Regulation 1999* (NSW), speeches and policy documents as indicated in the body of the report.

Two reports produced by the Drug Court of NSW Review Committee (a committee consisting of Drug Court Team members), namely the *Review of Drug Court Procedure*, produced in November 1999, and an updated report in December 2000, were of invaluable assistance in providing additional detail about the Drug Court's operations, and complemented the information provided via interview by the Drug Court Team members.

3. ESTABLISHMENT AND IMPLEMENTATION

3.1 REASONS FOR THE ESTABLISHMENT OF THE COURT

Research has consistently shown that there is an association between illicit drug use, particularly heroin, and income-generating crime (Dobinson & Ward 1985; Hall 1996; Stevenson & Forsythe 1998). The study by Stevenson and Forsythe revealed that burglars who use heroin reported a higher median rate of burglary (13.0 per month compared with 8.7 per month) and generated a much higher weekly income from their burglaries than burglars who did not use heroin. In NSW up to 80 per cent of the adult male prison population has committed a drug-related crime (NSW Department of Corrective Services 1998), a figure that may be even higher among women in prison (NSW Department of Corrective Services 2000).

The NSW Drug Court was established to trial an approach which brought together 'the criminal justice system, the health system and a system of social support in an attempt to break the cycle of drug dependency, criminal activity and imprisonment' (NSW Drug Court 1999a). The literature has shown a reduction in levels of drug use, criminal activities and other risk-taking behaviours while illicit drug users are engaged in treatments such as methadone (Ball & Ross 1991; Harwood et al. 1995; Hall 1996; Bell, Hall & Byth 1992; Bell et al. 1997).

3.2 ESTABLISHMENT OF THE DRUG COURT

On 10 September 1998 the Premier of NSW, the Hon. Bob Carr, and the Attorney-General, the Hon. J.W. Shaw, announced that Australia's first drug court would begin operation in 1999. It was also announced that Judge Gay Murrell S.C. had been appointed as the country's first Drug Court judge and that she was to be supported by a team of health and legal specialists. Draft legislation was introduced into the NSW Legislative Assembly on 27 October 1998. The establishment of the Court received support from both sides of Parliament, and the Drug Court Act 1998 was assented to on 8 December 1998.

The Court commenced operation on 8 February 1999 at the court complex in Parramatta. The Court was initially funded for a trial period of two years but has since been extended twice, each time for a period of 12 months. Funding is currently available for participants to commence a Drug Court program until 30 June 2002.

3.3 OBJECTIVES OF THE COURT

The Drug Court Act, which commenced on 5 February 1998, outlines the objects of the Act in section 3:

- '1) The object of this Act is to reduce the level of criminal activity that results from drug dependency.
- 2) This Act achieves that object by establishing a scheme under which drug dependent persons who are charged with criminal offences can be diverted into programs designed to eliminate, or at least reduce, their dependency on drugs.
- 3) Reducing a person's dependency on drugs should reduce the person's need to resort to criminal activity to support that dependency and should also increase the person's ability to function as a law-abiding citizen.' (Drug Court Act s. 3)

Drawing on the models which had been developing in the United States of America (U.S.) since 1989, it is the first such court to be trialed in Australia. A 1999 review of NSW Drug

Court procedures conducted by the Court itself outlined ten components of U.S. drug courts that were applied by the NSW Drug Court:

- Treatment is integrated into the criminal justice system
- Prosecution and defence lawyers work together as part of a drug court team
- Eligible offenders are identified early
- Participants have access to a continuum of quality treatment and rehabilitation services which meet their health needs
- Participants are frequently monitored for illicit drug use
- Any non-compliance by a participant results in a swift and certain sanction by the court
- There is ongoing judicial supervision and regular judicial interaction with each participant
- There is evaluation of the rehabilitation outcomes achieved through the drug court
- The drug court team and others associated with the court receive ongoing interdisciplinary education
- Networks are forged with other drug courts, law enforcement authorities, public bodies, treatment providers and the community'. (NSW Drug Court 1999a, point 3.10)

Additional critical components of the NSW Drug Court include ongoing case management and the provision of the social support necessary to achieve reintegration into the community (NSW Drug Court 1999a).

The NSW Drug Court also differs from those in the U.S. in a number of ways. In NSW heroin is the preferred drug of addiction, whereas there is a higher usage of amphetamines and cocaine in the U.S., resulting in a higher proportion of NSW Drug Court participants being dependent on heroin than in U.S. drug courts. In NSW the target of the criminal population is at the higher end of criminality than in the U.S. (NSW Drug Court 1999a). Furthermore, most drug courts in the U.S. are abstinence-based, but the NSW Court provides a range of treatment options, including methadone and naltrexone. The NSW Drug Court also differs from other drug courts around the world in that it is legislation-based.

3.4 FUNDING

At the time of the Drug Court trial's establishment, funding was provided by the NSW Government to assist agencies in meeting the costs of the trial. Money was allocated to the NSW Attorney General's Department, the Department of Corrective Services, the Legal Aid Commission, and the Office of the Director of Public Prosecutions. The NSW Health Department (funding both treatment providers and the Corrections Health Service) and the Police Service were required to re-allocate existing resources in order to meet the additional costs associated with the operation of the Court. Additional funding was provided to the above departments to fund their services during the extensions of the trial period.

3.5 MONITORING OF THE NSW DRUG COURT TRIAL

Since the NSW Drug Court was a new method of dealing with drug-dependent offenders in NSW, issues associated with its operation have been discussed on an ongoing basis at various levels of government.

A number of inter-agency and intra-agency structures have been established to monitor the Court's operations and progress. Working parties, consisting of representatives from the relevant agencies, are established, when required, to discuss and resolve specific operational issues. The Monitoring and Evaluation Committee of the Drug Court Program was

established to monitor the Drug Court Program, to resolve operational issues as they arise, and to report regularly to the Cabinet Committee on Justice. This committee is one of the Government's structures which considers proposed changes to the Court's operations and submits recommendations to the relevant bodies. The Committee comprises senior officers of each of the agencies involved in the Drug Court trial, but does not include a representative from the Drug Court Team as the Court has declined to be involved.

Agency-specific committees have also been established as a result of the Drug Court trial. For example, the Drug Court Clinical Reference Group, comprising representatives of the treatment providers involved in the Drug Court trial, was established in order to review the referral patterns and treatment outcomes of the Drug Court participants, the impact of the Court on the delivery of health services to voluntary clients, and provide a mechanism to resolve other issues as they arise.

Prior to the commencement of the NSW Drug Court trial, BOCSAR was commissioned to conduct a study monitoring key aspects of the Drug Court's operation during the trial period. BOCSAR produced a series of six monitoring reports, conducted on a quarterly basis. The monitoring reports examined the demographics of participants entering the Program, the flow of participants through the Program, and participants' compliance with the Program among other things. These reports consisted of data routinely collected by the Court's registry staff.

3.6 REVIEW OF DRUG COURT PROCEDURE

In November 1999, the Senior Drug Court Judge, Judge Gay Murrell S.C., submitted a report to the then Attorney-General, entitled *Review of Drug Court Procedure*. The stated purpose of this review was:

- to briefly document the present objectives, structure and operations of the Drug Court of New South Wales;
- to document problems with the Court's structure and operations;
- to recommend changes to the Court's structure and operations which may enable the Court to achieve its objectives in a more efficient and effective manner;
- to provide guidance should the Court be funded to operate elsewhere in New South Wales; and
- to provide assistance to those contemplating the establishment of a drug court within Australia or elsewhere'. (NSW Drug Court 1999a, point 1.1)

This internal review, prepared by Drug Court Team members, documented the role of each of the agencies comprising the Drug Court Team and identified a number of concerns relating to the work undertaken by each of these agencies. Broader issues affecting the operations of the Court were also highlighted, such as, the need for a clearer delineation of roles/responsibilities of the various parties involved in the trial, a lack of adequate resources (human, physical, financial and technical), the need for legislative amendments, and the need for facilities/programs for the participants. The review made a number of recommendations in relation to the issues it identified.

In December 2000 this review was updated. By the time the second report was produced many of the problems identified in the previous report had been rectified. For example, accommodation issues and administrative support for Team members had been largely resolved. Problems arising from the differences in approach between the Court and the providers of drug treatment services had also been greatly alleviated by the time of the second report, as had other issues such as the supervision of urine sample collection. However, some issues, such as information technology difficulties, were still to be resolved.

In both reports, the Court recommended an expansion of the Drug Court trial to two or three metropolitan complexes, and regionally to Newcastle and Bathurst. Additional physical and human resources were also recommended.

3.7 LEGISLATIVE CHANGES

Within the first six months of the Drug Court's operation, the Drug Court Team identified areas of the legislation that required amendment in order for the Court to function effectively. Amendments were made by the Drug Court Amendment Act, which received assent on 1 November 1999 and commenced on 10 December 1999. Some of changes made, as outlined in the *Drug Court of New South Wales Review Committee Report*, are presented in this section.

Among the amendments was a tightening of the definition of 'eligible person'. The eligibility criteria that it be 'likely that the person will, if convicted, be sentenced to imprisonment' was changed to it being '*highly likely* that the person will, if convicted, be required to serve a sentence of *full-time* imprisonment' (Drug Court Amendment Act s. 5). This means that the Program is not available to offenders for whom imprisonment is only a possibility, or where imprisonment is undertaken by way of periodic or home detention. In proposing the legislative amendment, the then Attorney-General, the Hon. J.W. Shaw, argued that 'the Drug Court is a tough option which works best where the threat of full-time imprisonment provides an obvious and powerful incentive for an offender to remain in the program' (Hansard 20/10/1999, p. 1720).

Section 7(3) of the Drug Court Act was amended to allow the Drug Court to delay for 14 days the conditions to be imposed on the offender and the order suspending execution of the offender's sentence. The then Attorney-General, the Hon. J.W. Shaw, noted that this would allow the offender 'to take time to reflect on whether he or she wants to be involved in the Drug Court program' and 'permit[s] further stabilisation before his or her release into the community or to a residential rehabilitation establishment' (Hansard 20/10/1999, p.1721).

Amendments were also made to section 8 of the Drug Court Act in relation to dealing with the persons not accepted into the Program. Where a person who has referrals from more than one court is not accepted into the Program, the Drug Court may refer the person back to be dealt with by any one of the referring courts.

Perhaps the most significant amendment to the legislation was the development of section 8A. This amendment gives the Drug Court the power to hold a Drug Court participant in a correctional centre for up to seven days either to facilitate their detoxification or to re-assess their participation in the Program. However, the legislation specifies that this power can only be exercised with the consent of the offender and only if the Court is satisfied that there are no other suitable facilities available in the community.

Section 12(c), which deals with the imposition of the final sentence on the offender, was amended to take into account any time which the offender spends in custody, including the time imposed under section 8A.

The NSW Drug Court continued to identify aspects of legislation that required amendment for the efficient operation of the Court. Further legislative amendments were made via the *Drug Court Amendment Regulation 2000* which 'enables the ready rejection of excess referrals' (NSW Drug Court 2000a, point 2.5). This regulation came into operation on 1 December 2000 after the Court began experiencing delays of up to four months from the time of an offender's referral to their first listing in the Court (NSW Drug Court 2000a).

4. ASSESSMENT AND PROGRAM ACCEPTANCE

4.1 PROCESSES

The following section outlines the eligibility criteria for participation on the NSW Drug Court Program and the processes used for assessment and acceptance onto a Drug Court program. While the overall eligibility criteria, assessment process, and acceptance criteria for participation on the NSW Drug Court Program have remained largely intact since the Court commenced operation, some specific aspects of the assessment process were modified in response to the Court's management needs. These changes in procedures and the current processes for assessment and acceptance onto the Program are also outlined in the following section.

4.1.1 Eligibility criteria

In NSW, the Drug Court exercises the functions of the criminal jurisdictions of both the District Court and the Local Court, which means that offenders appearing before both Local and District Courts can be referred to the Drug Court.

Under the Drug Court Act:

'it is the duty of a court before which a person is charged with an offence:

- a) to ascertain whether the person appears to be an eligible person, and
- b) if so, willing to be referred to the Drug Court to be dealt with for the offence, and
- c) if so refer the person to the Drug Court to be dealt with for the offence.' (Drug Court Act s. 6 (2))

Section 6 of the Drug Court Regulation lists the courts that are required to determine whether the person appearing before the court appears to be eligible for referral to the Drug Court. Criminal proceedings brought before the District Court sitting in Campbelltown, Liverpool, Parramatta or Penrith, and Local Courts in Bankstown, Blacktown, Burwood, Campbelltown, Fairfield, Liverpool, Parramatta, Penrith, Richmond, Ryde or Windsor are listed.

An assessment of an offender's potential eligibility for participation in the Drug Court Program may be made either by the presiding judge/magistrate at the District/Local Court, or following a request by the offender or his/her legal representative.

For a referral to be successful, the following eligibility criteria must be met. The Drug Court Act outlines the eligibility criteria as follows: if

- a) the person is charged with an offence, other than an offence referred to in subsection (2), and
- b) the facts alleged in connection with the offence, together with the person's antecedents and any other information available to the court, indicate that it is highly likely that the person will, if convicted, be required to serve a sentence of full-time imprisonment, and
- c) the person has pleaded guilty to, or indicated that he or she intends to plead guilty to the offence; and
- d) the person appears to be dependent on the use of prohibited drugs (within the meaning of the *Drug Misuse and Trafficking Act 1985*) or other drugs prescribed by the regulations, and
- e) the person satisfies such other criteria as are prescribed by the regulations.' (Drug Court Act s. 5 (1))

Further criteria are provided to determine persons who cannot be considered eligible for the Drug Court Program. These criteria include persons charged with:

- 'a) an offence punishable under Division 2 of Part 2 of the Drug Misuse and Trafficking Act 1985, not being an offence that (under Part 9A of the Criminal Procedure Act 1986) is capable of being dealt with summarily, or
- b) an offence involving violent conduct or sexual assault; or
- c) any other offence of a kind prescribed by the regulations'. (Drug Court Act s. 5 (2))

In his Second Reading speech introducing the Drug Court Bill into Parliament, the Minister for Police noted that the types of offences which are eligible for referral to the Drug Court are break, enter and steal, fraud, forgery, stealing from person, unarmed robberies (with no violence), possession and use of prohibited drugs, or dealing in quantities of prohibited drugs below the indictable limit (Hansard 27/10/1998, p. 9031).

Drug Court Regulation prescribes further criteria that a person must satisfy in order to be an eligible person within the meaning of the Act:

- 'a) the person's usual place of residence must be within one of the following local government areas, namely, Auburn, Bankstown, Baulkham Hills, Blacktown, Campbelltown, Fairfield, Hawkesbury, Holroyd, Liverpool, Parramatta or Penrith,
- b) the person must not be suffering from any mental condition that could prevent or restrict the person's active participation in a program under the Act,
- c) the person must be of or above the age of 18 years,
- d) criminal proceedings against the person for the offence with which the person is charged must not be criminal proceedings that are within the Children's Court jurisdiction to hear and determine'. (Drug Court Regulations s. 5)

4.1.2 Referral to the NSW Drug Court

If the judge/magistrate at the District/Local Court decides that these eligibility criteria appear to be met, they stand the matter down in the list while the Drug Court Registry is contacted. Registry staff then conduct a brief screening by telephone to ascertain whether basic eligibility criteria are met, namely, the offence type, whether the offender is aged 18 years or more, whether the referring court is an eligible court for the Program, and whether the offender's usual place of residence is in the eligible local government areas.

When the Court was first established, only a limited number of eligible referrals to the Court were accepted. This number was determined by the number of beds available for the preliminary health assessment stage in the Detoxification Units. This process resulted in an excess of offenders eligible to progress to the detoxification assessment stage, enabling the creation of a control group to be used for the evaluation. A random selection process took place in Court, with each offender competing for a place at the detoxification stage being assigned a number, and the successful offenders selected via a computer-generated random number process. Those selected would proceed to the detoxification stage while those not selected became the comparison group for the purpose of the Drug Court evaluation and were sent back to their referring court to be dealt with.

From 1 July 2000, the intake of new participants into the prospective evaluation being conducted by BOCSAR ceased, and with it, the need to randomise the excess number of referrals. A new policy was devised which allowed the acceptance of all applicants, under the interpretation that the Court was unable to reject any eligible offender. At this time the Court started accepting one referral per day and sat on four, rather than five, days per week.

However, this policy of accepting all referrals resulted in lengthy delays from referral to first listing in the Court. The judge or magistrate at the referring court had to determine whether the offender was to be kept in custody or to be released on bail during the period of

adjournment. Given the lengthy waiting period, generally only those offenders who were on bail or who were facing relatively long custodial sentences for their offences were willing to be referred to the Drug Court for possible acceptance. Some applied to the Supreme Court to be granted bail.

The Drug Court Regulations were amended (effective 1 December 2000) to enable the rejection of excess referrals. This had the effect of 'the books' being closed and new referrals refused until the backlog was cleared. As a result of this amendment, the Court predicted that as of March 2001 an offender who has been successfully referred would appear before the Court within one or two working days of referral (NSW Drug Court 2000a).

The current referral process involves several additional steps. Any offenders who appear to be eligible are entered into a 'new applicants' list, with male and female applicants entered into separate lists. At 1.00 p.m., the NSW Drug Court Registrar checks the *Drug Court Program Occupancy List*, supplied by Corrections Health, which lists the numbers of beds that are available in the Detoxification Units. This determines how many referrals can be accepted. Where there are more applicants than 'detoxification/assessment places, that place is allocated on a random basis. No priority will be given to one offender over another on the basis that the former is considered more likely to succeed than the latter' (NSW Drug Court 1999b, point 3.4.1). All applicants are advised of the results of their application. Successful applicants are listed to appear in the Drug Court generally two working days from the acceptance of their application.

If the eligibility criteria are not met, or the offender does not consent to being convicted and sentenced under the Drug Court Act 1998 s. 8, they are referred back to the referring court and sentencing proceeds at that court. Section 8 allows the Drug Court to sentence an offender under their Local or District Court jurisdictions.

4.1.3 Preliminary health assessment

Before acceptance onto the Program, a preliminary health assessment must be conducted. This assessment, conducted by staff of the Corrections Health Service (CHS), is undertaken primarily to determine whether the offender meets the criteria for drug dependence, the level of their dependency and the drug(s) to which they are dependent.

Early in the life of the Court, the preliminary health assessment, for those being held in custody during their appearance at the referring court, was conducted overnight in the one of the Detoxification Units located at the MRRC for male offenders, or the Mulawa Correctional Centre for female offenders, both in Silverwater. The Drug Court Team's Nurse Manager determined whether a bed was available in the relevant Detoxification Unit and organised for the offender to be sent there for an assessment.

Sending potential participants to the Detoxification Units for an overnight assessment eventually became unworkable as the numbers grew. Preliminary health assessments are now conducted by the Team's Nurse Manager on the morning of the offender's first appearance in the Drug Court. If the offender is on bail the assessment is conducted in the Drug Court Registry or outside the Court, while those in custody are assessed in the cells. Assessments take approximately 15 minutes to complete and comprise four pages of questions, including the Diagnostic and Statistical Manual IV (DSM IV) criteria for substance dependence.

Those judged ineligible at this stage are referred back to their referring court. During the first 17 months of the Program, 18 per cent of participants (125 people) did not continue past the preliminary health assessment stage. Among these offenders, the most common reason for not continuing was that the offender was unwilling to participate on the Program (34%) (Briscoe & Coumarelos 2000).

4.1.4 Conditions for acceptance onto a program

Further investigations into eligibility

The offender can potentially be convicted and sentenced by the NSW Drug Court, and thereby accepted onto the Program, only if they are assessed to be drug dependent during the preliminary health assessment *and* the Court is satisfied of the following:

- a) that the person is an eligible person,
- b) that, having regard to the person's antecedents, it would be appropriate for the person to participate in a program under this Act,
- c) that facilities to supervise and control the person's participation in such a program are available, and have been allocated to the person, in accordance with the guidelines prescribed by the regulations,
- d) that the person accepts the conditions that the Drug Court proposes to impose on the person (whether immediately or at a later date) as a consequence of his or her conviction and sentence under this section,
- e) that the person has been informed of the Drug Court's powers under Division 2 of the respective consequences, as regards the sentence to be imposed under section 12, of the person's compliance or non-compliance with a program.' (Drug Court Act s. 7)

The Drug Court Regulation outlines the guidelines to be observed in determining the availability and allocation of facilities for the supervision and control of a referred person's participation in a program under the Act. A number of investigations are therefore conducted prior to the offender's appearance in Court to ensure that the above conditions are met.

The NSW Drug Court ensures all relevant files and documents are obtained from the referring court and brought to the Drug Court.

The Drug Court Team's Police Inspector obtains details regarding the offender's criminal history from the Computerised Operational Policing System (COPS). If the offender has current charges that render them ineligible for the Drug Court Program under the Drug Court Act s.5 (2) (offences involving violent conduct, sexual assault, or indictable drug offence) then a decision is made to exclude the offender at this stage.

If the offender has violent offences in their record, (section 7(2)(b) allows for the person's antecedents to be taken into account), the details are obtained to allow for a decision to be made on the offender's eligibility. If the offence is of a trivial nature then no further action is taken. If the offence is more recent and/or serious then it is listed for a section 7(2) argument, after the psychiatrist and psychologists at the Detoxification Units have assessed the offenders' potential for violence and the danger they pose to the community.

If there are any other outstanding charges for a Drug Court applicant, arrangements are made for them to be brought to the Drug Court from the other court(s).

The prosecution will examine the applicant's record, charge sheets, and statements of facts. They will then decide if the appropriate charges are being prosecuted in the light of the evidentiary material presented. The appropriate jurisdiction, either Local or District Court, is pursued in the light of the objective criminality of the matter, including an examination of the criminal antecedents. Examination of the Court files indicates that approximately 20 per cent of Drug Court cases have been dealt with on indictment in the Court's District Court jurisdiction. Offenders referred to the Court face an average of six offences, some of which may be pursued on indictment and some summarily (NSW Drug Court 2000a).

One of the Legal Aid solicitors on the Drug Court Team interviews the offender on the morning of their first appearance before the Court. The solicitor obtains brief instructions to confirm that the applicant fits within the eligibility criteria for entry onto a program. Initial instructions include confirmation of the plea, drug dependency details, usual place of residence and criminal history. The solicitor also gives the offender a broad outline of the Drug Court Program and the processes for Program admission (NSW Drug Court 2000a).

In most cases, eligibility for a program is determined at the first appearance before the Court. Legal Aid appears for the offender at this initial hearing. If there is some question regarding the offender's eligibility, the matter is listed for legal argument on another day and evidence or psychological reports may be called (NSW Drug Court 2000a).

Of the 313 people who had started on the Drug Court by 30 June 2000, 94 per cent were convicted of theft offences, 32 per cent driving offences, 30 per cent against good order offences, and 24 per cent drug offences. The average number of offences for which they had been referred was 6.4 (Briscoe & Coumarelos 2000).

Those who are unwilling to participate in the program are referred back to their referring court.

Allocation to detoxification stage

All Drug Court participants must complete a detoxification stage prior to acceptance on the Program. However, the system for progression to this stage of the assessment process has changed.

Prior to 30 June 2000, there were more people eligible for a place on the Program than there were places available, as already noted. Once prospective participants had completed the preliminary health assessment stage and were still deemed eligible, they had to 'compete' for the limited places available for the detoxification stage. A random selection process was used to determine who received the available places. This process took place in Court with each competing offender being assigned a random number. One offender was selected via a computer-generated random number process. Those selected would proceed to the Detoxification Unit while those who missed out were referred back to their referring court. Those not selected at this stage became the comparison group for the purposes of the Drug Court evaluation. Under this system documents had to be prepared for everyone applying for a place on the Program and all applicants were brought before the Court prior to the randomisation process. This created a large amount of additional paperwork.

4.1.5 Detoxification and further assessment

Under the procedures adopted after June 2000, if the Drug Court judge is satisfied that, after the preliminary health assessment, the offender is eligible for the Program, the matter is adjourned for two weeks so that the offender can undergo detoxification and assessment. Bail is usually refused. Male offenders are sent to the Detoxification Unit at the MRRC and female offenders are sent to the Detoxification Unit at Mulawa Correctional Centre. Offenders with past offences involving elements of violence may also be sent to the Detoxification Units for an assessment by the psychiatrist and psychologists as to their potential for further violence.

While the offender is in the Detoxification Unit, each agency comprising the Drug Court Team undertakes a number of tasks in relation to that offender. For example, the Legal Aid solicitor explains to the offender the conditions of the Drug Court Program and the alternatives available to them. The Drug Court Registrar arranges for all outstanding charges to be adjourned to the Drug Court on the date of the offender's assessment hearing. The Police Inspector provides details of the offender's previous criminal history and outstanding charges to the Legal Aid solicitor and the prosecutor, and develops recommendations regarding the offender's suitability for the Program. Based on the offender's charges, the prosecutor (Director of Public Prosecutions) develops recommendations regarding the offender's legal eligibility. Staff from Probation and Parole Service prepare a pre-sentence report and a report regarding the offender's family relationships and residential stability, and develop a case management plan. All of this information will be considered by the entire Drug Court Team in deciding whether to accept an offender onto the Program.

One staff member from Corrections Health described the process participants undertake in the Detoxification Unit.

‘They go into a safe cell for 48 hours to keep the participants clean. While in the Unit they get whatever medication is appropriate for them. When they are over the worst (of the withdrawal) and are feeling O.K. then we sit down and discuss a suitable treatment. We give them information about naltrexone, methadone or rehabilitation centres, and education about other drugs. We look at their home, how long they have been using, whether they have tried other treatments, and whether others at home are using. We ring their family to talk about the Program and the participant and see if they are willing to have them at home. If they are willing then we tell Probation and Parole to contact them. The psychiatrist sees them for a review. We go through the undertaking, explain the phases, and try to run some groups or induction programs if there is time. Often there is only one nurse here so we do not get to do as much as we would like.’

During the planning and development stages of the Drug Court Program, it had been expected that the detoxification stage would take seven days. However, Freeman, Lawrence Karski & Doak (2000) found that 80 per cent of the 246 offenders who completed their detoxification assessment during the first 12 months of the Drug Court Program were kept longer than seven days. In fact, the average time between entering the relevant detoxification unit and either being sent back to the referring court or commencing the Program was 15 days. Freeman, Lawrence Karski & Doak (2000) noted that some of the reasons for such lengthy stays in detoxification included unstable benzodiazapine withdrawal, serious illnesses, legal complications and the time taken for Drug Court staff either to negotiate appropriate treatment plans or to undertake inspections of private residences in which the offender was proposing to live.

This increase in the duration of each offender’s stay in the Detoxification Units has been taken a step further by the Court. Team members reported that those who stayed longer in the detoxification stage settled onto their program better. They have therefore decided to develop an induction program for male participants in addition to the seven to fourteen days they spend at the Detoxification Unit during this stage (NSW Drug Court 2000a).

‘Highly suitable’ treatment

In order to be accepted onto the Drug Court Program, the Court must be satisfied that the treatment plan being proposed for the offender is ‘highly suitable’ (NSW Drug Court 1999c). The method by which treatment plans are developed is outlined in the NSW Drug Court Team’s policy on *Treatment Plans and Placement*.

‘Through the Nurse Manager (Drug Court Team), the CHS is responsible for assessing the most appropriate therapeutic intervention for each offender and for presenting an appropriate treatment plan to the Drug Court Team. In formulating and developing an appropriate treatment plan, the Nurse Manager is to adequately consult with the proposed treatment provider. Generally, the Nurse Manager will not propose a treatment plan to the Drug Court Team unless a representative of the proposed treatment provider has assessed the relevant offender in person and supports the proposed treatment plan.’ (NSW Drug Court 1999b, point 3.1.2)

The treatment plan has to be formulated in consultation with the participant and the participant’s health needs are considered as paramount. This policy document also stipulates that for all participants, ‘consideration will be given to the therapeutic appropriateness of a treatment plan that does not rely on the legal administration of any drug’ (NSW Drug Court 1999b, point 3.1.9). Furthermore, it states that a participant’s treatment plan can be varied, but only when there is a good therapeutic reason for doing so.

The NSW Drug Court offers three types of treatment programs to participants: abstinence; methadone or naltrexone. Each of these programs can be undertaken either in the community, or in a residential treatment environment.

The Drug Court Team's policy on *Treatment Plans and Placement* notes that, in general:

- Offenders who are strongly motivated to remain abstinent from all prohibited drugs (including methadone) and who have adequate social support will usually be suitable for a community-based abstinence program.
- Offenders with a relatively short history of drug dependence who lack adequate social support and who have not previously undertaken substantial drug dependency treatment will usually be suitable for a residential abstinence-based program followed by community-based follow-up.
- Female offenders with young dependent children who lack adequate social support will usually be suitable for a residential program followed by community-based treatment.
- Naltrexone treatment is usually suitable for offenders who are highly motivated to undertake such treatment, who are sufficiently responsible to adhere to the treatment and who exhibit relatively stable social functioning but are unlikely to succeed without some pharmacological support. A recommendation for naltrexone treatment is to comply with any naltrexone guidelines established by the New South Wales Health Department.
- Offenders who have a long history of using heroin and/or methadone use and whose social functioning is chaotic will usually be suited to a period of methadone maintenance treatment.
- Methadone reduction treatment is usually suitable for offenders who have stabilised on methadone maintenance treatment, who have made significant lifestyle changes and who are motivated to reduce or eliminate their methadone intake. Methadone reduction treatment will be followed by community-based naltrexone or abstinence treatment.' (NSW Drug Court 1999b, point 3.1.12)

The Drug Court Regulation specifies the agencies which can be involved in the provision of treatment services to the drug offender. These agencies include:

- We Help Ourselves (WHOs) (catering for men and women);
- Guthrie House Co-operative Inc. (which is a half-way house for women undertaking methadone treatment);
- Jarrah House Women's Alcohol and Drug Centre (which accepts women and their children);
- Kamira Farm Inc. (catering for women undertaking abstinence programs);
- Wayback Committee Ltd (which is a half-way house for men undertaking methadone treatment);
- Westmount Co-operative Ltd (which caters for men and women);
- Odyssey House program (McGrath Foundation) (catering for men and women undertaking abstinence programs and accepts children of participants);
- the Bridge Program (William Booth Institute) (which caters for men and women undertaking abstinence programs); and,
- South Western Sydney, Wentworth and Western Sydney Area Health Services.

During the planning and development stages of the Drug Court Program, it was agreed that these agencies would not reduce their treatment services to voluntary clients in order to meet the increased demand for services from the Drug Court Program. Rather the treatment services were expanded to meet the needs of the Program participants, and each agency providing residential rehabilitation services to Drug Court participants receives payment for each participant.

Some agencies send a representative to personally assess each Program participant who may become a client of a treatment program provided by their agency. This assessment is conducted in addition to that undertaken by the staff of the CHS. The process serves a number of objectives. It allows staff of the treatment agencies to: become acquainted with the Program participant; tailor the treatment program to the participant's specific needs, requirements and previous history; and connect the participant with the relevant services in their geographical area. For example, the coordinator of the Drug Court Program, South Western Sydney AHS, personally conducts a comprehensive assessment of each participant who is likely to receive treatment from this treatment provider. This assessment includes details regarding the participant's medical history, surgical history, forensic history, psychiatric history, drug and alcohol history, education history, social situation and employment history. A treatment plan is then devised in consultation with the staff of CHS.

Other agencies accept referrals from the Drug Court without conducting their own assessments of the participants. Western Sydney AHS, for example, accepts the assessments undertaken by the Detoxification Unit staff; participants being referred are discussed by telephone and details are faxed to the AHS. Wentworth AHS staff no longer attend the Detoxification Unit because of the travelling time involved.

Staff at the Detoxification Unit described the procedures for starting participants on each of the treatment options:

'Those starting on methadone get put on 20-25mg to increase by 5mg every three days, if they are tolerating it. They are often released on 40mg and the doses will continue to increase.'

'When starting on naltrexone, the participant first does a urine test. If they are clean they are given 25mg of naltrexone (half a tablet) and then 50mg a day.'

'Often rehabs are not the first option for many as they want to go home.'

Staff make an effort to choose centres that will best suit the participant. For example:

'Odyssey (House) is good for the young ones as it is structured. If they have done lots of gaol time and are older, then Westmount is good as they confront issues.'

Suitable accommodation

Offenders who intend to undertake a community-based treatment program and, therefore, intend to live in a private residence while on a Drug Court Program will not be accepted unless their residence is considered suitable by the Drug Court Team. Generally the suitability of a private residence will be considered only after the Probation and Parole Service has visited the residence, spoken to the principal residents, and made a recommendation concerning the suitability of the residence (NSW Drug Court 1999d). The Court's policy regarding private residential accommodation states that a residence is unsuitable:

- if occupied or frequented by a person who appears to abuse a drug (including alcohol) but is not necessarily unsuitableif successfully undertaking treatment for his or her drug problem
- if occupied or frequented by a person reasonably suspected of engaging in criminal activity
- unless the principal residents know that the participant is undertaking a Drug Court program, are willing to have the participant reside at the residence, are prepared to cooperate with the participant's case manager and treatment provider; and, otherwise are prepared to support the participant through his or her program
- if the residence fails to comply with criteria developed by the Probation and Parole Coordinator, Drug Court team.' (NSW Drug Court 1999d, point 3.4)

A Drug Court Team member reported that 'home checks' were not conducted by the case managers in the early stages of the Drug Court Program.

The Corrections Health staff obtain the participant's address details and other information while they are in the Detoxification Unit, and pass it on to Probation and Parole who then do the home check. The first contact that Probation and Parole have is with the home; they usually do not go to see the client in the Detoxification Unit, although they may go if there are problems with their accommodation. Clients are allowed no contact with family or anyone from the outside when they are in the Detoxification Unit.

In the course of this assessment of the residence, Probation and Parole case managers will assess other factors that may affect a person's Drug Court program, such as arrangements with the participant's children. They also check that the residence has a permanent telephone connection 'as everyone loses their mobiles', according to one Probation and Parole staff member. One case manager reported that, once they have completed the 'home check', they report back to the Detoxification Unit about the participants' families, and their history of treatment and supervision.

To assist in providing suitable accommodation for Drug Court participants who are undertaking treatment in the South Western Sydney AHS, the treatment program coordinator has negotiated to lease two two-bedroom houses specifically for Drug Court Program participants. Each house provides subsidised accommodation for two participants, each of whom contributes 25 per cent of their income towards the rent.

Treatment plan

Once a decision has been made about the treatment, the treatment plan is formalised and signed by the participant. The treatment plan outlines the requirements of their treatment program.

4.1.6 Assessment hearing and sentencing

Once the offender's treatment plan and the various agencies in the Drug Court Team have developed their recommendations regarding the offender's eligibility and suitability for the Program, an assessment hearing can occur. In the early stages of the Court's operation, each case was discussed in a Drug Court Team meeting prior to the court hearing. Now the Drug Court Judge is given the relevant documents from the Team members prior to the hearing, and submissions are then made in the Court room.

If the offender has violent offences in their records, it may have been listed for an argument under Section 7 (2) of the Drug Court Act 1998. As part of this argument, assessment reports from the psychiatrist in the Detoxification Unit regarding the offender's potential for violence may be presented. A decision will be made by the Drug Court Judge as to the offender's eligibility based on these reports and the arguments presented.

If the offender is deemed eligible and willing to enter the Program, at the court hearing, the offender enters a plea of guilty and the Judge convicts and sentences them. The prosecutor provides assistance to the Court by way of submissions to ensure that the appropriate sentencing range is imposed (NSW Drug Court 2000a). The sentence consists of a program of supervision and control (that is, the person's 'Drug Court program') and, for the duration of this program, execution of the custodial sentence is suspended (Drug Court Act 1998 s. 7 (3)).

The offender is informed that the Legal Aid solicitor will not be their advocate at subsequent 'report-back' sessions to the Court, unless they seek legal assistance (this procedure was implemented on 6th September 1999). However, the solicitor can give legal advice prior to or when they return to the Court to report on their progress, called 'report-backs' in the terminology of the Court.

Of the 313 people sentenced under section 7(3) of the Drug Court Act by 30 June 2000, the average sentence imposed was 11 months (range 0.9 to 48.4 months) (Briscoe & Coumarelos 2000).

Those who are unwilling to participate in the program or for whom no highly suitable treatment plan is available are usually referred back to their referring court for sentencing. As of April 2001, 42 per cent (374 offenders) of the 908 referrals to the Drug Court since it commenced had been referred back to their referring Court. Another 41 offenders had been sentenced under section 8 of the Drug Court Act, which allows the Drug Court to sentence and convict the person referred even if they are not accepted into the Program (NSW Drug Court 2001).

4.1.7 Undertaking to Drug Court

When the offender is formally accepted onto the Drug Court Program, they must sign a written undertaking which the Registrar explains to them. The Undertaking document is detailed and consists of a number of sections, including: participant details such as their name, address and telephone number; their treatment type; and, the name and telephone number of both their treatment provider and their case manager.

The second section of the Undertaking, entitled 'Initial Directions', instructs the participant to:

- report to the Court on specified dates;
- telephone his/her case manager by a specific time and date;
- participate in a specific program and to abide by the rules and regulations of that program;
- provide a urine sample as directed by either their case manager or their treatment provider;
- attend counselling twice each week for six weeks;
- attend a bridging program at a specified location; and
- attend the Drug Court Registry three times per week for urinalysis.

The Undertaking, listing all the program requirements, is signed by both the Drug Court participant and the Registrar. A copy of this Undertaking can be seen in Appendix C. Special conditions may be added to the Undertaking as required, for example, to attend specific courses.

Together with the Undertaking the participant receives a set of guidelines regarding the types of behaviours which may result in rewards and those which may result in sanctions. The guidelines also include examples of the types of rewards and sanctions which the participant could receive. These guidelines will be discussed further in the following chapters.

Participants are also given a letter for their general practitioner advising that they are on a Drug Court program so they should not be prescribed medications containing prohibited drugs, such as codeine.

4.1.8 Being released onto a Drug Court program

Once sentencing has been completed and the Undertaking signed, the participant is released from custody. If they are to attend a residential program, then either a worker from the program, or the Probation and Parole case manager who manages participants at the program they are attending, will drive the participant to the centre. Probation and Parole staff report that a few participants have absconded before reaching the rehabilitation centre. In such cases, the Court is then informed so they can be brought back into the Court.

If participants are receiving treatment in the community, they will be allowed to leave the Court of their own accord with instructions to present to their treatment provider the following day.

Participants' personal effects are not transported with them from prison to Court. Their belongings remain at the gaol until the participants return to collect them or some other arrangement is made. As a result, on release from custody, they will have no money of their own and may have to travel home in prison clothes. The Team's Probation and Parole Coordinator now gives these participants \$5.00 to allow them to travel from Court to the gaol to get their clothes and money or to return home.

4.2 INTERVIEWEES' COMMENTS

4.2.1 Eligibility criteria

Members of the Drug Court Team, CHS staff, Probation and Parole case managers, and treatment providers were all asked their opinions of the eligibility criteria for the Drug Court Program. Most thought the criteria were appropriate in general, although a number of contentious issues were raised. Each of the eligibility criteria will be discussed separately, along with other factors that were perceived by the interviewees to be associated with eligibility for the Program.

The offence must not involve violent conduct or sexual assault

Nearly all Drug Court Team members raised the issue of 'violent conduct' as an exclusion criterion. This issue is one that has been debated by Team members because of the term 'violent conduct' can be interpreted in different ways.

Section 5(2)(b) of the Drug Court Act states that a person is not eligible if charged with 'an offence involving violent conduct or sexual assault'. However no definition has been provided in the legislation as to what offences constitute 'violent conduct'. Some members of the Drug Court Team take the view that offences, such as robbery or assault, which by definition involve actual or threatened violence, necessarily exclude a person from the Drug Court Program. Other members take a more restrictive view of violent conduct, maintaining that the circumstances of a case must have involved some form of physical contact between the victim and offender, to exclude the offender from the Program. A number of Team members reported that 'violent conduct' has evolved to be defined by the Court as 'actual physical violence' not threatened violence. According to one Team member, this more restrictive definition creates anomalies. The Team member suggested, for example, that the more restrictive definition of violent conduct means that someone who threatens a person with a knife may be allowed onto the Program, whereas someone who pushed another over when they were 'bailed up' would not be.

The matter is complicated by the fact that section 7(2)(b) of the Drug Court Act permits the Drug Court to have regard to a person's antecedents in considering whether to accept a person onto the Program. This section has been used as the basis for presenting arguments to the Court (called 'Section 7(2) arguments') to consider whether an offender should be excluded from the Program because their past offending reveals a pattern of violence. Whether section 7(2)(b) was intended for this purpose is impossible to say.

Any change to the Court's current approach, however, would require legislative change (NSW Drug Court 2000a). One Team member suggested that if the 'antecedents' were defined (Drug Court Act s. 7 (2)(b)) a large portion of Court time would be saved, as there would be less time needed for arguments in Court.

At times the Drug Court Team asks for a psychiatric assessment to be undertaken by CHS of a potential participant's propensity towards violence. These assessments were praised by Team members, although one member thought there was a tendency towards saying that someone was *not* likely to be violent. Team members also pointed out that there was no way of knowing for certain whether an offender would be violent in the future, which posed a difficulty for the Court. One Drug Court Team member suggested that over time more people who have a history of violence have been considered eligible for the Drug Court Program under section 7(2)(b) of the Drug Court Act. One CHS staff member commented that 'some are excluded because they appear violent on paper even though they are not really violent'. He stated that he would like the opportunity to assess more of these people. Another Corrections Health staff member was also in favour of a greater opportunity for assessing offenders' potential for violence.

One Team member was of the opinion that progressively, people who have committed more violent offences are being let onto the program. Three Team members felt that Parliament had not envisaged that such people would be admitted onto the Program. They believed that the community would be less supportive of the Drug Court if they thought there were violent offenders out in the community on a Drug Court Program; the community views violent offenders as needing greater punishment. They also maintained that violent offenders should be excluded for the safety of the other participants and the treatment providers.

One Probation and Parole case manager considered that the violent offenders were successfully being excluded by the Court. The other case manager commented that the violence criteria are 'arbitrary'. 'Serious violent offenders are being let onto the Program and we cannot supervise them'. The case manager reported on a violent incident at the Probation and Parole office the previous day, but acknowledged that this was rare as 'most try to keep their Probation and Parole officer happy'. This case manager said that they had told the Court about people having violent tendencies, but 'Health and Legal Aid try to keep them on the Program' and 'the Court does nothing'. According to this interviewee, the Court tends to listen more when the case manager reports that 'Apprehended Violence Orders' have been taken out by the participants' family members. Another case manager commented that 'we have some concerns about putting them in our cars to take them to the rehabs, (but) there have been no violent incidents'

Several of the treatment providers expressed concern at the seriousness of the offences that some of the Drug Court participants had committed. One thought that offenders were not being screened properly, and that they had been told at the outset that they, as treatment providers, would not be treating any violent offenders. Another commented that even if their most recent offences were not violent, most have violence in their histories.

It must be highly likely that the offender will, if convicted, be required to serve a sentence of full-time imprisonment

One Drug Court Team member commented that as the Drug Court was established on the basis of coerced treatment, a Drug Court program can only be justified if the offenders are highly likely to be going to prison. Other interviewees agreed that this requirement was essential because of the length of the Drug Court Program, the intensity of the supervision and the expense of the Program. Less expensive options should be used for offenders who are at an earlier stage in their offending career.

One treatment provider was of the opinion that participants need to be facing a substantial prison sentence for the Drug Court Program to work; they will only 'sign up' if they are facing a long stay in prison. The treatment provider suggested that those facing longer sentences are more motivated to avoid prison and tend to do better. One Team member suggested that those facing longer sentences do better because they tend to be more mature.

The two Probation and Parole case managers interviewed both commented that they were dealing with 'serious' and 'hard core' offenders who have 'breached everything' and 'done a lot of gaol time and crime'. One also commented that the NSW Drug Court participants are very different from those on the drug court programs in the U.S., whose workers 'are overwhelmed by the types of offenders we have in our Drug Court'.

At least three interviewees (one Team member and two treatment providers) thought that the NSW Drug Court Program had been established to divert people before they became further criminally involved, as is the aim in the U.S. All three commented that the NSW participants all have significant gaol histories and are very institutionalised.

Two treatment providers saw it as a deinstitutionalisation exercise; a way of moving people out of the prisons. One stressed that, as with the deinstitutionalisation of mental health services, the support services are needed in the community if the Program is to work.

The offender must have pleaded, or intends to plead guilty to the offence

One Drug Court Team member reported that there had been feedback from the referring courts that some offenders had pleaded 'guilty' in order to be accepted onto the Drug Court Program. If they then failed to be accepted and were referred back to the referring court, they wanted to change their plea to 'not guilty'. This difficulty was also observed by a number of other interviewees, including one of the Drug Court participants, who suggested that people may be pleading 'guilty' when they had not committed the offence so they could become eligible for the Program.

Team members reported that Legal Aid solicitors have difficulties acting for their clients when they want to change their plea. They have tried to resolve the problem by referring them back to the lawyer who took their 'not guilty' plea in the referring court. Legal Aid solicitors at the Drug Court now ask the accused to sign instructions that they are pleading 'guilty', and will then withdraw from the case if the accused changes their mind.

The offender must appear to be dependent on prohibited drugs

'Prohibited drugs' on which offenders must appear to be dependent are those listed in Schedule 1 of the *Drug Misuse and Trafficking Act 1985* (NSW). Most of those who are assessed for a Drug Court Program are dependent on 'prohibited drugs' of some form and most are polydrug users. However, this schedule excludes alcohol and benzodiazepines, which, according to one Team member, are often associated with criminal activity. A number of Drug Court Team members thought it was anomalous that a person dependent on cannabis was eligible whereas a person dependent on benzodiazepines was not. One Team member also suggested that dependence on alcohol be included in the eligibility criteria.

Another Drug Court Team member commented that 'an offender who had a gambling addiction had been rejected as there was no way to deal with them within the Court'. He was of the opinion that 'there is scope to expand (the Court's Program) into other problem areas'

Restrictions on the offender's usual place of residence

Most Drug Court Team members considered that that the requirement of having to reside in one of the prescribed local government areas in Western Sydney was inequitable and resulted in difficulties at times.

The Court has, as a result, taken a relatively flexible approach to residence requirement, such as allowing people to nominate their mother's or grandmother's address when they live elsewhere. One Team member commented 'that if an offender can get a residence here

then there is no reason why they should not be referred here'. A small number have been allowed to move to the country when they are well advanced in their program, as 'it is good to get them away from the old scene', according to another Team member.

Most Team members suggested that the residence criteria should be broadened. One suggestion was to refer offenders from the city courts to Parramatta as long as they can find a residence in Greater Western Sydney. Both judges were in favour of expanding the geographic boundaries. They acknowledged that people would still be excluded by reason of residence even if the geographic boundaries were broadened, as the full range of Drug Court services would not be able to be provided in every location throughout the state.

The offender must not be suffering from any mental condition which could prevent or restrict their active participation in a program

Several interviewees commented that the Drug Court had a higher than expected number of participants with mental health problems.

A CHS staff member explained that the original reason a psychiatrist had been employed, was to exclude people from the Drug Court Program who had psychiatric/mental conditions that would interfere with their program. The psychiatrist therefore gave all participants a full psychiatric assessment. As more of these assessments were completed, it became evident that the vast majority were suffering from some problem or condition. The CHS staff member stated that, among the first 85 participants, approximately 5 per cent were schizophrenic; 13 per cent were depressive to the extent that they needed anti-depressants; 8.5 per cent had post-traumatic stress disorders; and 67 per cent were abuse victims who had attachment difficulties. The interviewee commented that 'these findings refute the image of repeat offenders that are well adjusted with no problems other than drug use: the Drug Court population is incredibly diverse and very unwell. Nearly everyone has some problem/condition'.

One of the Team members commented that many of the participants have psychiatric problems that are masked by drug use. Another felt that the Court is unable to deal well with people suffering from 'dual diagnosis'.

Treatment providers also commented on the high number of participants with mental health problems. One commented that there is a higher proportion with social problems in this population than in the community. The treatment provider felt that the health services could treat those with co-morbidity, but that it is harder for participants to comply with their program when they have multiple problems, for example attention deficit disorder (ADD). The treatment provider commented that many people self-medicate: illicit 'amphetamine use is high among these people (ADD) but it is opposed by the Court. Health commonly stabilises people with ADD on these drugs, so the Court needs to decide whether to treat or exclude them from the Program'.

Other treatment providers commented that they were not expecting the Court to send them participants with serious mental health problems, such as depression and anxiety. One treatment provider reported that they had been sent several participants suffering from undiagnosed post-traumatic stress disorder whose drug use had taken the form of self-medication for their disorder. This treatment provider also reported that in the second half of 2000 they had been sent highly disturbed people whose substance abuse was secondary to their other problems. Another treatment provider commented that they had been sent people suffering from major mental health problems when they had no services for them. They had to be sent on to another AHS.

In order to help treat people suffering from mental health problems and show that they can survive on the Drug Court Program, the CHS psychiatrist conducts outpatient clinics at the Drug Court once per week and prescribes medication as needed. Treatment providers are happy with this arrangement. However, several interviewees, particularly the CHS staff,

commented that it would be preferable for these services to be provided by medical staff employed in the community health system, so as 'to break the participants' links with the prison system'.

Language and cultural problems affecting eligibility

Several Drug Court Team members commented that the number of Aboriginal clients who have been accepted onto the Drug Court Program is low. Most Team members said that Aboriginal offenders are often considered ineligible for the Program because they nearly always have alcohol-related violence on their record. The 'violence' will often be for a 'drunken brawl' in their youth. One Team member commented that the most gentle and placid Aboriginal client will always have 'assault police' or 'resist arrest' convictions on their records, which excludes them.

Because of the large number of Aboriginal prisoners the Drug Court is trying to address this issue. Team members have suggested that Aboriginal offenders be admitted onto the Program despite their violent antecedents, but on the condition that they attend an 'Anger Management Course' and be tested regularly for alcohol use.

Some South-East Asian offenders have reportedly been found ineligible for the Drug Court because of language difficulties. Some have met the eligibility criteria but have been rejected either because they cannot speak English, or else their parents could not communicate with the Probation and Parole case manager. This problem has been partly addressed by the employment of a Vietnamese case manager, but there are no South-East Asian counsellors employed at the treatment centres. This means that they cannot participate in counselling or other programs required by the Court.

Gender issues affecting eligibility

Of the 313 people who were admitted onto a Drug Court Program by 30 June 2000, 57 (18.2%) were women (Briscoe & Coumarelos 2000). Suggestions were made by a number of interviewees that this number did not represent the real level of need among women and that the proportions entering the Drug Court Program should be higher.

One CHS staff member reported that over recent years the number of women imprisoned has increased dramatically, and at a much greater rate than for men. The CHS staff member also reported results from a survey of women in custody that most women offenders have children: approximately 60 per cent are parents, and 30 per cent sole parents. The majority have mental health problems; an estimated 80 per cent have suffered some significant abuse, and most have substance abuse problems (40% are on methadone in prison). The interviewee commented that when the Drug Court was being established, they thought it would be ideal for women as it would allow them to care for their children while completing the Program. They maintained that the numbers of women on the Drug Court Program are lower than they should be.

A couple of interviewees from the Drug Court Team and treatment services, suggested that some women were deciding not to start a Drug Court Program after they had been accepted, and that they may be dropping out at a higher rate than men. The reason for this, it has been suggested, is that unless they have extended family to help with childcare, the incarcerations in the Detoxification Unit and the commitments required on the Program are too great. It is easier for them to 'do their gaol time' and 'get it over with'.

4.2.2 Referral process

In the early stages of the Court there was a large number of matters referred which did not fit the Drug Court eligibility criteria. However the referring Courts improved in their referrals over time and few ineligible participants are now referred.

One Drug Court Team member commented that magistrates refused to refer offenders to the Drug Court initially, but they were advised by Legal Aid of their obligations under the Drug Court Act. Some of those offenders with legal representatives who were unaware of this requirement were not referred in the early stages.

Another Team member commented that there are fewer referrals to the Drug Court from the District Court than the Local Courts, as District Court matters tend to have some element of violence, rendering them ineligible.

One Drug Court Team member suggested that the system of returning ineligible participants to their referring court might mean that they receive a longer sentence than if sentenced by the Drug Court.

4.2.3 Process of randomisation to Detoxification Unit

Four Drug Court Team members discussed the randomisation process used for the first 17 months of the Court's operation, which had been established to construct a comparison group for the evaluation study of the effect of the Drug Court Program on reoffending. One of the major problems identified was the need for the Legal Aid solicitors, prosecutors, the Police Inspector, and Nurse Manager to prepare paperwork for everyone who appeared before the Court. One Team member reported that 'there were three fresh referrals a day and we had to take instructions from all of them and explain to each the ballot system. It was a large workload'.

One Team member felt that it was 'inappropriate for a court to have random allocation; the clients felt it was unfair and they didn't understand the reasons (for it)'. Another felt that 'it didn't concern them that they had a one in three chance of getting on the Program. All were facing a custodial sentence and accepted the process'.

A couple of Team members said that they thought that 'the randomisation had some advantages in that we were not able to determine any reliable indicators of success or failure. So picking with a pin was as good a method as any'.

One other Team member suggested that 'the trouble with the control group was that they were tainted by the process of going through the application process'. The Team member suspected 'that sentencing magistrates may have been more lenient in sentencing those rejected by the Drug Court, and imposed shorter sentences'.

The change of system from the randomisation process to a waiting list resulted in some improvements and some disadvantages. Some Team members reported that their workload was greatly reduced and much more manageable with the waiting list system and the corresponding reduction in the numbers of new referrals for whom documentation had to be prepared. Most agreed that the waiting was too long when it resulted in a four- to five-month wait. As several pointed out, 'since they have been placed on the waiting list, people with shorter sentences are not coming onto the Program, or they are breaching their bail and absconding. They have to be motivated to wait'. Another commented that 'this is changing the clientele, and 'they have more serious matters'.

One Drug Court Team member reported that 'some of those on the waiting list are on bail; we may try to talk them into going into detox if they are out of control rather than waiting until their place comes up on the Drug Court Program. We know that if they commit more offences they won't be able to get on the Program'. One treatment provider reported that they saw some offenders for counselling and methadone treatment who were on bail. Others who are not granted bail while waiting for acceptance onto the Program 'stay in custody so long that it is hardly worth coming on', according to one Team member. Another suggested that they need some interventions while they are waiting in gaol. One Team member commented that they thought it was 'anti-therapeutic that people are waiting so long. They are not yet part of the Drug Court, but they will be seen as part of us and it will be seen as negative, and doing damage to the Court'.

Most agreed that another system was needed to avoid the long waiting list and to start people on the Program immediately. Some Team members commented on the need for prompt intervention while people are in crisis. (The waiting list was closed during the interview period and the new randomisation system commenced in March 2001.)

4.2.4 Detoxification/Assessment Stage

Duration

The duration of each participant's stay in the Detoxification Units was originally planned to be seven days. This was found to be not long enough. One CHS staff member reported that 'seven days is too short, as they are only just over their withdrawals and will go straight out and use if they only have seven days in detox'. 'They are still thinking about drugs' if they stay only seven days, according to another Team member. 'When we put people on quickly they left quickly' according to another. 'It was a production line before; we're setting them up to fail; they were just wanting to get out and use' according to one Team member. 'They were all over the place with the seven day detoxification', commented a treatment provider.

When participants stay in the Detoxification Units for a longer period, such as fourteen days, 'they go through heroin withdrawal' then 'we can talk about plans for treatment when they are more comfortable', reported a CHS staff member. Team members agreed that a longer stay meant that there was more time 'to sort out their problems', for example, 'with their girlfriend, kids, and accommodation'. They can then be stabilised before treatment plans are discussed. Another CHS staff member also reported that 'sometimes a lack of beds or legal issues to sort out means they have to stay longer'. 'Some who are in detox decide against going ahead with the Program', reported another Team member.

Offenders who are already receiving methadone maintenance treatment do not need to be detoxified from opiates, so they stay a shorter time in the Detoxification Unit, according to CHS staff. One reported that some may be on methadone but need detoxifying from cocaine, for example, and therefore need a longer stay. One Team member reported that the Court was trying to keep people with benzodiazepine problems in the Detoxification Unit for a longer period so as to make sure they are completely detoxified.

If they have been on bail for several months while waiting to be accepted onto the Program, 'they may need detoxing when they come back to Court. If they have been in custody they may not need detoxing' reported another Team member. A CHS staff member reported that two new people had recently been accepted onto the Drug Court Program, one of whom 'was stable on naltrexone and another who had already spent four months at William Booth and was clean'. There was seen to be no need for these people to spend any time in the Detoxification Unit.

The period spent in custody before release onto a Drug Court program is in the process of being extended further by the Court.

Facilities

A number of Team members praised the Detoxification Unit staff for keeping the Units 'drug free', as it results in the participants being released into the community 'drug free'. One Team member commented that the participants 'have no choice but to go through detox and if they were anywhere else they would probably resume drug-taking to relieve the pain'. Another Team member commented that the participants 'all look different when they come out of the detox; they have put on weight'.

Some interviewees mentioned problems with the Detoxification Unit. One treatment provider from an AHS commented about the high turnover among nursing staff in the unit, which

meant they did not have sufficient knowledge of the Program and were not completing all the paperwork. Some Team members and the treatment provider expressed the view that a Drug Court preparation program should be conducted prior to their release. Another Team member thought that participants on sanctions should be separated from those waiting to commence their Program as it is inappropriate for them to be talking about the Drug Court.

CHS staff and several Team members and treatment staff raised the issue of the facilities for women at Mulawa being inferior to those for men at the MRRRC. There are no Drug Court dedicated health staff at Mulawa; Drug Court staff from the MRRRC 'come across when they can', which Mulawa staff report as infrequently. 'This means the women are not getting the attention the men get'. One CHS member would like a nurse dedicated to Drug Court participants located at Mulawa.

One Team member reported that women had complained that their conditions are confined, crowded and they 'get no fresh air or exercise'. One CHS member commented that 'it is punitive and very rigid, particularly to women on sanctions; this may be changing a little'.

One female participant said that being in the Detoxification Unit at Mulawa 'bores your brains out. The only thing to do is watch T.V. Because it is so unpleasant it makes you think'.

One male participant commented that going to the 'detox is better than normal gaol, where you want to isolate yourself. Everyone wanted to do something about their problem in detox. Some are there to rot it; they don't last'.

'Highly suitable' treatment

Several interviewees commented that when the Drug Court first started treatment assessments were not being conducted appropriately. One Team member commented that the Detoxification staff seemed concerned to get offenders onto '*any* treatment', but were setting them up to fail as they were at times unsuitable. 'It works better now as it has to be a *suitable* treatment.' The Team member also commented that 'participants need to be suited to the rehab they are going to; don't send them to a religious rehab if they are not religious'.

According to one AHS treatment provider: 'the best evidence-based treatments are not being offered. The decisions were being made by the Court. It was an inflexible approach. Early on the push for residential was not suitable. People left the rehabs, as the wrong people were being sent there. Then methadone became the favoured treatment'.

Another treatment provider suggested that the health assessments and treatment plans conducted in gaol were inappropriate for treatment programs 'on the outside'. One Team member commented that 'there are some issues with the staff at the prisons fully understanding the Court's operations; that is, understanding of the Program, not clinical issues. They need to propose treatment that is in tune with the Court; not necessarily what the participant requests, but steering them in the right direction, away from naltrexone or abstinence if they are unlikely to do well'.

A Probation and Parole staff member commented that Probation and Parole officers were not involved in the assessment process directly apart from the 'home checks' when they often had 'valuable information in relation to the participant's family, past drug treatment, psychiatric history and other pertinent issues'. Over time, a better exchange of information has developed. Probation and Parole now has the opportunity to inform CHS staff when a participant 'has been to a rehab three times before and won't last there again'.

One CHS member said that when staff are discussing treatment options with participants they 'give the warnings and options with each treatment type'. A Team member mentioned that 'there are problems with the identification of "appropriate treatment" but we have to let people give it a go. Some people request to go to specific places, and some seem most

suitable for a particular type of treatment'. Most interviewees thought it was important that participants be allowed to try their preferred treatment option whenever possible, and have the option to change at a later date. One treatment provider suggested that there was a tendency for participants to prefer abstinence-based treatments in the first instance.

One AHS treatment provider pointed out that 'one of the anomalies with the Program is that participants don't need detoxing if they are going on methadone'. He also questioned the ethics of detoxifying people who are going onto methadone programs. His suggestion was that a decision as to whether a person was going on a methadone program needed to be made prior to the detoxification.

A couple of CHS staff members were of the opinion that 'naltrexone is dangerous' so they do not encourage participants to choose it as a treatment option. One treatment provider was concerned that there was undue emphasis on the risks of naltrexone, and reported that he had provided information to the Court about the 'medical interventions – methadone and naltrexone'. 'There is occasional conflict between treatment and the Drug Court over treatment,' according to one interviewee from CHS.

Some Team members mentioned the lack of suitable treatment options for female Drug Court participants. As most of the women have children they prefer to stay in the community. There are few residential rehabilitation centres where women can be accepted at short notice with their children. One solicitor also suggested that 'lots of the women are more damaged than the men; they have lots of problems so they need more help'. A need for treatment places that allow women to balance their family and childcare needs was suggested by a CHS staff member. Another CHS staff member said that generally 'methadone is the most suitable treatment for women, as they stay in the community'.

Suitable accommodation

A Probation and Parole staff member commented that one reason a participant's residence will be considered unsuitable is if their partner is using drugs. Their partner must 'do something about their drug use' for it to be approved. The Probation and Parole staff member reported that 'recently we turned down someone because their father was smoking lots of cannabis'.

One case manager reported that at times the participant's family 'will say they do not want them' because they consider that they have already done all they can for them.

If their residence is considered unsuitable, the participant will need to find another address or start considering residential treatment. One treatment provider suggested that 'participants are entering rehabilitation because there is no other accommodation available'. Other treatment providers agreed that some of those choosing community treatments were unable to be accommodated and were required to enter residential treatments instead.

5. PROGRAM ACTIVITIES

5.1 PROCESSES

Between 8 February 1999 and 30 April 2001, 457 offenders were accepted onto and commenced Drug Court programs. As at 30 April 2001, 180 people were on the Drug Court Program, and another 36 were waiting to start on the Program (NSW Drug Court 2001).

The *Review of Drug Court Procedure* outlines the four critical aspects to every Drug Court program:

- accountability to the criminal justice system by regular reporting-back to the Court;
- regular urine tests to determine whether the offender remains free of illicit drugs;
- treatment; and
- social support and the development of living skills.

When the Court was established it was expected that 12 months would be sufficient time in which to complete a program, but this was extended when it became evident that participants needed more time. A Drug Court program currently takes *at least* 12 months to complete.

5.1.1 Drug Court program phases

A Drug Court program has three distinct phases, each with its own specific goals and associated restrictions and requirements. The degree of supervision decreases as participants progress through the phases. A brief description of each phase is as presented in the following section.

Phase 1 is the 'initiation and stabilisation phase'. The main requirements of the participants during this phase are: to stabilise their physical and mental health; to reduce illicit drug intake and demonstrate an ability to remain drug-free for a significant period; to cease criminal activity and associations; to complete a 'Day Program' (relapse prevention); to become fully engaged in counselling; to commence addressing major life issues; and to demonstrate a commitment to rehabilitation. Some of the requirements have been revised as the Program has evolved. For example, originally participants were expected to *cease* illicit drug use during Phase 1. This was later modified to *reduce* illicit drug use.

Progress is reviewed after the first six weeks and if there is a need to change the participant's treatment then this is also considered. Originally, participants were expected to graduate from Phase 1 three to four months after commencement. However this period has generally become extended.

Phase 2 is the 'consolidation and early reintegration phase'. The main requirements of the participant in the second phase are: to maintain stable physical and mental health; to demonstrate an ability to remain free of illicit drugs; to remain free of criminal activity and associations; to stabilise their home environment; to complete the 'Pathways to Employment, Education and Training Program' (conducted by Probation and Parole and TAFE); to address life issues through counselling; and to commence study, vocational training, or employment.

Participants can anticipate to graduate from Phase 2 six to eight months after commencement. This period has also been extended from the time it was originally anticipated this phase would take.

Phase 3 is the 'reintegration phase'. The main requirements of the participant during this final phase are: to remain consistently free of illicit drugs; to demonstrate a lifestyle free of criminal associations; to maintain a consistently stable home environment; to demonstrate

fiscal responsibility and pay (or substantially pay) outstanding court fines; to demonstrate an ability to deal with significant life issues which have been addressed in counselling; to demonstrate a willingness and an ability to access health, financial and social services; to be well established in study, vocational training or employment; and to complete any outstanding periodic detention order or community service order.

Participants graduate from Phase 3 and therefore from their Drug Court program a minimum of 12 months after commencement.

5.1.2 Orientation to treatment program

The three AHSs participating in the Drug Court Program are responsible for providing treatment for Drug Court participants on methadone, naltrexone, and abstinence-based programs in the community. The vast majority of these participants are treated at Western Sydney and South Western Sydney AHSs.

Most treatment providers reported that they provide an orientation to their treatment program when Drug Court participants arrived at their service, assign participants to counsellors, and conduct health and psychological assessments where appropriate.

5.1.3 Reporting on participants' progress to the Court

Each treatment provider and case manager is required to provide regular reports to the Court on each of their client's progress. The information required includes whether they have attended counselling sessions and courses as required, provided urine samples when requested and reports on their drug use and other pertinent issues that the participant themselves have reported. The CHS psychiatrist may also provide a psychiatric report on why a participant's progress has not been as good as expected, taking into account initial diagnoses, any outpatient consultations and reviews undertaken on their return to the Detoxification Unit on sanctions.

Treatment providers fax their reports to the Drug Court's Nurse Manager, while case managers provide their reports to the Probation and Parole Coordinator. The information is subsequently presented in the Team meeting held before the Court session at which the participant is to appear for their 'report-back'. Some treatment providers, such as Western Sydney and South Western Sydney AHSs, who treat the majority of participants, also attend the Court for Team meetings, case conferences and 'report-back' sessions in Court whenever possible. As one treatment provider commented, 'in this way we are part of a team and speak about the clients and our reasons for our recommendations'.

5.1.4 'Report-backs' to the Court

As a requirement of their Drug Court program, participants on community-based programs must report to the Court according to their program phase, that is once per week in Phase 1, once per fortnight in Phase 2, and once per month in Phase 3.

All those reporting to Court attend on their allocated 'report-back' day, for example, every Tuesday. 'Report-back' days are now Tuesday, Wednesday and Thursday from 11.00 a.m. to 1.00 p.m. Previously 'report-backs' were held at 2.00 p.m. All those reporting on their particular day were required to present at that time and wait until they were called. However the long waits posed a problem for participants who were working or had children so the policy was changed to allow them to come at any time during the session. If they are unable to get to the Court by the end of the session, then they must ring the Registry, their case manager or their treatment provider. Those who do not telephone may have a warrant put out for their arrest. Their case manager will be asked to assist in locating the participant.

Originally, participants at residential treatment centres had the same reporting requirements as community-based participants, but weekly reporting proved to be too disruptive to the residential participants and the staff. They are now required to report less often than those in community-based programs. Participants at Westmount, for example, are now brought to the Court by staff members to report every ten weeks.

Some community-based participants report to the Court more than once per week. For example, a participant may report (voluntarily) on Monday that they have been using drugs over the weekend, then report again on Wednesday as their regular day.

All participants reporting on a day wait in the public seating section of the Drug Court until their names are called out from the daily list by the Judge. Once called out participants walk to the microphone located next to the bar table. They are spoken to and speak directly to the Judge who addresses their progress as reported by Team members, treatment providers and case managers.

5.1.5 Home visits and supervision of participants

As part of their Drug Court program, participants must maintain contact with their Probation and Parole case manager and participate in regular home visits. Originally, case managers were to conduct random home visits twice per week in order to closely monitor their clients and their living situations. However, participants were often not at home when the visits were unexpected and, as the caseloads grew, this became unmanageable. Case managers now generally phone ahead to warn the participant that they are coming.

In Phase 1, participants on community-based programs 'get a minimum of one visit and one phone call per week, but it is likely to be more', according to one case manager. This case manager commented that 'in the first three months we see our clients a lot. We organise and remind them about appointments, and drive them to appointments. We liaise with Health'. In Phase 2, participants see their case manager once per week or fortnight. In Phase 3 home visits are monthly, but case managers keep in regular contact with their clients. A Probation and Parole staff member commented that the benefits of home visits are seen when participants have a relapse: 'mum contacts the case worker when she is worried about them using again, so they can do something about it. The case worker will then get onto them and organise additional urines or more counselling'.

Participants in residential treatment programs receive fewer visits from their case manager as they are closely supervised by residential treatment staff. One case manager commented that they established a relationship with the participant so they know who to report to if they leave their residential program.

5.1.6 Counselling

Drug Court participants in community-based treatment programs are required to attend counselling with their treatment provider. Participants must attend counselling twice a week for the first six weeks of their program, then weekly after that. In Phase 2 counselling reduces to once per fortnight; in Phase 3 they are seen monthly.

In the first six weeks, the AHSs report that they work on developing rapport and trust with the participant. In Phases 2 and 3 the frequency of counselling is more dependent on the client's needs. One counsellor reported that at times it is better to see clients less often as they can become too dependent on the relationship. At Western Sydney AHS, those on community abstinence-based programs are seen by the psychologist. Others see nurse counsellors.

One treatment provider commented that he thought the second counselling appointment 'was wasted in the first six weeks', especially if they could only be timetabled on consecutive days as sometimes occurred. He generally spent 'a good hour' with the participant in the first appointment, and used the second as a 'meet and greet' session.

At both AHSs, counsellors reported that many of their counselling sessions are devoted to 'dealing with crises, such as family and financial problems'. The participants are reportedly unable to focus on more fundamental problems until these issues are resolved. 'We spend lots of time on these other things, such as letters and phone calls to Housing and Centrelink and sorting out bank accounts.' They report 'being in constant contact with Probation and Parole'; this avoids duplication or opposition. All the counsellors at South Western Sydney AHS have mobile phones which are generally left turned on. There are reportedly few calls after hours unless something 'major' has occurred.

Both AHSs also reported that it took time for their clients 'to recognise their feelings and emotions as they are all blocked out from drug use'. Most are reported to be developmentally delayed and poorly educated as a result of the early onset of criminal behaviour and drug use. As one psychologist commented 'most come from abusive situations and need long-term work. It is hard for them at first because of the commitments required, they have to learn about responsibility and organising themselves. Previously everything has been everyone else's fault and now they must take responsibility.' The counsellors report that they 'can put things into perspective. We nurture them here but they still have major problems, such as their families still won't talk to them. It is still hard. And the drugs are still there when things get difficult'. One psychologist commented that 'there are problems with the participants who are doing the Program just to get out of gaol. They will not engage in counselling and block you. They will not let you talk about issues as they think they are O.K'.

Counselling at residential rehabilitation centres is undertaken according to their own programs and practices. For example, at Westmount, participants undertake six days per week of group therapy for the first six weeks they are at the centre, 'focussing on thinking and beliefs about using', according to the coordinator. They also attend 'Narcotics Anonymous' and 'Alcoholics Anonymous' and learn about practical living skills, such as budgeting.

5.1.7 Attending courses

Participants are required to attend a number of courses as part of their Drug Court program.

Western Sydney and South Western Sydney AHSs conduct a 'bridging program' for participants when they are released from gaol. Bridging programs are held one morning per week and are attended by the participants until the next Day Program starts, also conducted by the AHSs. The topics covered in the bridging programs include social and lifestyle issues, such as financial planning, parenting, nutrition, oral hygiene and smoking. The programs run for ten weeks and can be joined at any stage. The aim, according to one Area Health staff member, is to start participants on routines and responsibilities, introduce them to 'group sessions' and keep them busy.

It is a requirement of the Drug Court that participants complete a Day Program. The Day Program is a course conducted by the AHSs covering topics such as assertiveness training, mood-management, problem-solving, relapse prevention, life skills, and recognising and managing high-risk situations. Psychologists at the AHSs conduct similar Day Programs, which consist of 12 sessions over a six week period. Participants start on the first available Day Program after commencing on the Drug Court Program. If they miss any of the 12 days of the Day Program they have to return and attend that session. At times it takes months for

some to finish it, according to one treatment provider. The psychologists report that 'the group is usually harder work at the start. After a few weeks they change and become keen. They would drop out if they didn't have to be there'.

The 'Pathways to Employment, Education and Training Program' is conducted by the Probation and Parole Service in conjunction with TAFE, and must be attended by participants when they are in Phase 2. By Phase 3 participants should be attending a TAFE course, employed or otherwise occupied.

5.1.8 Treatment requirements

In addition to the above Program requirements, participants who are receiving methadone or naltrexone from one of the AHSs must attend the clinics to have their medication dispensed.

Participants on methadone generally attend daily for methadone dispensing. Once they meet the NSW Health Department guidelines on the granting of 'take-away' doses, the requirement to attend daily may be reduced, generally for weekends. A small number of participants who are stable may be permitted to collect their methadone doses from community pharmacies.

Participants receiving naltrexone treatment are generally required to attend the AHS or a pharmacy for daily dispensing of their medication. When the Drug Court first started, those on naltrexone were given one to two weeks worth of tablets to take with them. However the tablets were not taken regularly by the participants so they were required by the Court to attend daily, except on weekends.

Those on naltrexone and methadone must also receive regular medical assessments and have their dosage levels checked, for methadone in particular. The medical practitioner at Western Sydney AHS sees each participant on methadone on a monthly basis.

5.1.9 Urinalysis

Drug Court participants must provide a minimum of two urine samples per week either at the Court Registry, their treatment provider, or the Drug Court bus. These issues are discussed in detail in Chapter 6.

5.1.10 Reviewing treatment programs

Participants can ask to have their treatment program reviewed when they report at the Court or are sent to the Detoxification Unit. It is not uncommon for participants to change treatment type during their participation on the Program. However, problems may arise in changing from a residential program to a community-based treatment if they have no suitable accommodation. Probation and Parole case managers may try to assist in finding alternative accommodation.

5.2 INTERVIEWEE'S OPINIONS

5.2.1 Level of program requirements

A number of Drug Court Team members and Probation and Parole case managers commented that one of the aims of the Drug Court Program was to keep the participants 'busy'. However other interviewees suggested that the high level of commitments required on the Program was disadvantageous for those with parenting commitments, who are primarily women.

A Team member and CHS staff member were of the opinion that women with children were often 'unsuccessful', as they cannot satisfy the Program requirements. One suggested that 'the Program discriminates against primary caregivers'. Some interviewees suggested that women were leaving the Program because they were unable to participate fully due to an inability to arrange alternative care for their children. One CHS staff member suggested the reasons for their lack of alternative carers were 'association problems', alternative carers or partners being incarcerated, a lack of family support or childcare facilities and financial difficulties. Two participants with children commented that 'they didn't see their kids much most days, except for weekends, as they had commitments most weekdays for the Drug Court'.

A treatment provider and Team member also suggested that it was difficult for those who were employed to meet their Drug Court commitments. The Court advises Centrelink that participants are not required to look for work in the early stages of their program, but actively encourages employment or other activity in the latter stages of their program.

5.2.2 Reviewing treatment programs

A number of interviewees commented on participants' ability to change treatment types as a positive aspect of the Drug Court Program.

Commenting specifically about residential programs, one of the coordinators of a residential centre commented that participants were able to change their residential program too easily 'if they didn't like it'. Another treatment provider commented that 'there are no problems getting people into rehabs but there are problems keeping them there'. Some were reported to retain participants better than others, according to Team members and CHS staff.

People who have been put on naltrexone treatment 'have not done very well; many have overdosed', according to one CHS staff member. A Team member commented that 'we think our people are not reliable enough to be put on naltrexone'.

'Abstinence in the community is usually for speed and cannabis users. They need a reasonably stable environment and to be highly motivated. Heroin users trying community abstinence always get into trouble', reported a CHS staff member.

Several Drug Court and treatment staff commented that although many participants are 'against going on a methadone program' at the start, they eventually 'end up on methadone', as they decide that methadone is a more suitable treatment option and likely to provide them with greater assistance.

5.2.3 Progress on Drug Court programs

All interviewees were asked whether they thought that the participants were progressing on Drug Court programs as they expected.

A number of interviewees reported that generally progress had been slower than they had thought it would be prior to the Court's commencement. One Team member commented that the length of a Drug Court program has been extended from 12 months to at least 18 months, because it was discovered that a longer time was needed on a program than originally envisaged. Some participants are still in Phase 1 after 18 months on a program. Another interviewee thought that the original phases and 12 months on a program was 'an arbitrary time that someone chose'.

However one Team member who thought that participants' progress had been slow commented that 'all have long drug use histories so I think they have done well to get down to using once per week'. A treatment provider commented that the Court did not recognise improvements but focussed on the negative aspects.

Other Team members thought that participants were progressing through the program phases as they expected. One Team member commented that 'if they are using two or three times per week and not doing crime then that is a win - it is not ideal but as good as it's going to get for some'. The Team member thought that 'there would be more people trying to rot the system and run away. (The Team member has been) pleasantly surprised by the numbers who have decided to try to get something out of the Program'. Another Team member commented that, at first, they 'did not anticipate that there would be any graduates; I thought the drug problem was only part of it. The participants would have to get used to living on social security and learn to get their self esteem from other things, not the most expensive clothes'. Another Team member had expected progress to be slow because the age at which most participants started using drugs meant that they knew no other lifestyle. Most have reduced their level of drug use on the Program but not ceased. She commented that 'the court is getting better at noticing that people are making some progress'.

A couple of Team members commented that they were able to tell when participants were progressing well on their Drug Court program. They generally dress more conservatively, put on weight and sit alone in Court when they are doing well.

5.2.4 Opting to serve their gaol sentence

One AHS treatment provider expressed the view 'that 20 per cent of Drug Court participants give up as the program is too hard; they terminate themselves. The demands for perfection and the zero tolerance of drug use is the problem'. One CHS staff member said that 'anecdotally, women fail on the Drug Court Program as they have little support in the community while they are on the Program. They have their kids to look after and these responsibilities are their major problem. The participants we see coming back want to plead guilty and do the time after a while as the hassles of keeping up with the program commitments are too great'.

6. ENSURING COMPLIANCE WITH THEIR PROGRAM

The Court seeks to ensure compliance primarily through three aspects of the Program: the use of sanctions to respond to breaches of the Program, the conferral of rewards for progress on the Program, and the use of urine tests to monitor drug use throughout participation on the Program.

6.1 PROCESSES

The legislation allows the Court to confer rewards on a participant when they maintain a satisfactory level of compliance with their Drug Court program (Drug Court Act s. 16). Sanctions may be imposed on the participant if they fail to comply with their program. Participants are informed that their behaviour can attract both rewards and sanctions. They are also informed about the types of behaviours which could result in either rewards or sanctions. Guidelines for the conferral of rewards and sanctions have been developed by the NSW Drug Court Team.

6.1.1 Sanctions

Sanctions have been an integral part of Drug Courts in ensuring that participants comply with the Drug Court Program conditions. Participants agree in their undertaking to the Drug Court, signed on entry to their program, that 'if I do not comply with any of the program conditions, my behaviour will be subject to sanctions', and the types of sanctions are described.

Types of sanctions imposed

Section 6 of the Drug Court Act outlines the types of sanctions that can be imposed by the Drug Court on an offender who fails to comply with their program. These include: the withdrawal of privileges conferred; a change in the frequency of counselling or other treatment; an increase in the degree of supervision; an increase in the frequency of drug testing; the payment of a monetary penalty; imprisonment for up to 14 days; and a change in the nature or frequency of the vocation and social services attended by the participant.

The Drug Court Team has devised additional sanctions which are outlined in the Court's *Guidelines on Rewards and Sanctions* given to each participant. These sanctions include the participant being reprimanded by the Judge, being held in the cells during the court sitting, repeating a component of their program, paying a monetary penalty, complying with a curfew, being demoted to a previous phase of their program, and increased frequency of urine testing or supervision.

At the commencement of the Program there were no established guidelines on the imposition of sanctions. The Team later developed a set of guidelines for graduated custodial sanctions. The severity of the sanction depends on the nature of the program breach and the participant's subsequent action or inaction. Some examples are as follows:

- leaving a residential rehabilitation centre without permission, and attending the Drug Court as soon as practicable - up to 7 days;
- leaving a residential rehabilitation centre without permission, not attending the Drug Court of own free will - 7 to 14 days;
- failing to attend Drug Court for weekly progress report - up to 2 days;
- unauthorised leaving of residence or changing address - up to 7 days;
- failure to keep in contact with Probation and Parole Officer over period exceeding 5 days - up to 4 days;

- using prohibited drugs: isolated use with free admission - rising of court to 1 day;
- using prohibited drugs: isolated use coerced admission - 1 to 2 days;
- failure to provide urine sample, adequate sample, or sample with correct temperature - 2 days;
- misleading, or lying to, the Drug Court - 2 days;
- failure to attend Day Program, counselling, appointment with Case Manager or other Drug Court-related appointment: isolated incident - work in registry/ writing essay/ rising of court; and
- failure to collect methadone or naltrexone: multiple incidents - up to 4 days.

When are sanctions imposed?

The types of behaviours giving rise to sanctions are outlined in the Court's *Guidelines on Rewards and Sanctions*. They include: testing positive for prohibited drugs; failing to provide a (urine) sample when requested; failing to punctually attend Drug Court sittings and other relevant appointments; failing to perform a specified component of their program; committing further offences; failing to obey any reasonable direction; and any other failure to comply with the conditions of the participant's undertaking.

If the Court suspects that the offender has failed to comply with their program, it has the legislative power to issue a warrant for their arrest. If such a warrant is issued under section 14 of the Drug Court Act, any police officer is authorised to arrest the offender and to bring them before the Drug Court. This legislative provision is designed to 'bolster the legitimacy and toughness of the program' (Hansard 1998, p. 9032).

The legislation does not allow appeals against Court decisions regarding sanctions (Drug Court Act s. 10).

Purpose of sanctions

The Drug Court Team in their review of the Drug Court operation outlined the purpose of sanctions in the Drug Court Program. The Team argued that sanctions are not just a form of punishment. They:

- set the boundaries of acceptable conduct in a consistent way,
- educate other participants regarding expectations,
- emphasise that a participant is responsible for his or her own conduct and that they must accept the consequences of that conduct,
- promote honesty and responsibility for conduct by imposing a more lenient sanction when a breach is freely admitted, and
- prevent substantial relapse through early detection and referral to the Court and provide 'time out' through imprisonment for a short period.' (NSW Drug Court 1999a, point 4.14)

Where do they serve their custodial sanctions?

Over the first 12 to 18 months of the Drug Court's operation, participants were sent to the Detoxification Units at the MRRC (for men) or Mulawa (for women) to serve their custodial sanctions. If there were too many for the number of beds in the Detoxification Units, participants may have been moved into the main section of the MRRC or the reception section of Mulawa with other prisoners. Some who were on short sanctions of one or a few days were at times left in the police cells without any treatment or medication such as their methadone or naltrexone.

From early 2001, male Drug Court participants have been sent to the Parramatta Sanction Unit to serve their sanctions. This Unit is a dedicated section of Parramatta Gaol, created specifically to accommodate Drug Court participants. This Unit allows Drug Court participants serving sanctions to be kept separate from other prisoners. If participants need a treatment review while in custody they can be transferred to the MRRC Detoxification Unit. The Sanction Unit has a capacity for approximately 15 inmates.

Women on sanctions are generally sent to the Detoxification Unit at Mulawa. On admission they are segregated for two days to become 'clean', then moved into the four-bed Drug Court Unit. Recently the Court has also started sending women to Jarrrah House to serve their sanctions. Jarrrah House conducts a three-week residential program for women and has some beds for the children of drug-dependent women. However attending Jarrrah House requires that the Drug Court participant stays for three weeks, which is generally longer than the length of their sanction.

Mechanics of sending participants to gaol on sanctions

The Drug Court Nurse Manager coordinates with the Department of Corrective Services where Drug Court participants will be sent to serve their sanctions. The needs of the participants are taken into account whenever possible in deciding where to send them. For example, if there are personality clashes between two participants they may be sent to different units or prisons.

Nursing staff at the Detoxification Unit are sent a list by the Drug Court Nurse Manager at the end of each Court day. This list details what has happened to the Drug Court participants who have gone before the Court each day, including who has been sentenced to sanctions. This information is then checked and recorded in each participant's file. Treatment staff are also sent this information.

This list system took a while to develop. In the early days of the Drug Court there was no proper dissemination of information about the participants' movements, and staff at the Detoxification Units and treatment centres often did not know when people were going into custody and where they were.

Offenders do not receive unemployment benefits while they are incarcerated for more than two weeks. They receive a partial payment if they are in prison for a shorter period.

Legal Aid will only visit participants in gaol on sanctions if they are preparing for a termination argument.

Effect of custodial sanctions on the final sentence

The Drug Court Act states that:

- '1) On terminating a drug offender's program, the Drug Court must reconsider the drug offender's initial sentence.
- 2) In reconsidering a drug offender's initial sentence, the Drug Court must take into consideration:
 - a) the nature of the drug offender's participation in his or her program, and
 - b) any sanctions that have been imposed on the drug offender during the program.' (Drug Court Act s. 12)

This section has been interpreted by the Court to mean that custodial sanctions are to be deducted from the offender's initial sentence. For example, if the participant has a suspended sentence of nine months and he or she has spent two months in gaol on sanctions, the two months will be deducted from the sentence determined upon termination from the Drug Court Program.

Changes in the imposition of sanctions

For the first 15 months of the Drug Court's operation, custodial sanctions of periods of as little as one day were imposed by the Court for breaches of the participant's program. Participants were incarcerated immediately after their program conditions were breached or identified as being breached. The objective of imposing sanctions which are 'certain, consistent and swift' was considered necessary in order 'to be effective with drug-dependent offenders' (Hansard 1998, p. 9032).

However, a number of problems arose from the fact that participants were being incarcerated without warning and for such short periods. A prison bed and transport by the Department of Corrective Services had to be organised at short notice. Each period in custody, irrespective of its length, necessitates a substantial intake process by the Department of Corrective Services. With numerous short stays the workload became unmanageable.

Treatment providers reported to the Court that they were unable to treat Drug Court participants when they went into gaol on sanctions for one day. Participants missed medical and counselling appointments, and were unable to engage in treatment when they were in and out of gaol. Treatment providers also suggested that most participants were likely to use drugs in the first few months of their program, but this period should be used for stabilising and to review treatment programs rather than for incarcerating them.

To circumvent these problems, 'suspended' custodial sanctions were introduced in early 2000. As a result of this policy change, participants do not serve a custodial sanction until they have accumulated seven days or more. Suspended sanctions can be reduced as a reward for 'staying clean'.

At times sanctions are not suspended if the Court considers that the participant is very unstable. They may be sent to gaol with only three or four days of sanctions accumulated if they request it for a period of stabilisation or if the Court decides it is in their best interests.

The Drug Court Amendment Act introduced section 8A which allows 'with the consent of a Drug Court participant, the Court may commit a participant to a correctional centre for up to seven days at a time for the purpose of detoxification or assessment'.

Current alternative sanctions to imprisonment

There are a number of sanctions currently used as an alternative to incarceration. These include the imposition of curfews, which may be used to ensure participants remain at home at night; their case manager is responsible for checking that they observe the curfew. People who need a lot of structure may be asked to provide additional urine samples. Others may be directed to attend counselling more frequently. If they are using drugs occasionally they may be given an information session on the effects of the drugs, or directed to a 'Quit Cannabis' course. Participants will also be put back to a previous phase as a sanction. Fines are not generally used as sanctions as most participants have little money.

6.1.2 Conferral of rewards

The Legal Aid solicitors monitor the participant's progress and discuss in the Team meeting what type of reward a client is to receive and when. Alternatively Probation and Parole or Health will inform the Team that someone should be applauded as they have 'had a good week'.

As outlined in the Drug Court's *Guidelines for Sanctions and Rewards*, the types of behaviours that give rise to rewards includes: satisfactorily complying with the program for a significant period; demonstrating responsibility, stability, or initiative; displaying an outstanding attitude to the participant's program; satisfactorily completing components of their program; and any other conduct warranting acknowledgment.

The types of rewards that can be offered to participants are outlined in the legislation. Possible rewards include: the conferral of specified privileges; a change in the frequency of counselling or other treatment; a decrease in supervision; a decrease in the frequency of drug testing; a decrease in the amount of monetary penalty; and a change in the nature or frequency of the vocation and social services attended by the offender (Drug Court Act s. 16). Some of these rewards have not been conferred to any great extent.

The Drug Court has also used other types of rewards, including praise or applause from the Judge and the Team, the conferring of a gift, graduation to the next phase and removal or reduction of an existing sanction.

Participants are presented with a certificate signed by the Team when they advance from one phase to the next. The Judge comes down from the bench and makes a presentation speech. This also works as a reward, especially as many have never been presented with a certificate before.

The Drug Court Team developed a specific policy regarding the acceptance of rewards or gifts from individuals and community organisations outside the Drug Court Program (NSW Drug Court 1999e). This policy was designed primarily to encourage community support for the Drug Court by providing guidelines to assist those who might wish to offer rewards for conferral on participants who maintained a satisfactory level of compliance with their program. The policy also ensured that the Court only accepted appropriate rewards. To be considered appropriate, the policy required that donated rewards supported a participant's ability to participate in their Drug Court program (e.g. telephone cards, transport assistance), promoted their rehabilitation, could not be readily exchanged for money, contained no conditions on the conferral of the reward and would not be publicised by the donor. This policy was revoked in late 2000 and no further material rewards are being accepted.

Currently the rewards most commonly used in practice are the reduction of suspended sanctions and applause. Other rewards such as a speech from a Team member may also be used on occasions.

6.1.3 Drug testing and urinalysis

Purpose

Each Drug Court participant is required to provide urine samples while on their Drug Court program. The major purpose of urine testing is to ensure that the participants are not consuming any illicit drugs or medication that is not medically prescribed.

Each urine sample is screened for five categories of drugs: opiates (including heroin), cocaine, cannabis, amphetamines, benzodiazepines and methadone.

Frequency

When participants are accepted onto the Program and sign their Undertaking to the Court, they also receive a schedule specifying the days and locations where they are to provide a urine sample. The frequency with which urine samples are to be provided varies according to their Drug Court phase.

Currently, they are required to give three samples per week in phase 1, two per week in Phase 2, and two per week in Phase 3. When they are approaching graduation they are required to provide three samples per week for the last six weeks to ensure that they are drug free.

In early 2001 the frequency with which participants were required to provide urine samples was increased to the above frequencies so that the minimum requirement for all is two per week. Prior to this change, participants in Phase 1 provided two to three per week, while those in Phases 2 and 3 provided one per week and one per fortnight respectively.

Because all participants are now required to provide a sample at the Court when they present for 'report-backs', it is possible that they may be asked to provide more than one sample in a day, if their 'report-back' day coincides with their random urine test at their methadone unit.

Supervision of urine sample provision

The Drug Court has developed guidelines for the supervision of urine sample provision.

'Ideally the process of providing urine should be directly observed. If this is not possible then the following procedures should be followed.

- The collector should ask the donor to remove any unnecessary garments such as a coat that might conceal items that could be used to tamper with the donor's urine sample. All personal belongings should be left outside the collection facility.
- The donor should thoroughly wash his/her hands prior to providing the specimen to ensure that no adulterant on the hands is transferred to the sample.
- Occurrences of adulteration can be further reduced by adding coloured cleaning solution to the toilet bowl, removing soap and cleaning solutions from the facility and making the hot water tap inoperative.
- After the urine has been produced, the sample must be immediately handed to the collector. The sample is to remain within sight of both parties until properly sealed for dispatch to the laboratory.
- Urine substitutions can often be detected by measuring the urine temperature. This should be done in the presence of the person providing the sample using a temperature sensitive strip attached to the outside of the urine jar. The reading must be taken within four minutes of urination.
- The donor and collector should complete the certification, and should include a seal number where appropriate.' (NSW Drug Court 2000a, point 9.15)

One Team member also reported that participants providing samples at the Registry are required to position their body in such a way so as to ensure clear viewing by the nurse.

Where are samples provided?

All Drug Court participants provide urine samples for drug testing at the Drug Court Registry when they come to the Court for 'report-backs'. Since 1 July 2000, instant tests have been conducted by the Court in order to obtain immediate and accurate information about participants' recent drug use. The participant signs a security seal on the sample bottle which is sealed in the presence of the participant after the sample has been provided. Part of the sample is immediately tested by the Registry nurse. If the participant disputes the instant test result they can pay \$20.00 for the sealed sample to be sent to the pathology laboratory to confirm the result. If the laboratory check supports the participant's claim that the sample of urine was 'clean', the participant is reimbursed their \$20.00.

The Registry has recently been refurbished and a new toilet installed for the purposes of urine testing. Participants are directly observed by the Registry nurse with the aid of mirrors to ensure the sample is not substituted.

Participants who are on abstinence or naltrexone programs in the community provide all their urine samples for drug testing at the Drug Court Registry. Both the methadone and rehabilitation centre participants are also tested when they attend the Court.

Drug Court participants who are on a methadone maintenance program and living in the community, are required to provide the majority of their urine specimens at their methadone unit when they attend to pick up their methadone dose. Wayback Committee Drug Court participants also provide their urine samples at Western Sydney when they attend for their methadone dosing. Methadone units therefore collect a large proportion of the urine samples because of the large numbers of Drug Court participants on community methadone programs.

Drug Court participants attending methadone units are given fifteen minutes to provide their sample. If no sample is provided within this time limit, a 'failure to provide' is recorded. Participants must also arrive at the methadone unit at least 30 minutes before the end of dosing time. Supervision of sample provisions is undertaken by video surveillance. Those who are on a methadone program with the South Western Sydney AHS are tested randomly, but are notified the day before they are required to provide the sample. This practice enables the participants to be prepared to provide a urine sample while not allowing them sufficient time to eliminate evidence of recent illicit drug use. Drug Court participants on Western Sydney AHS's methadone program are also tested randomly but given no such warning.

One treatment provider from a methadone unit described the administrative problems they had with setting up a system for collecting urine samples for the Drug Court, which took the whole of the first year. Most of these are now sorted out. The treatment provider reported that administratively the Drug Court participants consume a lot more time than do other methadone clients. 'The nursing staff at the methadone clinic have to pick out the Drug Court clients from the dosing queues, take their urines, record that they have taken them, take extra steps in labeling the sample, and pass that information on to the Court.' Results from the urine testing undertaken by the pathology laboratory are reported to the Drug Court in the first instance. Registry staff then forward the results for all the participants to the AHSs.

Another methadone treatment provider commented that 'it takes weeks to get the results (of urine tests), and not all the results are forwarded by the Court to the methadone unit. An administrative person at the unit then has to enter all the results into our database.'

Those who are resident at rehabilitation centres generally provide their urine specimens at these centres. The Court considers that the rehabilitation centres monitor drug use in their residents closely. These centres generally have their own sanctions for drug use while at their facility. Drug Court participants are tested as part of the usual centre protocol rather than according to the Drug Court schedules. These participants are also required to provide urine samples when they attend the Court for 'report-backs'.

In March 2001 a specially equipped bus, which allows for the collection of urine samples in a secure and closely-supervised manner, commenced operation. The bus is staffed by an officer from the Sheriff's Office, who acts as a driver and provides security, and a nurse, who supervises the sample collection. This bus is now travelling to Penrith, Blacktown, Fairfield, Campbelltown, and Liverpool. Each location is visited twice per week for between one and three hours, depending on the demand. The bus parks outside the court buildings in these locations.

All participants now provide at least one urine sample per week at the Court Registry, usually when they attend to report to the Court. Participants are then able to organise with the Registry as to whether they provide their other samples at the bus or their methadone unit.

Failure to provide and substitution of urines

Drug Court participants are sanctioned for failing to provide a urine sample or if they are caught substituting a urine, as it is assumed that they have used drugs.

Consequences of having 'dirty urines'

Honesty is encouraged in Drug Court participants by the granting of less onerous sanctions if they admit to drug use (1 day) than if they do not admit it and drugs are detected (2 days sanction). If they admit to using drugs then they do not have to provide a supervised urine sample.

Changes urine collection practices

During the planning and development stages of the Drug Court trial, it had been envisaged that Probation and Parole Service would 'either arrange appropriate (chain of custody compliant) urinalysis services, or personally supervise random sampling for transmission to the Toxicology Unit' (Department of Corrective Services: Probation and Parole Service 1998). However, in this same submission, Probation and Parole Service noted that 'as supervision of urinalysis is not a normal part of a Probation and Parole officer's duties, negotiation with the Union would need to occur before any firm undertaking could be made'.

Probation and Parole officers collected urine samples for a brief period only. Case managers reported that it was detrimental to the establishment of a relationship with the participants 'watching them do a urine' in their home. Industrial problems with the supervision of urine collection by Probation and Parole officers meant that they were not permitted to continue to collect samples from Drug Court participants. Without proper testing the potential for continued drug use increased. The Monitoring and Review Committee of the Drug Court Program perceived that these problems posed a threat to the integrity of the Program and could undermine support for it.

Private pathology clinics were therefore contracted to be the collection points for those on abstinence or naltrexone programs in the community. However this method of collection was also problematic. The Court noticed that the vast majority of urine test results were 'clean', and participants themselves reported inadequate supervision allowing for the easy substitution of urine samples. Disruptions at these clinics by Drug Court participants resulted in the clinics withdrawing their services to the Drug Court.

In the absence of an alternative collection site, urine sample collection started in the Drug Court Registry under the supervision of one of the prosecutors. When urine testing was first being undertaken in the Registry it was done in the common toilet and supervised by observing from the open doorway. One Team member commented at the time that 'we need a better urine collection system'. The Court has recently put considerable effort into improving its collection facilities and supervision. In late 2000 a nurse was employed by the Court to supervise urine testing and instant tests are now being used to provide immediate indicators of drug use. Furthermore, a new purpose-built toilet has been constructed and since early 2001 a second nurse has been employed to collect urine samples on the Court's bus.

Meanwhile, the three AHSs had been directed to supervise urine sample collection at their methadone units for those attending for methadone dosing. The methadone units at South Western Sydney and Western Sydney AHSs already had the facilities for supervising urine collection, while Wentworth AHS had neither a methadone unit nor facilities for supervising urine sample collection. Concerns over the proper supervision of urine sample collection at South Western Sydney AHS led them to replace and install additional video cameras and collect samples more frequently. Wentworth AHS eventually installed the facilities for video surveillance, and urine collection was supervised by nursing staff.

As discussed above, the Court has recently moved to increase the numbers of urine samples provided and to require participants to provide samples at a number of different sites in an effort to ensure no drug use is going undetected.

One Drug Court Team member reported that this increase has created difficulties for some of the participants who are in the later phases of their program and who work. The Drug Court Registry hours are too limited for many of these workers, and the number of working participants is reported to be increasing. Some allowances are being made for those workers affected; some are providing urine samples at their local doctor's surgery, as long as the Registrar is satisfied that they are being properly supervised. Consideration is also being given to keeping the Registry open until 7.00 p.m. two days per week to enable workers to provide their samples at the Court. A Sheriff's Officer will be needed for security if the Registry is to stay open at night.

Alternative methods of drug use detection

Because of the difficulties associated with supervising urine sample collection, the National Drug and Alcohol Research Centre (NDARC), University of NSW, was commissioned to conduct a review of literature on the different methods of drug screening. NDARC's review was to include a consideration of developments in urinalysis procedures and any possible alternative testing methods. A draft copy of the report is currently being reviewed by the Drug Court Clinical Reference Group, the Monitoring and Evaluation Committee of the Drug Court Trial and the Drug Court.

The Court also obtained funding to trial 'sweat patches' that are worn by the participants for one week and are tamper resistant. It was thought that the patches would be suitable for detecting any drug use by participants in the latter stages of their program. However these patches have been found to only detect drug use for five days and to be prohibitively expensive to analyse, so their use will not be pursued at this stage.

Recently the Court has purchased a number of breathalysers for detecting alcohol use. These are now used by the Court, the nurse on the bus, and the Probation and Parole case managers to test people who present appearing intoxicated. An amendment has been added to the Drug Court Undertakings signed by the participants which formalises the Court's policy that they should not use alcohol to such an extent that it interferes with their Drug Court program. Now participants may be sanctioned for a blood alcohol level exceeding 0.05. Some participants may, as part of their treatment plan, be allowed no alcohol at all, so they will be breathalysed when they present to ensure they stick to this requirement.

6.2 INTERVIEWEES' OPINIONS

Interviewees were asked their opinions of the sanctioning and rewards system, urinalysis and drug testing. A number of issues were raised that will be discussed in the following section.

6.2.1 Sanctions

Are sanctions necessary?

Most interviewees agreed that sanctions are necessary to ensure participants' compliance with a Drug Court program.

One treatment provider commented favourably about the graded responses to non-compliance. These responses range from requiring more frequent urines or Court attendance for a more minor infraction, through to incarceration for a short period, with the ultimate sanction being 'thrown off' the Program. Clients need to see that the system is fair, graded and proportional to their misbehaviour. Another treatment provider said the sanctions are good for 'giving people a shake-up' and 'providing order' and said that reducing sanctions also works as a reward. The treatment provider commented that, if there were no sanctions

for missed urines, then all participants would miss providing urine samples when they had been using. One treatment provider was of the opinion that having rules and sanctions for infringements encouraged consistency across participants' programs. Another saw the sanctions as one of the distinguishing features of the Drug Court.

One Drug Court Team member commented that honesty is encouraged among participants by the Court imposing fewer sanctions if they admit to their drug use.

Appropriateness of incarceration for non-compliance

Drug Court Team members tended to see being sent to the Detoxification Unit on a sanction as a way of removing the participants from their 'scene', getting them to detoxify and 'get clean', and 'settle down'. It was seen as a detoxification exercise as much as a punishment and therefore entirely appropriate. At times participants are encouraged to stay in longer to stabilise themselves, and other times participants ask to be incarcerated to remove themselves from the 'drug scene'.

Treatment providers saw incarceration as more of a hardship for the participants. One commented that 'sanctions upset the (participant's) program, finances, and their family. The effects of the seven days in gaol lasts a long time'. Another treatment provider commented that 'there is a level at which these program requirements become a deterrent, but then the anxiety levels increase and it becomes counterproductive'.

For what breaches should sanctions be imposed?

Several treatment providers were of the opinion that participants should not be sanctioned for drug use while on the Program. One treatment provider did not think they should be sanctioned for drug use at all, especially if occasional drug use means going to gaol and breaking the ties they are endeavouring to set up at home or work. Another commented that it is illogical for these people to contract to a program to be perfect for 12 months. Another treatment provider commented that 'overnight abstinence is expected (of the participants), including abstinence from cannabis. There is no focus on the primary drug and accepting that we "will live with" the others. Most have extensive polydrug use, and cannabis use is a lifestyle for the majority'.

One treatment provider commented that 'participants cannot work out why they are getting sanctioned for using cannabis'. The treatment provider acknowledged that the Court cannot be seen to condone cannabis use, but suggested that sanctions should only be applied when they are using to such an extent that it affects their motivation, as with alcohol. One participant complained of being 'thrown in gaol for using pot'. Within the prison system there are less severe penalties for cannabis than for other drugs. One Team member would like the Drug Court to do the same, having less severe penalties for cannabis. Those using cannabis could then be encouraged to do a 'Quit Cannabis' program.

A couple of interviewees considered that there needed to be sanctions for participants who missed courses or appointments. Some treatment providers said that they were less strict about reporting participants for being late for counselling appointments than they were at the start of the Program.

Most interviewees agreed that sanctions should be imposed for further criminal offences committed while on the Drug Court Program.

One Team member spoke at length about the fact that additional punishment was not imposed for minor offences committed while on the Program. The Court's view is reportedly that imposing a penalty while someone is on a Drug Court program is double punishment, as they are getting an additional sentence to their current sentence. The Team member commented that at present, the participants know they will not have additional sentences

imposed or be terminated from the Program 'if it is not a major crime'. Their sanction of a 'further suspended sentence' was considered to be effectively no penalty. The Team member argued that there should be additional sanctions imposed, such as an extra week in gaol, when an offence such as shoplifting is committed while on the Program. The Team member commented that 'the Court needs to support those making an effort, by trying to dissuade those using the Program to stay out of gaol. There needs to be a closer link between the action and consequences; imposing sanctions may help address offending behaviour and may prompt greater compliance, and perhaps even behavioural change.'

Deducting sanctions from the head sentence

Two Team members in particular believe that sanctions served for non-compliance should not be deducted from their sentence on termination; 'if they have been sentenced for three months then they should retain their three-month sentence'.

Others have commented that deducting sanctions from the sentence allows a participant to serve their sentence in their own time, effectively by periodic detention. One Team member commented that 'they know when they have two weeks left to serve', for example, and this works as a disincentive to do well as any time spent in gaol for using drugs will reduce their final sentence. Those who do well still have the same sentence at the end as they have not 'worked it off' by sanctions. One Team member stated 'this demeans the Drug Court process and removes the therapeutic value'.

Do sanctions increase compliance?

Some Team members thought that the deterrent effect of sanctions was reduced by the fact that they are deducted from the head sentence.

Some interviewees considered that gaol was not a deterrent for most, while others considered that participants would always try to avoid going to gaol if they could. One interviewee commented that incarceration was more of a problem and a deterrent for women as someone has to look after their children.

Are sanctions consistently applied?

Some interviewees, including Team members, treatment providers, case managers and participants, expressed the opinion that sanctions were not consistently applied across participants. They mentioned 'favouritism' as a problem. Suggestions were made that those participants who presented well to the Court were treated more leniently than those who presented badly. One caseworker said that they 'give clients tips on how to present in court' to try to redress the imbalance. A treatment provider commented that the participants become angry when they feel they have been treated unfairly.

Some interviewees considered that it was important for the Court to be seen to be consistent and fair. Others thought that there needs to be some flexibility in responding to extenuating circumstances, so 'the clients think they're listened to'.

Some also suggested that the Court had become more 'mellow' or 'lenient' in recent months.

Immediate versus suspended custodial sanctions

Most interviewees were of the opinion that suspended custodial sanctions worked better than immediate imprisonment. Everyone agreed that sending people to gaol for one day was very difficult administratively. Participants were reported to have complained that they had left their car outside the Court, had not locked their house properly, or made proper childcare arrangements. One CHS staff member commented that 'it was hard for the mothers

who could not pick up their children from school and damaging for the children not knowing whether their mothers would come home that day. The aim is to try to break the cycle'. Treatment providers were unable to maintain continuity in treatment when participants were in and out of gaol constantly.

One treatment provider considered that participants were more comfortable about 'going in' for a week. A Team member thought it was a good reminder that they had a sentence 'hanging over their heads'. Detoxification Unit staff are also better able to review their treatment or detoxify them when they are in gaol for a week rather than a day. However, two treatment providers commented that 'if something negative is delayed so they are punished for an event in the past, it has a negative effect on recent behaviour. A CHS staff member suggested that 'it may be worthwhile looking at the changes in participant outcomes since suspended sanctions were introduced'.

Some pointed out that a small number of participants take advantage of the system by using drugs until they have reached five or six days of suspended sanctions, stopping for a while to reduce them, then starting to use again. This was particularly evident among people on shorter sentences. One case manager commented that the 'word had gone out through the gaol about how to do things on the Drug Court'. Those who are identified by the Court as taking this approach are sent to the Detoxification Unit sooner, perhaps after three to four days of suspended sanctions had been built up. If they are 'really out of control' they will also be sent in sooner. One Team member commented that the decision about whether to suspend sanctions or not 'is made as part of a therapeutic decision'. At times the participants themselves request to go to gaol for 'time-out'

Participants opinions of sanctions

The Drug Court participants interviewed generally considered that the sanction system was fair. One participant commented that 'you know the choice is here (the program) or gaol', whereas when he had been in other treatment programs he had 'consistently pushed things'. He saw the Drug Court Program as 'not forcing us to be clean but encouraging us' so we 'end up wanting to be clean'. The participants knew when they had 'sanctions hanging over their heads' but were glad to be able to work them off by 'staying clean'; if they relapsed (to use) 'it's not like we've failed, we can fix it by not using'.

Another participant talked about 'spending all your time in the cells where they don't dose you' and the discomfort of detoxing from methadone in this way. This practice of leaving people in the cells on sanctions happens infrequently now.

Several participants spoke about how 'it bothers everyone to go to gaol', as does the 'knowing you will go in'. Community service was suggested as an alternative to incarceration.

A number of the participants thought that the number of sanctions accumulated before they were sent to the Detoxification Unit should be reduced, perhaps to three days. One commented that 'building up sanctions is not teaching people; it tells them they can use and get one day's sanction, so they get away with it. You don't have to serve it when it is only one day, so you start to think you can keep using. When you got sent straight in for one day it was better; you got sick of going in so you stop'.

Suggested alternatives to custodial sanctions

Most of those interviewed suggested that alternatives to imprisonment for program infringements, such as community service, should be seriously considered.

Some considered that imprisonment was not a deterrent for some participants, as they were 'used to gaol'. Undertaking community service may be more of a deterrent, particularly if the time spent was not deducted from the head sentence.

Others believe that imprisonment is 'always a problem for everyone'. 'It dislocates (people) when they are in and out of custody; there is always an adjustment when you come into custody as you need to behave differently and watch yourself'. One Team member commented that 'as they become more stable and involved in the community, going to gaol becomes more disruptive and a harsher punishment'. A treatment provider commented that it can 'seriously impede their health treatment if they go back to the detox after being on methadone, for example'. He also believed that 'the sanctions should be integrated into the health plan'.

One Team member raised the issue of the costs to the community of imprisonment and argued in favour of community service as a method of ensuring that participants 'return something to the community'. Another thought that community service may give the participants some self-esteem and skills, and pointed out that they would normally not be eligible for community service.

Other suggestions included offering weekend detention as an alternative to full-time imprisonment. A CHS staff member suggested that as an alternative to incarceration, a halfway house for ten to twenty women be established, providing a number of support services. She suggested that Drug Court participants have already been judged as a lower security risk so they could be 'kept on the outside' with no Correctional staff involvement.

A couple of interviewees considered that custodial sanctions were appropriate because participants would be in gaol if it were not for the Drug Court Program.

Conditions for participants while on sanctions

As described previously, the conditions in the Detoxification Unit at Mulawa Correctional Centre, where women are sent on sanctions are unfavourable. These problems have been recognised by the Court which now also sends women to Jarrah House as an alternative. However, Jarrah House runs a three week therapeutic program, which means that to complete their program the women would have to stay longer than they are required by their sanctions, generally seven to fourteen days. Often they leave before the end of the three weeks. Jarrah House staff perceive that the women often seem unwilling to be there and would rather complete a shorter sentence in gaol, where they are not required to confront issues.

One Team member expressed concern that there were no programs for the men who were sent to the Parramatta Sanction Unit. The Team member thought they would be better occupied attending courses rather than 'just sitting around'.

6.2.2 Rewards

Most interviewees considered that applause and the reduction of suspended sanctions were appropriate and adequate rewards.

Several Team members expressed surprise at the extent to which the participants liked being applauded by the Court when they had been going well on their program. They acknowledged that most participants had never had any positive reinforcement before and it gave them 'an extraordinary rush of pride'. One Team member admitted that he was cynical about the idea of applause at first, but found that it was highly significant for someone who had never been applauded before. Several Team members said that it was extremely important and very different from normal experiences with the legal system. 'It is also simple, when often the court jargon is not understood.'

Once sanctions for breaches of a Drug Court program started being suspended in mid 2000, a treatment provider suggested that they could be 'worked off' as a reward for program compliance. 'Working off' sanctions in this way provided a positive incentive to stop using, is one of the few tangible rewards available to participants, and has worked well as a reward

according to most interviewees. Suspended sanctions can be reduced as a reward if, for example, a participant does not use drugs for a month.

Some treatment providers and a Team member were of the opinion that there were not enough rewards granted by the Court to balance the sanctions. One commented that 'there are individuals who make great improvements and the Court needs to say that they are doing well' (even if they have not stopped all drug use).

Most Team members commented that it was better to have encouragement and the removal of sanctions rather than material rewards. Most said that they felt uncomfortable with the idea of giving material rewards, such as gift vouchers and football tickets to 'criminals', which relied on the charity of businesses. There were instances early on in the Program when people reverted to drug-use immediately after material rewards had been awarded, and it was felt that this was damaging to the credibility of the Court. One also felt it was embarrassing giving gifts from the bench.

Only two Team members thought that material rewards were appropriate. One of the treatment providers gives 'Woolworths vouchers' to clients when they do not use drugs, and suggested that participants had reduced their drug use as a result.

6.2.3 The need for urine testing

Drug Court Team's view

The Drug Court, in its 2000 report entitled, *Drug Court of New South Wales Review Committee*, emphasises the importance of drug testing in its Program.

'Urinalysis is the only objective measure available to the Drug Court of a participant's progress towards the goal of refraining or abstaining from prohibited drugs. It is therefore essential that the provision of urine samples be supervised to ensure the validity of the analysis. The Drug Court must detect and respond to a relapse into drug use in a timely manner to minimise risk to the individual concerned and the community.' (NSW Drug Court 2000a, point 9.2)

Nearly all Team members commented that urine testing is an essential component of the Drug Court. One Team member described urine testing as 'a necessity, and the cornerstone of the Drug Court Program. It is the only objective measure of how they and treatment are going, how well they are engaging in treatment'.

Former Team members were reported to have wanted to monitor drug use by an honour system or observation of their demeanour. Another Team member commented that this was unreliable as many 'are big users and hide their use'.

A Team member commented that 'immediate testing was needed for those in the first stages and to demonstrate that there is no drug use at the end of the program, in particular. One Team member said 'it makes a mockery of the system to not have urines. If we don't pick up drug use early it will escalate to the point where they start doing more crime. Drug use is a barometer of their crime'.

Another Team member commented that 'honesty and relapse are problems which urine testing deals with. The people who object are the ones who are trying to use. The successful ones don't mind as it is not as bad as having to explain to their family that they are going to gaol again. It makes them honest'. Participants ask for additional urine testing at times to help keep themselves away from drug use, according to another Team member.

One Team member was of the opinion that 'people who have been in custody can cope with supervised urines; in gaol they share toilets with twenty people and they may have been working as prostitutes. For everyone it is embarrassing at first, then they get used to it. It is an important part of the process'.

A number of Drug Court Team members said that they thought 'the treatment providers should be more accountable (for urine testing)'. Difficulties with what was described by one Team member as a 'lack of supervision and the lack of cooperation from some treatment providers early on' had been largely resolved.

Treatment providers' views

Medical practitioners with responsibility for methadone and naltrexone treatments at the three AHSs all raised the issue of whose responsibility it was to conduct urine testing for the NSW Drug Court Program. Their views are outlined as follows.

By the time the Drug Court was established, methadone units had virtually stopped conducting urine tests for their methadone clients. It had become an optional requirement with the NSW Health Department and most chose not to do it under a harm minimisation philosophy. However the Court directed that urine testing would be done as part of the Drug Court Program and that the methadone units must supervise urines for the participants at their units. One AHS with a purpose-built methadone unit was sufficiently well-equipped to supervise urine testing and did so. The second AHS reported that they had no physical 'methadone unit' and therefore 'no facilities for supervising'. Eventually a facility for supervising urines was established at a reported cost of between \$4,000 and \$5,000 per month for four to five participants. Staff from this AHS reported that they were 'berated' by Drug Court Team members for not supervising urines when they had no facilities. The third AHS reported that they had the physical capacity to do supervised urines with mirrors and cameras, so they started supervising urine sample collection for Drug Court participants. After a period they were told by the Drug Court that participants had been substituting urines so they upgraded their monitoring systems.

One of the medical practitioners commented that 'urine testing became a symbol of the dichotomy between health and the law. Law uses urine testing to monitor their legal progress whereas health uses it to guide further treatment. The urine test results are an instrument of the Court but they were being done by health; health didn't believe in it, but health was responsible'. Another medical practitioner agreed, commenting that we 'never wanted health to take the responsibility for urines; the Court should do it and take the responsibility. But the Court wanted the methadone units to do it and we could so we did'.

All agreed that the urines are an important part of the Drug Court, but that it could have been handled better. 'It became a political football.' Two reasons had been offered for conducting the urine tests: to impose legal sanctions and to evaluate the Program's effectiveness. One medico suggested that as the results of the tests are delayed and the sanctions are delayed there is no immediate reaction by the Court to drug use. The medico suggested that there were alternative methods of conducting urine testing, such as hair and sweat analyses. Another medical practitioner said that they 'liked the idea of doing urines at a range of places (methadone units, the bus and the Court), as the Court is working towards, then if any one place is not working well it will be picked up elsewhere. It is good if it fits in with what the client is doing and where they are going'.

Case managers' views

Case managers also thought that urine testing was a necessary part of a Drug Court Program. One thought it was important in 'keeping them honest' and considered that the 'process is flawed if they get away with it'. Another case manager thought they were not doing enough urine testing at the time of the interview, particularly in the later phases. The number required has since increased. The case manager thought it should not be a reward to reduce the number of urines required.

Participants' views

A number of different issues regarding urine testing were raised by the Drug Court participants.

Two participants complained that if they do not get to the methadone unit with enough time to spare, they have to come back later or be counted as a 'failure to provide'. One thought that the number of urines required was too high.

One participant reported that his results from a urine test done at the methadone unit showed that he had used speed and pills when he had not used, while the urine provided at the Registry was clean. He raised the possibility of samples either getting mixed up in the methadone unit (as they are doing so many), staff using contaminated gloves, or accepting urines when the seals are broken.

Another participant reported that it was still possible to do 'bodgy urines'. The participant reported that some participants always 'have a spare urine on them so if the Court tells them to do one they will be clean. They can still get away with it at the methadone unit with cameras either side. It is harder for the men (to get away with it)'.

One treatment provider commented that 'participants complain less about urines now, as they see the Drug Court as being more helpful. This may be because of suspended sanctions; they are not as angry about being locked up'.

6.2.4 Frequency of urine testing

Several Team members and a case manager commented that they thought that more frequent drug testing was needed so as not to leave days where they can use drugs without being detected. One interviewee commented that testing on Mondays, Wednesdays and Fridays was optimal as it was frequent enough to detect opiates which last two to three days in a person's system. The frequency of urine testing has been increased since these interviews were conducted.

6.2.5 Supervision of urine testing

Urine testing at the Drug Court Registry

Most Drug Court Team members commented that the urine test results for the first six to 12 months of the Drug Court's operation were unreliable because of the lack of supervision and adequate collection procedures and sites. One commented that 'the Court really only started effectively when they started fully supervised urines. We find more dirty ones now. At first we had weeks of clean urines when we knew they were using'. Another commented that 'the reliability of the urine tests has vastly improved'.

Most Team members seemed confident that the urine tests conducted at the Court were now accurate. One Team member commented that 'those (urines) taken at Court are highly reliable; and the instant tests are much better'. Another commented that 'we are now catching people when they are using, not listening to stories, and are able to be fairer'. 'It is now hard to do bodgy urines' according to one Team member. Another commented that, as a result of the increased supervision, participants are being more honest about their drug use. However one Team member and a case manager believed that it was still possible to substitute urines provided at the Registry and that women can substitute more easily than men. Several Team members thought the best place to conduct urine testing was at the Drug Court Registry.

Urine testing by methadone units

Staff at the AHSs reported that they had greatly improved their supervision of urines. 'There are cameras in the toilets and nurses to supervise.' One Team member also commented that 'we have noticed that treatment has tightened up their urine testing'.

Another Team member, however, commented that 'at the methadone units the urines are not as reliable, not as closely supervised, not properly random, and not instant. When the results take seven to ten days to get to the Court, as from the methadone units, the participants cannot remember if they used and are more likely to dispute it'. (This delay results from the time taken to process samples through the testing laboratory.) The Court, in its latest review, expressed concerns that 'the workload of clinic staff (at the AHSs) may at times result in poor supervision of sample collection' (NSW Drug Court 2000a, point 9.10).

Urine testing by residential rehabilitation centres

The coordinators of the residential rehabilitation centres visited as part of the study reported that they undertook urine tests for the Drug Court as requested. Two centre coordinators said that they conduct their own testing if they are suspicious that a resident has used drugs. The third centre encouraged twice per week testing, one of which is conducted at the centre and one at a methadone unit where participants are dispensed their methadone.

Urine testing by the 'urine bus'

The major advantage of the 'urine bus' was to reduce the travelling time for participants who had to present at the Court to provide urine samples. Some were travelling from Penrith and further to the Drug Court three times per week, according to one case manager. However, one Team member reported that 'the bus has not been as popular as first thought, partly because it is being parked outside the court buildings, rather than within the grounds of health facilities as originally planned. Those who have been on their program for some time say that going to the court environs often means that they meet up with their old cronies and they don't want to be seen outside the court'.

7. ENDING A DRUG COURT PROGRAM

7.1 PROCESSES

The following section outlines the processes for ending a Drug Court program, either by program termination prior to successful completion, or program graduation.

7.1.1 Program termination

Section 11 (1) of the Drug Court Act states that ‘the Drug Court may terminate a drug offender’s program:

- ‘a) if the drug offender successfully completes the program, or
- b) if the drug offender requests the Drug Court to terminate the program, or
- c) if the Drug Court decides to terminate the program as referred to in section 10 (1) (b).’

If it is satisfied, on the balance of probabilities, that a drug offender has failed to comply with their program, the Drug Court:

‘if it is also satisfied that there is no useful purpose to be served in the drug offender’s further participation in the program, may decide to terminate the program. (Drug Court Act s, 10 (1) (b))

The Drug Court Team has developed a policy regarding terminations. This policy is designed to:

‘clarify the circumstances in which a participant’s program will be considered for termination [and] to identify the process by which the Drug Court Team will consider program termination, so as to ensure that the participant is afforded procedural fairness’. (NSW Drug Court 1999f, point 1).

Based on this policy, termination should be considered if the participant:

- is subject to a treatment plan which appears to be unsuitable, and no apparently highly suitable treatment plan is available
- has absconded and is arrested on a Drug Court bench warrant
- does not significantly reduce his or her dependency on prohibited drugs and demonstrate a capacity to become free of prohibited drugs
- is alleged to have committed significant offence(s) (whether or not the participant remains free of prohibited drugs)
- is alleged to have committed an offence referred to in section 5(2) of the Act [that is, an offence punishable under Division 2, Part 2 of the Drug Misuse and Trafficking Act 1985; an offence involving violent conduct or sexual assault]
- threatens other Drug Court participants, a treatment provider or anyone connected with the Court, or repeatedly disrupts any process related to the participant’s program
- is in possession of prohibited drugs within the precincts of the Court
- otherwise demonstrates a lack of commitment to his or her Drug Court program, or a lack of progress on his or her Drug Court program.

Termination will be considered by the Drug Court Team at the request of any team member, the participant’s case manager, or the participant’s treatment provider. The primary responsibility for identifying participants to be considered for termination are the solicitors from the Office of the Director of Public Prosecutions and the Inspector of Police on the Drug Court team.’ (NSW Drug Court 1999f, point 3.2 & 3.3)

The policy requires that the participant's legal representative, case manager, treatment provider (if appropriate) and the CHS at the relevant correctional centre are to receive reasonable notice that the participant's program is being considered for termination. Each one is to be given the opportunity of making submissions to both the Team meeting and the Court.

The termination of any participant's program is considered by the Drug Court Team at the meeting scheduled prior to the case being determined in court. The presiding Judge may not be in attendance at this meeting either as a result of the Judge's own decision or following a request from the legal representative of the participant in question.

If there is advice not to terminate from any of those making submissions, this advice must be provided in writing, and the person may be required to be available for questioning in the Team meeting and in Court. A 'termination argument' may be entered into in Court between Legal Aid officers and legal officers from the Office of the Director of Public Prosecutions.

The 'termination' argument will be listed before the Court. The prosecutor assumes the adversarial role making submissions as to whether 'no useful purpose' (Drug Court Act s. 10(1)(b)) exists for the maintenance of the participant on a Drug Court program. The Legal Aid solicitor represents the participant in this argument.

If the participant has committed further offences while on the Program, the Judge will decide whether to deal with them or refer back (under section 8) to the court in which the charges were laid. The types and seriousness of the charges laid will be considered. For example, if the person has been charged with one or two shoplifting offences they are less likely to be terminated than if they have committed a serious assault. If a participant has abandoned their program for a period greater than two months their program will be automatically terminated. A fresh warrant will be issued and a new sentence will be imposed by the Judge.

The legislation does not allow offenders to appeal against Court decisions regarding the termination of their program (Drug Court Act s. 11).

Sentencing

On terminating a program, the Court must reconsider the initial sentence by taking into account both the person's participation on their program and any sanctions that were imposed during the course of their program. However, the legislation requires that the final sentence not be greater than the initial sentence imposed for the offence (Drug Court Act s. 12). Since the Drug Court has the status of a District Court and it exercises the functions of the criminal jurisdictions of both the District Court and the Local Court it can impose penalties that could have been imposed by the District Court in the case of indictable offences, and also penalties that could have been imposed by the Local Court in the case of summary offences (Drug Court Act s. 5).

One Team member reported that when a participant is terminated from their Drug Court program they are always sentenced to incarceration. Their sentence is generally their original sentence, less any time they have served in sanctions. If they have made some 'improvements' while on their program this is usually taken into consideration in determining the non-parole period rather than the gaol term. Their sentence cannot be longer than it was originally unless they have committed more offences.

Some Team members commented about the differences between the judges in their sentencing methods. One judge reportedly 'approaches sentencing mathematically and sends the participants back to gaol if everything is not completed'. The other judge is described as 'taking into account who the person is at the end of the program'.

Participants terminated from the Drug Court Program

Of the 457 people who had been accepted onto a Drug Court program by 30 April 2001, 51 per cent (233 persons) had been terminated under section 11 (1) (c) of the Drug Court Act (NSW Drug Court 2001). This means that the Court has decided to terminate the participant as it was satisfied that there was 'no useful purpose to be served in the drug offender's further participation in the program' (Drug Court Act s. 10 (1) (b)).

Briscoe and Coumarelos (2000) reported that of the 133 who had been terminated by June 2000, 121 (91%) had not progressed beyond Phase 1 of their Drug Court program.

7.1.2 Program graduation

To be eligible to graduate from a Drug Court program, participants must successfully complete their program (Drug Court s. 11 (a)), and also have spent *at least* 12 months on the Program.

According to the Drug Court's policy on graduations, either the Probation and Parole Coordinator of the Drug Court Team or the relevant residential rehabilitation manager is responsible for nominating participants who are considered eligible for graduation (NSW Drug Court 2000b).

The guidelines require that they be 'drug free' for six months prior to graduation. The graduations clerk in the Drug Court registry will advise when a Phase 3 participant is approaching eligibility for graduation. Their potential suitability for graduation is discussed at a Team meeting. If there is agreement, the participant is placed on a schedule of providing three urine samples per week. The participant's case manager and treatment provider are required to prepare a comprehensive report on the participant. Whether a nominated participant is suitable for graduation is considered by the Drug Court Team at a Team meeting which is held approximately two weeks prior to the proposed date for the final sentencing and subsequent graduation.

Once the Drug Court Team has agreed a participant can graduate, the Registrar coordinates the completion of the program requirements and the graduation.

Final sentencing precedes graduation, and usually takes place on the morning of or the day before graduation. Sentencing upon graduation generally consists of placing the graduate on a good behaviour bond.

The participant's family and significant others, their treatment provider and case manager are invited to attend the graduation. Both Drug Court Judges generally preside at the graduation ceremony. A graduation certificate is presented to the participant.

The first graduation ceremony occurred on 4 April 2000, when two 33-year old men graduated, one after completing a 14-month Drug Court program, and the second after completing a 12-month program. By 30 April 2001, 27 people had graduated from their Drug Court program (NSW Drug Court 2001).

Graduates generally have no further contact with their Drug Court Probation and Parole case managers. Another Probation and Parole officer will take over the graduate's supervision which will consist of reporting once per month. Treatment programs, such as methadone maintenance, may continue. Some will refer graduates on to other services, such as ongoing counselling, as needed.

7.1.3 Terminations under the Drug Court Act (s.11(b))

Under section 11(b) of the Act, the Drug Court may terminate a drug offender's program if the drug offender requests the Drug Court to terminate the program. Since early 2001, those

who have been on a program for an extended period and who are unlikely to obtain much more benefit from it, have committed no further crime and ceased drug use apart from very occasional use, have been encouraged to terminate their program under this section. Participants in this situation are advised by their Legal Aid solicitor to ask for a 'termination' as they are unlikely to be given a custodial sentence. According to one Team member, these participants are considered by the Court to be 'as good as graduates', as they are close to but unable to meet the criteria of being 'drug free' for a six-month period.

Since this practice has been encouraged, 17 participants have terminated their program under this section, most of whom started their program in 1999 (NSW Drug Court 2001).

7.2 INTERVIEWEES' OPINIONS

7.2.1 Termination

The Team members' view of the 'no useful purpose argument'

A number of Drug Court Team members, in particular the legal members, expressed concerns about the program termination test of 'no useful purpose to be served in the drug offender's further participation' (Drug Court Act s. 10 (1) (b)). The Court's difficulties in regard to this requirement are outlined in the *Drug Court of New South Wales Review Committee* report as the following:

'A participant who is charged with an offence involving violent conduct is taken to have breached his or her program. Nevertheless, the Court cannot terminate the program if satisfied that there is a useful purpose in the participant remaining on the program. Consequently, the 'useful purpose' test can result in participants remaining on the program when that is not appropriate because of the risk to community safety'. (NSW Drug Court 2000a, point 12.23)

Another Team member commented that, under section 10(1)(b), new offences are no basis for terminating but a basis for considering termination only, as the participant has breached their program. He further commented that 'it is hard to say that there is 'no useful purpose' for these people as for everyone there is a useful purpose if they stop using and offending. All participants are using drugs less and they are proud of reducing their use. A reduction in crime and drug use are the goals; if we are not achieving these then there is 'no useful purpose'.

One Team member commented that 'at present the participants know they will not get sanctioned or terminated if it is not a major crime, so they can get away with minor crimes, such as shoplifting'. This same Team member argued that the objects of the Act, to reduce dependence and reduce criminal activity (section 3), should be referred to when considering termination. 'This means that useful purpose should be determined as of *today*, not whether some useful purpose might be served in the future. The risk to the community is too great; they have had their chance and must be terminated.' The Team member suggested that the onus should be on the participant to prove why they should stay on the Program. Several other Team members commented that they did not believe that the community would condone participants committing further serious offences remaining on the Program.

One Team member was of the opinion that if participants commit a break, enter and steal or similar offence then they should be terminated, as the Court should be protecting the community from such crimes. Another Team member commented that the Court was starting to conduct termination arguments for people who commit offences such as break, enter and steal, stolen motor vehicle, and receiving stolen goods. There need to be legislative changes

in which it is made clear that if participants commit these listed offences they are to be terminated, except if there are exceptional circumstances for them not to be terminated. Another Team member was of the opinion that in 'the second reading speech of the minister introducing the bill it was implied that there was no intention to keep participants on if they commit offences such as break, enter and steal. There really needs to be a schedule of offences'.

Some suggested amendments to the wording of section 10(1)(b) have been proposed. One Team member's suggestion is: 'the likely benefits of any useful purpose are outweighed by risks to the offender or harm to the community'. The amendment of section 10 (1) (b) as suggested in the NSW Drug Court's report (NSW Drug Court 2000a, point 12.24) is:

'if it [the Court] is also satisfied that there is no useful purpose to be served in the drug offender's further participation in the program, or that, for another compelling reason, it is no longer appropriate for the drug offender to further participate in the program, may decide to terminate the program.'

Most Team members considered that continued drug use was not sufficient reason to terminate someone's program.

Treatment providers' view of the 'no useful purpose argument'

A couple of treatment providers were of the opinion that there have been some participants terminated when they did not believe they should have been, and vice versa. At times, 'when a participant is terminated without us knowing and we do not get to finish discussing an issue, it can be a problem, particularly if it is a personal issue, as it is unlikely to be followed up in gaol', according to one treatment provider.

Some treatment providers felt that the Court was more inclined to take the advice of the Probation and Parole Service in deciding whether to terminate or not. They felt that the Drug Court Team members saw health as 'a soft touch', always recommending that people be retained on the Program. However they defended these criticisms by pointing to the time that is required for participants with major problems to make significant changes.

Several treatment providers commented that many of the Drug Court participants had no previous treatment experiences, but were better informed about services once they had been on the Program. Some participants have returned to treatment after being terminated or graduating.

One residential program coordinator commented that recently the Court has been leaving the treatment providers to make the final decisions about terminations. He expressed the view that the Court should take the initiative rather than telling the participant that it was the treatment provider's decision. 'It sets us up when the participants are not the nicest people. People are less likely to come back here, to a known treatment, if they know we have thrown them off.'

Another treatment provider commented that they 'could not look after people if they were behaving badly. If they were not Drug Court participants we would have kicked them off. The Court can send them to another AHS if they do not like what we do'.

7.2.2 Graduation

Criteria for graduation

At the time the interviews were conducted, graduations under section 11(b) of the Drug Court Act had not commenced, but were being discussed. Several of the interviewees were concerned about the issue of some long-term participants being unlikely to meet the criteria for graduation.

One Team member described the situation as follows: 'Some participants are as good as they are going to get and are unlikely to progress further. They are basically stable (may be using drugs intermittently) and have been on a program a long time (more than a year) but the bar has been set very high. Occasional relapses are stopping them from graduating. Someone with a ten-week sentence who has been on the Program since the start, should be graduated.'

Another Team member commented that 'progress is the major issue: most participants progress to a level of drug use that is lower than at the start of their program. Those who have been in Phase 1 for 12 or 18 months cannot be kept on forever'.

Treatment providers argue that the graduation criteria are too onerous, and this has contributed to the low number of graduates. One treatment provider commented that: 'it takes time, they have relapses, long histories (of drug use and criminal behaviour), a history of trauma in many cases. It takes a long time to get their trust. The Drug Court doesn't allow that (the time) because of the structured process. It is too short a program for lots of them. Some are in Phase 1 for months; there has been progress, for example engaging in counselling and reducing their drug use, but not measurable progress (in terms of Drug Court criteria)'. The treatment providers welcomed the new system of terminating people under section 11 (b) of the Act.

One case manager was concerned that some serious offenders were being sentenced 'to no further penalty' after being terminated after a long stay on the Program and little progress.

One Drug Court Team member commented that graduates were usually 'sentenced to a (good behaviour) bond of about one year, despite them having a huge variation in their original offences'.

7.2.3 After graduation

An issue that has arisen recently is 'failure after graduation'. One Team member described two graduates who had relapsed into drug use, one of whom was in custody. 'One had relapsed into drug use three to four months after graduation, after doing really well. His partner came to Court to ask for help so he could be more closely supervised on his bond. Then he got arrested'. The Team member said that the Team had expected graduates 'to last the time of their bonds' and they were uncertain what their continuing role should be. Another Team member's comments about this dilemma were that 'if they breach their bond then a decision has to be made regarding their punishment. The Drug Court cannot supervise people indefinitely, however tempting, so the normal sentencing powers would be used'. Those who re-offend after graduation will be dealt with by the courts.

Probation and Parole case managers reported that graduates are referred back to the Court if they are using drugs, as using is a breach of their good behaviour bond. They also questioned 'whether the Court had a continuing role' with these people. Probation and Parole have tried a number of approaches to sustain support after graduation. They reported setting up a graduate program, for which they found little interest among the graduates, many of whom had relapsed into drug use. Another case manager reported trying 'to create a buddy system with graduates and a new person to increase their responsibility and contact'.

Most treatment providers reported offering continuing contact or treatment with their service after graduation. One treatment provider reported having continuing contact with graduates, many of whom were working and maintaining the changes they made on the Program. Some still need assistance. Another treatment provider reported that graduates were often keen to be reduced off their methadone program as soon as possible after graduation. The treatment provider warns graduates that 'all support systems are gone and there may be problems if they come off too fast. I encourage them to do one thing at a time'.

Another treatment provider thought it was unethical and harmful to the participants to provide so many resources and support when they are on a Drug Court Program, then suddenly take it all away. The treatment provider reported that 'some fall apart when they leave and there is a sudden withdrawal of services'. The treatment provider urged that this issue be addressed as part of the evaluation of the Drug Court. Another thought this was less of an issue because the relationships with the Court, case managers, and treatment providers had wound down by the end of the Program.

Probation and Parole case managers suggested establishing a Phase 4, for those who are close to graduating whereby 'they can have as much or as little contact as they want'. They expressed serious concerns about the graduates. One commented that 'we spend so much time getting them into a routine... once the supervision stops they cannot maintain the changes; once they are off the program, we have no powers of persuasion'. They thought that reporting once a month to a new Probation and Parole officer was insufficient supervision after graduation.

8. NSW DRUG COURT TEAM

8.1 STRUCTURE OF DRUG COURT TEAM

A brief description of the role of each Drug Court Team member will be provided here. These descriptions have been based on those outlined in the *Drug Court of New South Wales Review Committee* report and interviews conducted as part of this project.

The approach adopted by the Drug Court in NSW is consistent with the key components of the drug courts in the US. The NSW Drug Court Team has been established with representatives from the criminal justice system and the health professions.

The Drug Court Team consists of the Senior Judge, the Senior Judge's associate, and the Registrar, prosecutors (from the Office of the Director of Public Prosecutions), solicitors (Legal Aid Commission), an Inspector of Police (NSW Police Service), a Nurse Manager (CHS) and a Probation and Parole Coordinator (Department of Corrective Services).

While the NSW Drug Court has been in operation, the Team has increased in size but not in composition.

8.1.1 Judicial officers

Pursuant to section 20 of the Drug Court Act, two judges were appointed to the NSW Drug Court, each judge also being a judge of the District Court of NSW. Judge Gay Murrell S.C. was appointed Senior Judge in September 1998, and Judge Neil Milson as Acting Senior Judge during any absence from duty of the Senior Judge. In practice one judge sits on the Drug Court bench each sitting day.

For the first two years of the Court, Judge Milson sat as Drug Court Judge regularly two days per month and when Judge Murrell was away. Judge Milson also attended policy and Team meetings whenever possible as a way of getting to know the people and processes involved.

In January 2001, Judge Murrell took leave from the Drug Court to return to the District Court for a six month period. Judge Milson was Acting Senior Judge sitting in Judge Murrell's place, with Judge Barnett sitting in Judge Milson's absence.

The Court is constituted by a judge having the jurisdiction of and exercises the functions of both the District Court and the Local Court (Drug Court Act s. 23-24). The judge is responsible for initial sentencing, final sentencing, termination of programs, the conferral of rewards, and the imposition of sanctions (NSW Drug Court 1999a). The Senior Judge is also responsible for policy development for the Court leading the Drug Court Team.

8.1.2 Judge's associate

The Senior Judge has an associate who fulfils the traditional role of the District Court Judge's associate, plus a number of other functions. The Senior Judge's associate is part of the Drug Court Team (NSW Drug Court 1999g).

When the Court first started, the associate attended Team meetings, performing the secretariat duties for the Team. Other duties included undertaking planning and policy work for the Drug Court, attending policy meetings, and attending to the many media enquiries that came to the Judge. The associate also organised speeches and articles for the Judge, and planned and organised the itineraries of visitors to the Court. However, many of these duties decreased over time as roles became more clearly defined, with much of this work ceasing by mid 2000.

While the Senior Judge is in Court, the associate liaises between the Court and the Registry. A system was devised to communicate quickly between the two using email. The Registry staff emails the associate regarding such information as the results of instant urine tests, participants who ring to say they will be late arriving at the Court, and when the Department of Corrective Services truck to transport offenders is late. The associate emails requesting files, and regarding such information as participants being sent into custody, the preparation of warrants, or variation of undertakings. All four staff in the Registry receive copies of the emails from the associate and can act on them instantly on the associate's authority, rather than waiting to view the Judge's signature.

The associate also records any actions or orders on the files and court lists, and prepares the exhibit sheet.

The second judge has no such support and is required to complete much of his own paperwork. However at times the Senior Judge's associate assists the second judge in Court.

8.1.3 Court officers

A registrar and other such officers as are necessary for the proper administration of the Act are appointed under section 28 of the Drug Court Act. A number of officers have held the position of Drug Court Registrar since the Court and the registrar position were created. The position of Deputy Registrar was created in mid 1999. The Registry staff support and service the Court.

The Registrar is a member of the Drug Court Team. The Registrar's major duties are described as follows:

- dealing with enquiries from other courts to the Drug Court regarding eligibility;
- conducting initial eligibility assessments over the telephone;
- listing of matters in Court (previously any Team member could set a matter down for listing);
- record keeping;
- documentation of Court results, summaries for Court;
- co-developing the new Drug Court database;
- reviewing of Drug Court processes to improve efficiency;
- facilitating access between the treatment and case managers and the Court;
- managing the budget, paying accounts, and ordering stores;
- meeting with the Judge regarding administration, accommodation, and information technology system; and
- organising conferences as required.

The Registrar has coordinating role, allowing members of the Team to focus on their specific tasks. The Registrar is also responsible for fine enforcement. This function was able to be undertaken effectively following recent access to the appropriate computer system. Early on, fines were given verbally in court for finalised or for victims' compensation matters but were never enforced.

In the early stages of the Drug Court's operations, the Registrar attended Team meetings and sat in Court. However, since early 2000, the Judge's associate has been recording the results of each case discussed in Court while the Registrar attends to other duties. When the Judge's associate is not available, the registry staff fulfil his role in Court.

The current Registrar has also more recently assumed responsibility for coordinating the collection of urine samples for testing, ensuring that they are supervised adequately, and organising collection points for participants with work commitments.

Registry staff photocopy the relevant court papers and provide copies to the relevant Team members. Since late 2000 the registry staff have been maintaining the files on each participant. Each day approximately 50 files are taken into court.

The Court has employed two nursing staff who supervise the collection of urines.

8.1.4 Prosecutors (Office of the Director of Public Prosecutions)

There are two solicitors from the Office of the Director of Public Prosecutions attached to the Drug Court. The first has been with the Court since it commenced operation in February 1999, the second since May 1999.

The role performed by these solicitors is the traditional role of a prosecutor. 'This involved preparing factual material to the Court, negotiating pleas and the appropriate charges, arguing questions of law, and making submissions on legal and factual matters.' (NSW Drug Court 2000a, point 4.3). There are some additional aspects of their role that are peculiar to the Drug Court including:

'ascertaining whether an offence is one involving "violent conduct", investigating and assessing the "antecedent" of a potential participant to ascertain if there is a history of violence or violent conduct', 'arranging for outstanding matters involving the participant to be called into the Court'. (NSW Drug Court 2000a, point 4.3)

While an offender is on a program, the prosecutors becomes part of the Team performing a monitoring role, representing the community's interests in ensuring that a balance is struck between opportunities for rehabilitation and continued drug use and offending. The prosecutors resume their more traditional adversarial role when termination of a participant is being considered (NSW Drug Court 2000a, points 4.4 and 4.5).

The workload is shared between the two prosecution solicitors. Generally both solicitors attend Team meetings, but attend alternate Court sessions while the other prepares upcoming matters and attends to administrative tasks (NSW Drug Court 2000a, point 4.6).

8.1.5 Legal Aid solicitors

Solicitors from the Legal Aid Commission are available to act in the role of defence lawyer for all offenders referred to the Drug Court. No means or merit test is applied. The three Legal Aid solicitors attached to the Court represent the overwhelming majority of Drug Court participants (NSW Drug Court 2000a, points 6.2 and 6.3).

Legal Aid solicitors act for people before the Drug Court on their initial referral, on all legal arguments before the Court, at initial (suspended) sentence proceedings, at any other sentence proceedings, at any proceedings related to the proposed termination of a participant's program, and at the final sentence proceedings upon graduation or termination from the Program.

Legal Aid solicitors do not normally act for participants at the weekly 'report-back' sessions, but are available to give advice. The Legal Aid solicitors are part of the Drug Court Team. At least one attends every Team meeting, participates in discussions about appropriate rewards and sanctions, and keeps a record of discussions and conclusions (NSW Drug Court 2000a, point 6.4).

8.1.6 Police Inspector

In October 1998, the NSW Police Service created a temporary position for a Police Inspector, who is to be accountable to the Drug Court and a member of the Drug Court Team. The present incumbent has been in the position since the Court commenced operation, and is now one of the longest serving members of the Team.

The main duties of the Police Inspector are: to provide information regarding criminal records, prior offences and outstanding charges to the Court; provide information from operational police about participants to the Court; assist in the preparation of matters; provide information to the criminal records unit about the results of matters dealt with in Court; issue, recall and organise execution of warrants; liaise between participants, treatment providers, case managers, and Police Officers; and participate in Team meetings (NSW Drug Court 2000a, point 5.4).

The Police Inspector described his role as being an information conduit from the Police Service to the Court about such issues as participants' charges, fresh referrals, and information from police 'intelligence reports' on the conduct of the participants once they are on the program. The Police Inspector feeds information back to the police from the Court on such matters as any dealings or contact with police on outstanding charges, any outstanding warrants, and domestic violence issues. He interviews participants about other offences and organises warrants from the Drug Court with the Warrant Index Unit.

8.1.7 Probation and Parole coordinator

Two Probation and Parole coordinators are members of the Drug Court Team. Their primary role is to coordinate the case managers, who are responsible for the day to day management of Drug Court participants, and liaise between case managers, the Court and other agencies.

One of the coordinators is located at the Court. The responsibilities of this position are to represent case managers at Drug Court Team meetings, present weekly progress reports and other information to the Drug Court Team, assist participants at Court with any problems, feed information back to case managers about participants' progress and directions or requests made by the Court, and provide professional support to the case managers (NSW Drug Court 2000a, point 7.10).

The second coordinator is located at the Parramatta district office of the Probation and Parole Service. The responsibilities of this position are the management and administration of and provision of professional support to case managers, liaising with TAFE regarding education programs, and liaising with other government departments such as Centrelink (NSW Drug Court 2000a, point 7.11).

When the Drug Court first commenced operation there was one coordinator position. The coordinator in the position at the time quickly became overloaded with work and the second position, as described above, was created. The present incumbents have been in their positions permanently since November 2000.

8.1.8 Corrections Health Service (Nurse Manager)

One of the roles of the CHS is to provide an experienced Nurse Manager as health coordinator on the Drug Court Team, to advise the Drug Court, coordinate the assessment, treatment, and continuous monitoring of participants' progress in drug treatment (NSW Drug Court 1999a).

The present incumbent has been in the position since January 2000. Much of the Nurse Manager's role involves coordinating between CHS staff and treatment providers. For example, the Nurse Manager coordinates the participants' appointments at the Court with the CHS psychiatrist, discusses and reports on treatment progress and problems with the participants and their treatment providers. The Nurse Manager advises the Court on drug issues and reviews and organises changes of treatment. The Nurse Manager also gets lists of the participants in the prisons each morning and passes this information on to the Court and the treatment providers.

8.1.9 Team meetings

Generally, on each day that the Drug Court sits to consider the progress of participants or the possible termination of a participant's program, a Drug Court Team meeting will precede the sitting. At the meeting the Drug Court Team will discuss each of the cases listed for that day (NSW Drug Court 1999g). Interested persons such as treatment providers and case managers may attend in addition to Drug Court Team members, but the offender is generally not present.

At Drug Court Team meetings, the Drug Court Team will discuss matters relating to the special functions conferred on the Drug Court, including:

- '1) whether an offender appears to be eligible [to participate on the Program]
- 2) treatment plans (implementation and variation)
- 3) other conditions of Drug Court programs
- 4) appropriate rewards and/or sanctions
- 5) prison accommodation arrangements
- 6) logistical matters e.g. the need to call in outstanding charges and the status of matters before the Parole Board of New South Wales

The purpose of the Drug Court team meeting discussing a case listed on the day of the meeting is to reach consensus where possible and to identify any contentious issues.' (NSW Drug Court 1999g, point 3.6 and 3.7).

Each Team member has a role in the meetings. The meetings are chaired by the Drug Court Judge who is presiding in the Drug Court on that day. The Nurse Manager informs the meeting about drug dependency, treatment, and (CHS) prison accommodation matters; the Probation and Parole coordinator informs the meeting about other Drug Court program matters; the prosecutors and Inspector of Police inform the Court about offence matters; and the Registrar informs the meeting about urinalysis results.

Team meetings are currently held before Court on Tuesdays, Wednesdays and Thursdays. The Drug Court Team also has policy meetings on Fridays to facilitate the formulation of policies and procedures. The Drug Court Team may also hold meetings on Fridays with participants and/or their families to discuss particular issues.

8.2 INTERVIEWEES' OPINIONS

Each interviewee made comments about their roles within the Drug Court Team. The major points from the comments are outlined in this section.

8.2.1 Court officers

The Registrar of the Drug Court commented that, unlike the Registrar of other courts, the Drug Court Registrar has no power to adjourn matters or continue bail in the event that one or both Drug Court Judges were unable to convene court on a particular day. This was viewed as an issue needing emendation.

8.2.2 Prosecutors (Office of the Director of Public Prosecutions)

One of the prosecutors interviewed as part of this study commented that the major difference between their role at the Drug Court and a normal prosecutor's role is that it is less adversarial. All offenders must plead guilty to be admitted onto the Program so there are no hearings in the Drug Court. The prosecuting solicitors saw their major role as protecting the community, and ensuring that the participants are behaving on the Program. One even volunteered to supervise urine collection at the time when the Court had no other adequate options.

One prosecutor said that in order to engage in the Drug Court process, the prosecutors have had to relinquish many of the normal duties of a prosecutor. If they objected in Court as they would normally, the Court would cease to be functional.

A prosecutor commented that their roles have changed and the workload reduced somewhat as fewer new people have been starting on the Program. The prosecutors are now more involved in monitoring the progress of participants than in preparing fresh matters.

8.2.3 Legal Aid solicitors

Legal Aid solicitors interviewed reported that one of their most important roles is keeping records of what happens in Court. Because of the number of people on the Program and the number of issues that arise, recording of discussions and decisions is essential so nothing is forgotten. For example, Legal Aid solicitors monitor participants' progress so they can raise the issue in Team meetings of rewards being due.

Interviews undertaken as part of this study reveal that there had been a number of changes in Legal Aid staff since the Court commenced operation. Interviewees suggested that this staff turnover occurred because of the long work hours required at the start, and the inadequate working conditions, such as overcrowded offices and lack of space to conduct private interviews with their clients. An industrial dispute eventually arose over the Legal Aid solicitors' conditions, which resulted in new accommodation being found.

One solicitor was of the opinion that some Legal Aid solicitors were unable to 'let go of the adversarial model'. They considered that working in a team, as required at the Drug Court, did not suit all solicitors, and that everyone in these positions needed good interpersonal skills. In addition, being a Legal Aid solicitor in the Drug Court did not require a great deal of legal knowledge as there is little legal argument. Another interviewee was of the opinion that the different role had its own rewards.

Staff resignations have meant that temporary private and locum solicitors were employed in the Legal Aid positions. This has restricted the solicitors' ability to undertake tasks such as following-up participants when they are in prison.

Legal Aid solicitors interviewed considered that there is an ethical issue surrounding their role as members of the Drug Court Team and as advocates for individual client participants. Solicitors act for the clients when they are entering the Program, and will act for them again in 'termination arguments'. However, while they are on the Program, Legal Aid solicitors act as part of the Team and, among other issues, contribute to discussions regarding sanctions.

One solicitor interviewed felt particularly vulnerable about this conflict. The interviewee explained that the alternatives to this model were to be silent, not attend Team meetings, or fight over everything. In the early stages of the Court, Legal Aid solicitors were of the view that they represented their clients at every stage of their program. However this made it difficult to be part of the Team as they were arguing over every issue. So in September 1999, the model was changed so that the Legal Aid solicitors cease to act for their clients in 'report-back' sessions, but become part of the Team. The solicitors explain to the client before they start on their program what to expect, so by accepting the program conditions they are accepting the role Legal Aid will play. One of the other solicitors is of the opinion that this ethical issue is less of an issue in practice. If the participants are doing well then there is no Team discussion regarding sanctions. If they are performing badly then they are struggling with their addiction, not the ethical dilemmas of Legal Aid.

8.2.4 Police Inspector

The Police Inspector reported that he was attracted to the job as he liked the idea of being involved in the development of something new and having an input into how the Court operates. He had previously worked as a police prosecutor and thought 'that if we take out the drug offenders it would reduce all courts' workloads'. He, like other members of the Team, has undertaken a number of non-police tasks as a member of the Drug Court Team.

8.2.5 Probation and Parole coordinator

The court-based coordinator reported that the Probation and Parole coordinator's major role was communicating between the Court and the case managers. There are now ten case managers, based in various Probation and Parole offices throughout Greater Western Sydney, who report and are supervised by the coordinator. Until recently most of this management was conducted by telephone. Case managers would ring in the morning before court to update the coordinator about those participants who were reporting that day. The coordinator then sits in Court with the other Team members and reports this information to the Court as required. At the end of court each day the coordinator would ring each case manager to provide them with the details of what happened to their clients in court. In the last few months the outcomes have been communicated to the case managers by fax, and only urgent information is being phoned through at the end of the day.

8.2.6 Corrections Health Service (Nurse Manager)

The Nurse Manager commented that 'lots of the participants choose to talk to me as I am known to them, especially if they have spent lots of time in gaol'. Some ask the Nurse Manager to 'admit' to the Judge that they have been using drugs as they find it difficult. The Nurse Manger enjoys the face-to-face contact with the participants.

8.2.7 Changes in Drug Court staff

Most Team members commented during their interviews about the evolution of a Team dynamic over the first year of the Drug Court. The Team tried different ways of doing things, and developed policies largely by trial and error. Team members who were not suited to this style of working and 'were not team players' had left quickly. Those who remained or joined the Team subsequently became more experienced and confident as time went on, to the point that all considered that the Team was working well by the Court's second year of operation. All Team members were very 'involved', and 'were interested in promoting the Court' and 'making a difference'. One described it as 'frustrating to work here, but it has moments of great job satisfaction as well'.

One Drug Court Team member was of the view that 'the Court was under an obligation to establish structures to reduce burnout of staff members who are working in a difficult area'.

With the large numbers of Team members being replaced in early 2001 the potential for changes was identified. The need to recruit replacements who had a 'similar ethos' and to provide comprehensive background material to facilitate the assimilation of new members was mentioned by several. Discussions with Drug Court staff in 2001 have indicated that no major changes have occurred since the new Team members commenced.

9. TREATMENT AND SUPERVISION SERVICES

9.1 PROCESSES

A description of the roles of the three major organisations forming integral parts of each participant's Drug Court program, but not members of the Drug Court Team as defined in the Drug Court policies, will be presented in this section. Information describing the role of CHS Detoxification Unit staff and Probation and Parole case managers has been extracted from the *Drug Court of New South Wales Review Committee* report and interviews, while information on the treatment providers' roles has been extracted from the interviews only.

9.1.1 Corrections Health Service (Detoxification Unit)

The CHS is responsible for the provision of health services to the Drug Court in four areas, according to the Drug Court's *Review of Drug Court Procedure*. The initial assessments of potential Drug Court participants were originally conducted overnight at the Detoxification Units at the prisons. Now assessments are conducted at the Court by the Nurse Manager, who also provides the health coordinator role to the Drug Court Team. Participants are only sent to the Detoxification Unit following the preliminary assessment if there is a high probability that they will be accepted onto the Drug Court Program. Staff at the Detoxification Unit undertake the detoxification, stabilisation and development of treatment plans for Drug Court participants, and provide health services to participants on sanctions, including treatment reviews.

As previously mentioned, two Detoxification Units were established for Drug Court participants; one at the MRRC (for men), and one at the Mulawa Correctional Centre (for women). One of the Detoxification Unit nursing staff described the layout of the MRRC Detoxification Unit. The MRRC Unit consists of eight safe cell beds (four for Drug Court participants and four for others needing supervision) and, opposite these, nine other beds for Drug Court participants only. Staffing in the Unit consists of two nurses during the day (but often only one in practice) and one at night. Two doctors are also on staff, one of whom works part-time for CHS and part-time in the Detoxification Unit. A Corrective Services officer is in charge of the Unit's security at all times. He generally assigns the same security staff to the Unit so they get to know how the Unit works. Organisational problems experienced at the start of the program have now largely been addressed.

A CHS staff member based at Mulawa described the set-up of the Mulawa Detoxification Unit built in 1997/98. Mulawa has an Induction Unit where all offenders (Drug Court and non Drug Court) are sent when they first come into Mulawa. In this Unit prisoners are 'received', given a health assessment, assessed for alcohol and other drug use, and remain for up to two weeks. A Drug Court Unit has been established within this Induction Unit so Drug Court participants can be kept separated from other inmates. The Drug Court unit consists of four cells, two of which are monitored by cameras, and a small common area with a television, a table, chairs and some kitchen facilities. There is no free-access outside area, so the women may only be allowed outside under supervision for very short periods. The cells are often occupied by two Drug Court participants. This unit has a high staff to prisoner ratio, which helps with the assessments and monitoring; the security staff are generally assigned to this unit so they are familiar with the procedures. Staff from the MRRC Detoxification Unit are responsible for the Drug Court participants' assessments and treatment reviews; they come across from the MRRC when necessary. The CHS staff based at Mulawa have no direct responsibility for Drug Court participants, but look after their general medical needs and prescribe medications, including methadone.

From early 2001, male Drug Court participants have also been sent to the Parramatta Sanction Unit to serve their sanctions. This is a dedicated section of Parramatta Gaol where they are

kept separated from other prisoners but receive no treatment. It was established because of the need for additional dedicated beds for Drug Court participants on custodial sanctions. It has around 15 beds with usually seven or eight Drug Court participants occupying it at any one time. Having all male participants serving sanctions in the unit at Parramatta reduces the number of transfers to and from other gaols and the difficulties in determining where Drug Court participants were being held when serving their sanctions. Participants can now be more easily transferred to the MRRRC Detoxification Unit if they need a treatment review or a review by the psychiatrist.

One of the CHS psychiatrists based at the MRRRC has become heavily involved with the assessment and management of Drug Court participants. This psychiatrist started seeing Drug Court participants on an ongoing basis in order to manage their conditions in the community as it became evident that there was a gap in service provision for these participants.

The psychiatrists at the MRRRC Unit also assess and report on potential participants' propensity for violence when the Court is undecided as to the danger an offender may pose to the community and therefore as to whether they should be accepted on to a Drug Court program.

9.1.2 Probation and Parole (case managers)

As outlined in the *NSW Drug Court Review Committee* report:

'The case manager is the person responsible for the day-to-day management of a Drug Court participant...The case manager is responsible for coordinating and directing a participant's progress from the commencement of the participant's program until the participant is reintegrated into the community and graduates from the Drug Court program.' (NSW Drug Court 2000a, point 7.2)

The types of tasks and duties required of a case manager include:

- Monitoring compliance with all aspects of the Drug Court program and taking swift action to address breaches or otherwise
- Monitoring the effects of treatment and reporting back to the Court and treatment provider vital information relating to home environment, family and social relationships, associates, employment and education, and other pertinent lifestyle issues
- Providing holistic case management in consultation with the treatment provider
- Providing a high degree of supervision, guidance and support to participants
- Assisting participants to attend appointments and other Drug Court commitments
- Providing transport to residential rehabilitation centres and assisting with the retrieval of property from correctional centres
- Assisting participants with budgeting issues
- Arranging emergency accommodation and other housing
- Providing support and assistance to participants' families and making appropriate referrals when required
- Undertaking pre-program home assessments in accordance with the Court's policy in relation to accommodation
- Referring participants to appropriate educational courses including the Pathways to Education, Employment and Training (PEET) program, which is conducted by the Probation and Parole Service in conjunction with TAFE.' (NSW Drug Court 2000a, point 7.5)

Currently there are ten case managers, based at Bankstown, Blacktown, Campbelltown, Parramatta and Penrith Probation and Parole offices, who manage Drug Court participants only. Case managers work in teams of two or three so as to support each other. Participants are assigned a case manager based closest to where they reside, and change their case manager if they move to another area.

One Probation and Parole staff member reported that case managers have a caseload of approximately fifteen, which is smaller than the normal Probation and Parole caseload of between 50 and 100 clients. One of the case managers, who commenced when the Drug Court first started, reported that there were three case managers at first covering a large geographical area each and a caseload of twenty or more. In mid-1999 more case managers were employed.

Both case managers reported that they spend a lot of time in their car and cover very large areas. One reported driving 3,000 kms per month. They return to their offices at the end of the day to send and receive faxes and support the other case managers.

The case managers describe their role as supervision, monitoring and applying 'the hard hand of the law. Our client is the community and we try to keep them safe. We try to reduce offending by working with the offender, their family, the Court and services. We make sure they are compliant and report to the Court.' They have to supervise community service orders, parole, treatment compliance, accommodation, and organise appointments and courses. Often they reported dealing with crises, at times after hours, and distressed families.

9.1.3 Treatment providers (Health)

The majority of Drug Court participants are receiving their drug treatment through two of the three AHSs in Greater Western Sydney.

Western Sydney AHS reported that at the time of the interview (early 2001) they had 67 Drug Court participants on their program, 53 of whom were on methadone, three on naltrexone, and ten on abstinence programs.¹ They also dispense methadone for another 400 non Drug Court clients. They have one nurse counsellor, a coordinator, a counsellor, and administrative person and a psychologist specifically employed with Drug Court participants only.

South Western Sydney AHS reported that at the time of the interview (early 2001) they had 48 Drug Court participants on their program, 32 of whom were on methadone, five on naltrexone, and eleven on abstinence programs. They have a coordinator, two counsellors, and two psychologists specifically employed with Drug Court participants only. Counselling staff travel to the community health centre nearest to where the participant resides for their counselling sessions.

Only small numbers of Drug Court participants have been referred to Wentworth AHS.

Medical practitioners based at the Drug and Alcohol Units prescribe medication for those on the programs.

Residential rehabilitation centres are funded on the basis of \$100.00 per client per bed night, and they invoice the NSW Health Department each month retrospectively based on the previous month's activity. The centres were directed to create new beds with the funding, so that the number of beds available for voluntary clients would not be reduced.

9.2 INTERVIEWEES' OPINIONS

Each interviewee made comments about their roles in relation to the Drug Court. The salient issues arising from the interviews are outlined in the following section. In addition, issues raised by various interviewees relating to communication with the Court and between service providers are discussed.

¹ Information missing for one participant.

9.2.1 Corrections Health Service (Detoxification Unit)

Corrections Health Service staff and Drug Court Team members reported that the Team became interested in the mental health issues of the Drug Court participants they were managing. A greater exchange of information between the CHS psychiatrist and the Team about mental health issues evolved via informal discussions, the provision of written reports, and Team meetings. Team members and CHS staff reported that a greater awareness and understanding of mental health issues and how they could be managed resulted from this exchange of information.

9.2.2 Probation and Parole (case managers)

One of the case managers commented: 'The work is different from normal Probation and Parole work, as the intensity is greater. Normally we supervise people for (offences such as) driving without a licence, and we have to do little with them. We move up the offence scale with the Drug Court clientele, so it is more intensive.' Both also commented that it took time to define their role as they were receiving one set of directions from the Court and another from the Probation and Parole Service. They said that although they had worked with Courts before they had never worked so closely with eight different professionals. 'It is very hands-on.'

9.2.3 Treatment Providers (Health)

Treatment issues

Early on, the Court was reportedly directing issues such as dosage levels and the granting of take-away doses. Treatment providers advised that these were clinical issues and the responsibility of a medical practitioner.

Participants at residential treatment programs, such as Westmount, tended to be more involved with their treatment program than the Drug Court Program. The Court has allowed the residential programs to largely determine their own program and activities. Those participants commented that they would not have 'succeeded' if they had been on a 'home program' as there was too much opportunity for 'roting'.

One AHS treatment provider commented that participants who are on methadone when they are released from the Detoxification Unit will continue to increase their dose if they are released on a low dose.

Administrative issues

The reporting requirements of the Drug Court meant that new and more labour-intensive reporting systems had to be established. This was particularly onerous for the AHSs who had the larger numbers of participants. They had to start recording and reporting on information which they never had previously.

One treatment provider at an AHS commented that the Drug Court participants are more time-consuming for dispensing medication and urine testing than for their normal clientele.

Funding issues

Most treatment providers commented that the additional funding they had received for Drug Court participants was welcomed. As one commented, 'the Drug Court has been well funded so it has not drained resources, except when it comes to finding trained staff. Everyone is getting short of trained people. So less experienced people are going into senior clinical management'.

The Court has commented that they would like more input into the funding of the treatment services used for the Drug Court.

The structure of the Court

A number of treatment providers expressed the opinion that they as community treatment providers should have had their own representative on the Drug Court Team. They were dissatisfied by being represented by CHS who were seen to have different issues and concerns from those providing treatment in the community. Some suggested there should have been a medical practitioner from the community on the Team.

The Court was seen as having been very directive in the early days and taking insufficient notice of the extensive medical and treatment experience in the community. They are still seen by some as 'too removed'. Some treatment providers commented that no one from the Court had ever been to visit many of the treatment centres, so it is hard for them to know what is the impact of their decisions.

Another suggested that there was insufficient guidance from the NSW Health Department, and that 'the doctors and nurses had to wage the battles when it should have been the policy people. Health was not interested until it became a problem'.

Others interviewed suggested that the structure of the Drug Court did not encourage a genuine 'team' approach. One treatment provider commented that 'there needs to be a way to ensure that no individuals can jeopardise the Program. There needed to be more of a team approach.'

Most of the earlier problems have been resolved over time with changes of staff and the establishment of clinical groups to facilitate the exchange of information. A number of treatment providers commented that the 'Court has changed over time – it is more flexible, more understanding. Everyone is more flexible as it didn't work before'.

9.2.4 Communication issues

Reporting to the Court and confidentiality

The requirement that treatment providers report any drug usage and missed appointments to the Drug Court has been a contentious issue since the Court started. In recent times methadone treatment providers have neither been regularly testing for drug use nor punishing usage of drugs in their non Drug Court clients. Usage is used as a starting point to review treatment and direct counselling and other interventions, under the philosophy of harm minimisation.

Most treatment providers reported difficulties with the reporting requirements. One treatment provider described the situation with Drug Court participants: 'We say we will tell the Court about drug use, so this limits what they tell us.' Another commented that 'there is difficulty in eliciting the truth about use when there are consequences; it makes confidentiality a problem'. Most say that over time they have learnt to manage the confidentiality issue; and the issues they are required to tell the Court are reported.

Other issues are not required to be reported so they are dealt with confidentially by the counsellors. One treatment provider commented that 'they tell the Court about other issues that come up in counselling if it is relevant to what is happening in Court. For example, if they missed appointments because of a traumatic event we tell the Court'. Another commented: 'The Court has a right to know about client progress and childhood backgrounds of child abuse. The policy is that if it is affecting the program today then the court needs to know about it. We tell the participants that we will tell the Court.'

Some Drug Court Team members reported that some treatment staff were more reluctant than others to report issues to the Court. One commented that the counsellors do not necessarily 'have the whole picture and sometimes by not telling us they allow a relapse to continue longer than it should'. Another said that 'they (psychologists) have a duty to the Court rather than to treatment'.

Most Team members commented that this issue had been largely resolved: 'treatment has come into line'. One commented that 'there are no major problems with treatment providers at present. Communication is good. Some of the early problems were caused by treatment providers not being involved with the setting up of the Court. Overseas drug courts have experienced similar problems with treatment providers, which have resolved over time'.

Communication between Probation and Parole, and treatment providers

Probation and Parole case managers commented that 'we have always worked with the AHSs but there are more problems with the Drug Court arrangements. Now we are told that we cannot interfere with treatment. They say that it is a health issue. This means we have to question our role as we used to have an input into treatment issues'.

Treatment providers reported that there had been disagreements in the approach of the two groups. One treatment provider reported telling participants that 'Probation and Parole have more of a policing role and that sensitive issues are best not told to them. Clients get confused as we (counsellors) have confidentiality over general issues and they do not'. Another treatment provider suggested that Probation and Parole often 'do the crisis management, but not counselling or therapy'.

Both treatment and Probation and Parole reported often being the first contact when crises occur. Participants suggested that they contacted whoever they had the best relationship with.

Both treatment and Probation and Parole reported that most of the communication and role definition problems had been resolved and that they were generally working together and communicating regularly in the best interests of their clients.

10. ADMINISTRATION OF THE DRUG COURT

The following section outlines the administrative structures and procedures used by the Court, the related issues that have been experienced since the Court commenced, and steps taken to overcome the difficulties that have arisen.

10.1 TIMETABLE OF THE COURT'S ACTIVITIES

The Court sits full-time each Monday to Thursday. Each day that the Drug Court sits has specific activities timetabled. Since mid 2000, participants attend Court between 11.00 a.m. to 1.00 p.m. on Tuesdays, Wednesdays and Thursdays to report to the Court on their progress and activities over the period since their last 'report-back'. Between 2.00 p.m. and 4.00 p.m. on these days 'sentencing' and 'termination arguments' are conducted, and those participants who missed the morning session may report to the Court. Team meetings are also held between 9.30 a.m. and 11.00 a.m. on those three days.

On Mondays the Court sits between 10.00 a.m. and 4.00 p.m., with a break for lunch, to sentence offenders, hear termination arguments, and see the participants who have come to the Court to admit to drug use over the weekend. The Court does not sit on Fridays.

For a considerable period the Court sat Monday to Friday 10.00 a.m. to 4.00 p.m. every day. The lunch hour was taken up by Team meetings at which every participant's progress was discussed. Several Team members reported that the morning Court sessions were too long and expressed frustration that they had no break from the Court all day. They report that the new arrangements are preferable and allow them to manage their time better. Some suggested that the morale of the Team members improved with the changes in Court sitting times and meetings.

The Drug Court does not sit on public holidays but sits on working days when other courts are generally closed. One respondent commented that it was important for the Drug Court to sit at times such as around Christmas as these are times when many participants are particularly vulnerable and need the Court's support.

The Team attempted to establish a Night Court one day a fortnight from 5.00 p.m. in order to better accommodate those who were working. However, according to one Team member, the experiment did not work: participants did not arrive and Team members were too burnt out to continue the experiment. Day Court is now more flexible for those participants who are employed and have difficulty arriving at Court.

10.2 DRUG COURT COMPUTER SYSTEM

The NSW Drug Court's reviews of the Program have both identified issues surrounding their lack of a useful computer system. Both reports stated that 'a computer-based information system was established at the outset of the Drug Court. Little guidance could be given to those who designed and implemented this system because there was no experience that was relevant to such a Court' (NSW Drug Court 1999a, points 12.2 and 12.3; NSW Drug Court 2000a, points 10.2 and 10.3).

Team members interviewed as part of this project also expressed the Court's need for a better information handling system. At present they rely on paper files for the storage and retrieval of most of the information, rather than the current computer system. They commented that the Court has 'lots of information, and the physical collation and digestion of this information is labour-intensive and inefficient'. The current paper files extend meeting times as 'we are always looking for bits of paper'. It also was seen to restrict the number of participants the Court could deal with.

The Judicial Commission is currently developing a new Drug Court database with guidance from the Court. The Team hopes that this will largely eliminate the need for paper files. The Team has requested that the new database be able to accommodate such information as urine results (to allow for the easy identification of people who have 'failed to provide' or provided 'dirty' urine samples), reports from treatment providers and case managers who will have remote access, progress of participants on the program, and Court results.

10.3 FILES AND RECORDING OF COURT RESULTS

Court files were written-up and maintained by the prosecutors for the first 18 months of the Court's existence. These files contained information on each participant's progress, urine results, reports, and any directions and orders by the Court. The Registry also relied on the prosecutors' files. Since August 2000 the Registry has taken over this function and created a new filing system in which this information is kept. This change was partly prompted by the majority of Team members moving to separate premises.

The prosecutors have now established a card system and are responsible for keeping their own documents and information only. The prosecutor maintains a record of what happens each week in relation to each participant (NSW Drug Court 2000a). Legal Aid Solicitors have always had their own filing system on which they record information on each participant's 'report-back' session, sentencing, discussions and decisions in Team meetings, and court results.

Recently the prosecutors and Legal Aid solicitors have obtained some clerical support to assist with their administrative duties.

10.4 COMMUNICATION OF INFORMATION BY THE TEAM

Much of the work of the Drug Court revolves around the recording of information and communication of this information to others.

The Nurse Manager and Probation and Parole Coordinator spend much of their time communicating with CHS Detoxification Unit staff, case managers, and treatment providers. Each day the Nurse Manager receives faxed reports from the Detoxification Units recording the participants who are in the cells. This information is retyped and, along with a copy of the daily court list, is then passed on to treatment providers, and reported to the Team. The Nurse Manager also faxes to each AHS the results of each participant's 'report-backs' to the Court and receives weekly reports from the AHSs. The Probation and Parole Coordinator receives reports from each case manager and faxes the results of each 'report-back'. Prior to this arrangement the Coordinator rang each case manager after Court each day to communicate this information.

The Police Inspector, via the Criminal Records Unit of the NSW Police Service, has set up special reporting mechanisms for the Drug Court participants via the COPS system (the Police Inspector is the only member of the Team with access to the COPS system). All Drug Court participants have a 'warning' message that appears on their COPS screen whenever an inquiry about this person is made. This message tells the police to report all contacts with this person to the Drug Court and lists the Police Inspector's email, phone and fax numbers. It is easy then for police to report such contacts by sending a short memo or leaving an answering machine message. This information can then be checked in COPS and reported to the Team. The inspector spent a lot of time on the phone sorting out problems with participants who had been detained by the police, at times late at night. However, as general duties police have become more aware of the Drug Court's role, there have been fewer problems.

The way sentences for Drug Court participants were recorded also had to be changed on the COPS system so that police who came into contact with a Drug Court participant knew why they were not in gaol. Now COPS records 'convicted – sentence suspended for the duration of the Drug Court program', and the result of the program and the length of stay is readily available.

Solicitors from the Office of the Director of Public Prosecutions and the Legal Aid Commission have access to the databases belonging to their respective organisations.

10.5 DRUG COURT TEAM'S ACCOMMODATION

For the first 18 months of the Court's operation all members of the Drug Court Team, excluding the Judges and Judge's associate, were located in the Drug Court Registry. Around 12 staff used this small office space with the common toilet being used to supervise urine sample collection.

One of the advantages of these crowded conditions, as reported by many of the Team members, was that because they could overhear each other's conversations and they spoke to each other frequently, they knew what was happening with every participant. A strong team spirit evolved from this proximity.

The lack of privacy was a major disadvantage in other ways. Staff were unable to have private phone calls or conversations. The Legal Aid solicitors were particularly concerned that they were unable to conduct a private conversation with their clients and launched industrial action over the conditions. New more spacious accommodation was arranged directly across the road from the court complex.

Once this new accommodation was organised, half the Drug Court Team moved over there, leaving the Legal Aid solicitors and Nurse Manager to continue to work from the offices in the Registry. All the Team members interviewed at this time expressed concern that the team spirit had been disrupted and the functioning of the Team broken down by splitting the Team. Comments were made that communication had broken down which resulted in a more adversarial approach.

By late 2000 all Team members had moved to the new premises. Registry staff now occupy the Registry offices which have been refurbished. There are two offices that can be used by Team members for conducting interviews or using the computer. A reception and waiting area has been created so participants no longer have to wait outside the Registry. The nurse is seated in the reception area and security doors have been installed. One staff member commented that, since the reception area has been created with nice chairs and magazines provided, the participants have been better behaved and better dressed.

Although Team members recognised the need for improved accommodation, several commented that they liked being located in the Registry as they were able to 'keep an eye' on the participants better. They also reported that it is more difficult to work with the Registry staff and obtain and examine files when they are in a separate building.

11. OVERALL VIEWS OF THE DRUG COURT

11.1 WHAT IS THE PHILOSOPHY OF THE COURT?

The philosophy of the Court was discussed by a number of interviewees during the course of interviews undertaken as part of this project.

One Drug Court Team member described the philosophy of the Drug Court as ‘therapeutic jurisprudence. All its activities are intended to be therapeutic, including the sanctions.’

One CHS staff member described the concept of a ‘therapeutic frame’ as being created around a treatment, having rules, and being ‘containing’. The CHS staff member saw the Drug Court, including the treatment providers, legal service providers and other Team members, as having become such as ‘therapeutic entity or frame’. It is held in the same place, at the same time, and has rules. The Court is the ‘good parent’ and the Judge is the figurehead. ‘The Court, by being consistent and safe, rebuilds the participants’ “models” from their dysfunctional ones. It is like a family. Many participants say that the Court is the one room where they feel safe.’

The CHS staff member also expressed the view that the concept of ‘therapeutic jurisprudence’, as is exemplified in the Drug Court, has been academic until now. ‘Previously neither the health or the legal system provided effective interventions for these people. Now the two systems have been mixed and the identities of each have changed’. Each has reportedly started using each other’s terminology and sharing information.

One Team member argued that ‘behind the law of sentencing is the philosophy of harm minimisation. Others see this as the opposite of law enforcement, but the principal purpose of punishment is the protection of the community; imprisonment takes the offenders out of circulation and protects the community’. ‘The Court needs to be authoritarian within the therapeutic process; it becomes more supportive and less authoritarian as the participant progresses through the program phases.’

Some treatment providers were concerned about the Court’s notion of ‘therapeutic jurisprudence’. They commented that ‘there was not enough time at the inception of the Program to discuss with the Judge the difference between 12-step or abstinence model principles and harm minimisation approaches’. ‘Being “therapeutic” requires an understanding of therapy, its goal, principles and risks involved.’ ‘“Positive parenting” may enhance communication, improve self respect, and provide structure, but helping people change life patterns and alter their coping skills requires significant “helping” professional skills experience. At the same time the Judge is carrying out the due process of the law as promoted through the Drug Court Act; trying to do both is not a simple task.’ Another treatment provider expressed the opinion that the Court works within a zero tolerance model. This treatment provider was concerned that this model was unrealistic as ‘total abstinence is not immediately achievable’.

11.2 DOES THE DRUG COURT WORK AS AN ALTERNATIVE TO GAOL?

Nearly all Team members were very positive about the success of the Drug Court and were of the opinion that the Drug Court Program worked as an alternative to gaol. As one Team member commented ‘it has done what it was set up to do, that is, reduce criminal activity as a result of drug use’. Most have not re-offended and those using are using less now. However a small number qualified this success by saying that drug use and crime had reduced on the

Program but not ceased as was originally expected. Several mentioned the fact that the Drug Court was 'breaking the cycle' of people who have been coming back to the courts repeatedly. Team members who knew some of the participants from the court system reported being surprised that 'some have made great changes'.

Some also drew attention to the fact that imprisonment does little to help them with their problems. As one Team member mentioned, in the Drug Court Program 'there is a lot of support, counselling, Probation and Parole can organise anything for them, their partners can get access to services (not funded by the Drug Court) and issues with their children are examined. This is another way of trying to do something with these offenders; it won't necessarily fix the problem'.

Two Team members made similar comments that 'the Team needs to appreciate that we are not going to change the participants inherently; they are not going to become middle class. If we can have them unemployed, in public housing, not using or committing crime it is good'. However 'some have their first proper jobs in 18 years. Having a job improves their self-esteem'.

CHS staff also consider that the Drug Court Program 'works'. They describe improvements in those who come into the Detoxification Units with mental health disorders, and improvements in the appearances of those on the Program such as 'better skin, putting on weight, being with their kids rather than in gaol'. They 'report that they are doing less or no crime, and are proud of their achievements. Most still use some drugs; abstinence is hard as lots have difficulty stopping completely'.

One CHS staff member commented that 'the Drug Court identifies that lots of people have treatable conditions - this is the first really effective way of trying to integrate those with mental health and drug and alcohol problems. The fear is that if costs are cut and it is expanded to several courts that the therapeutic frame would be lost. Any analysis of costs must also look at breaking the cycle of generations as well as reducing recidivism'.

One Probation and Parole case manager commented that 'going to gaol is easier for many and they opt for gaol instead of the Drug Court. The Drug Court Program is hard. Some try to use the Drug Court Program to get out of gaol, but then find they get into the Program. Some never get into it'. Other interviewees also reported that a minority of participants use the Program to get out of gaol.

The case manager suggested that there was no comparison between the Drug Court and gaol because 'gaol doesn't address anything'. Another case manager considered that the Drug Court Program 'would pay off down the track'. The participants are 'learning more about themselves in counselling' and 'may learn something that doesn't make a difference until they apply it' (at a later stage). However, the second case manager was not positive about it: 'we are not seeing enough positive results given the resources going into it'.

Treatment providers at the two main AHSs providing services to the Drug Court were positive about the effects of the Drug Court. One interviewee reported that most participants had made significant life changes, although they may 'still be dysfunctional in the Court sense'. Another AHS treatment provider commented that 'it works as an alternative to gaol, but not universally. Many have done better on the Drug Court than if they had gone to gaol'. Another expressed the opinion that 'there is not one who has not reduced their drug use; reducing from five times per day to once or twice a week are the bad ones. They have stopped their crime, are more educated, are getting more access to TAFE, and some are working'.

The treatment providers at the third AHS were less positive about the Drug Court Program. One staff member commented that 'all have improved their health, tried new things, been in treatment, and use less while they are on the Drug Court'. Another staff member

commented that 'all the resources have been invested in a few people who are on the Drug Court, and everyone else has received nothing. It is a waste of money; the money could be used better. The Drug Court makes a difference to their drug use for a while but they will be unchanged in the long term'.

A staff member at a residential rehabilitation centre was of the opinion that 'the Drug Court has worked for some individuals but it is ineffective for larger numbers as it is too open to abuse by clients. It's an alternative for people who want it.' The coordinator of another residential rehabilitation centre was very positive about the Program commenting that 'the Drug Court is making a difference to most who are on the Program. The people who we get have got nowhere else to go and would get nothing if it weren't for the Drug Court. It is good for people who have done lots of gaol'.

A number of interviewees commented that they felt that the number of graduates and the results from the evaluation of the Drug Court Program did not reflect the Program's success. As one Team member commented 'there are other successes. There are around 60 per cent on the program who have never sought treatment before who have now been exposed to treatment in the community'. Another Team member commented that 'many go well for a while then blow it; but they will go into gaol and come out again and know where to go for treatment. They will eventually grow out of the lifestyle and we will see the benefits further down the track'.

Several interviewees expressed concerns that the Drug Court would not be shown to be cost-effective in the evaluations. Most thought there was 'value in spending the money', as one treatment provider commented.

11.3 FOR WHICH OFFENDERS DOES THE DRUG COURT 'WORK'?

Most interviewees acknowledged that the Drug Court Program did not work for all participants. A number of characteristics of participants were suggested by Team members as possible predictors of success.

Most Team members suggested that the older offenders with significant gaol histories were more successful on the Drug Court as they have 'decided they have had enough', as one Team member reported. He also commented that 'those who are doomed to failure are the younger ones who are not yet too uncomfortable with their lifestyle and have no desire to change. However, the Court had recently had three young men graduate'

Team members also suggested a number of other possible predictors of success. Motivation was also mentioned as a possible predictor. One Team member suggested that they have to 'decide to opt for sobriety rather than no self esteem'. Undiagnosed psychiatric problems were suggested as a predictor of not succeeding on the Program.

One Team member commented that 'participants generally do better if they have a partner or parents who are supportive, law abiding, and intelligent. Those with an alcoholic, unemployed family tend to do worse because the Program is then being undermined in non Drug Court hours'. A number of other Team members agreed with the need to have a stable and supportive living environment. Finding a drug treatment service that suited them was also suggested as a way of increasing the chance of successfully completing a program.

Several Team members considered that it was impossible to predict who would do well on the Program. One Team member commented that 'everyone who starts has as their initial motivation getting out of gaol. Some look as though they will do a runner from court and others don't, but you cannot pick who will run. Their initial motivation to come onto the program is not related to their success'.

11.4 WHAT ARE THE ASPECTS OF THE PROGRAM THAT MAKES IT 'WORK'?

Nearly all interviewees agreed that the major factor in the Drug Court Program's success with most participants is 'the level of structure and support provided'. The vast majority expressed the view that it was the unique combination of services and resources that contributed to its success, and that to remove any part may have unintended consequences.

Now that the initial problems had been resolved most were of the opinion that the Court operated under an interdisciplinary approach. As one CHS staff member commented 'it is the first effective, coordinated treatment with a new model of care; the two systems of health and law are working together not separately. The process generates respect, and there is continuity of care. It would be a disaster if the process was fragmented; the sense of belonging to the Court is needed'. As a Team member commented, 'without cooperation between agencies it would have failed'. Another treatment provider commented that 'the Drug Court has forced agencies to work together, not separately. In order to stop the manipulating we need to speak to each other, otherwise it splits people'.

One Team member emphasised the role of the Court in providing 'structure and support. This support includes the structures, sanctions, control provided through the treatment, the coordination of all aspects of the Program, the number of people watching them and who are available to turn to'.

One treatment provider commented that 'Probation and Parole, Health and the Drug Court all have a positive effect, as they are getting more than one area of support. Participants can't play us off. The support system is extended'. Several other interviewees referred to the 'intensity of the whole package' and the 'resources and time being put into them, feeling that someone cares about them' as being a major advantage. As another Team member commented, 'the methadone or psychiatric treatment helps them change and deal with their problems. Counselling alone is not enough, (as they are also) dealing with housing, and health problems. Strong medical and psychiatric backup is needed. It all, including the Court, forms part of the process'.

Several Team members and treatment providers commented that participants were getting a more positive view of the Court, Police Service and Probation and Parole. 'At first, Court is stressful but when they go every week it can be positive; the Judge listens, they get claps, and Legal Aid says they are doing well', commented one treatment provider. Another treatment provider commented that 'this is the first positive court experience the participants have had. They have never had a judge listen to them or talked to a prosecutor before. This means they view courts in a different way'.

A number of treatment providers commented that they had become aware of the benefits in having 'coerced treatment and counselling'. As a CHS staff member commented, 'most participants have never had treatment before'. One AHS treatment provider commented that the Program 'gives people the opportunity for intensive treatment and support, treatment that they would not normally have. They are more likely to engage in treatment because they have to go. At the start they will not engage, then they start to talk. So it works better than voluntary (treatment)'. Another treatment provider at an AHS commented that 'even those who have done badly have received some treatment. The success is because of the mandated treatment. People change over the time; their perspective and attitudes change while they are abstinent. We need to keep at it, and eventually it works'. A Team member also remarked that 'many at the start think they will do the minimum to avoid gaol. After a time they realise that the Program provides a respite; it pushes them into contact with treatment, and they become aware of the options and get time to think. Then they decide to accept treatment'. 'The coercion by the Court makes them come back so we can establish a relationship and learn that we are not out to get them,' commented another treatment provider. Another treatment provider commented that 'the Drug Court provides a background for treatment that we never had, a context, and a setting; it's the structure and support'.

A number of more specific components of the Program were mentioned by some interviewees as being important components of its success. 'The flexibility to change treatment is also critical; several treatment options are needed' was mentioned by a number of Team members. One treatment provider commented that 'all the treatments say they are the one that works...but it's all of them'.

One Team member considered that one of the Program's major achievements was 'getting them sober in detox, then the support when they are released', including 'having a strict Probation and Parole officer who forces them to make decisions'. A number of Team members commented that the mental health support has been very good.

One Team member commented on the nature of the Court in the following way: 'treatment of the participants as adults in a respectful fashion increases their self-esteem. In the Drug Court we are teaching them to progress towards independence, and to develop trust in the system. The positive structure of the system is directed towards extracting honesty which encourages them to become more mature and self-reflective'.

Some interviewees commented about plans for Drug Courts in other States and other similar systems. They commented that as they were dealing with more serious offenders they needed 'the District Court status', 'continuity in judge' and 'the structure and support'.

11.5 WHAT IMPROVEMENTS NEED TO BE MADE TO THE PROGRAM?

Interviewees were asked what improvements they thought should be made to the Program. Some have been mentioned in the body of the report. Further suggestions will be discussed in the following section, some of which are in the process of being resolved by the Court.

As previously mentioned, many of the initial problems with the Program were resolved over the course of the Court's first year in operation. Nearly all interviewees expressed the opinion that the Court is functioning much better now. As one Team member commented 'the basic legislative structure at the start was good, which was surprising as it was set up in a hurry. There has since been a lot of refinement. Development has been gradual; it is a work in progress'.

The information technology system was mentioned by several Team members as needing to be replaced, to allow for a more efficient flow of information and reduce the time spent on paperwork. Urine testing was an ongoing issue in need of refinement, according to some Team members.

Two Team members mentioned that their major concerns were to 'tighten up' the Drug Court; one in terms of continued offending, and another in terms of drug use. (These issues have been discussed in detail in previous sections.) One Probation and Parole officer commented about the need for the Court to be 'consistent and firm'. The officer further commented that 'the Court is now health-driven whereas it was previously DPP-driven. But we need to be tough as they are serious offenders'. They were of the opinion that the Court needs to be stricter about breaches of the Program. The coordinator from one of the residential rehabilitation centres considered that the Court should be tougher with people who are 'not engaging in treatment'. The coordinator commented that 'some have stuffed up at six rehabs; this is silly. The Detox Unit gets sick of them and they should be chucked off. It needs to be more serious'.

Additional services were suggested in some areas. One Team member recommended that 'more rehab beds and resources for treatment and Probation and Parole' were needed. Another Team member thought that more beds in the Detoxification Units were needed. A CHS staff member suggested that a drug and alcohol worker undertaking 'rehab-type work' with participants in gaol prior to their release should be employed.

CHS staff identified the need for 'a doctor based at the Court who is not a gaol doctor. There needs to be someone in the community to whom those with underlying psychoses can be sent. They become dependent on the gaol so we need to sever the link'.

One treatment provider suggested that something should be 'built in to find them jobs' as 'employment is the only predictor of success in the published literature'.

Most commented that they would like to see the Drug Court expanded.

11.6 PARTICIPANTS VIEWS OF THE DRUG COURT

The participants interviewed as part of this project were generally positive about the Drug Court. Most considered that one of the most important aspects of the Drug Court Program was allowing them to be 'out of gaol'. Those with children are able to be with them. Several reported that it was the longest they had been out of gaol. One reported 'it is the longest I have ever been out of gaol, and the longest I have ever not done crime. I had a cocaine habit of \$900.00 a day before the Drug Court'. Some described the advantages of not being in gaol as follows: 'as we are out we are exposed to everything and have to learn to handle it. We have to deal with it everyday, for example, seeing someone hanging out. These obstacles make you stronger'.

Most also said that 'being clean' was another 'good thing about the Drug Court'. 'If you want to stop it helps'. One commented, 'now if I use it's my choice. Drugs were a symptom of my life. I blamed everyone else. I wasn't taking responsibility before'. Another commented 'it is a good program if you don't want to use. Our crime has stopped as we don't need to do it as we're not using. It is the first time I have money in my pocket a week later. I'm not spending the whole time rorting'. One commented that 'I never thought about getting clean until I stuffed up'. Another commented that 'the Drug Court broke the cycle; I knew nothing else'.

Many reported that they 'had their family back and their life back' or were working towards that goal. They reported that they were now closer to their families as their families could see they were making an effort. Some saw the Program as 'our last chance; if we don't stop now we will go on using forever'. Others commented that they were able to 'get an insight into what I have lost. I can look at my life and sort it out.'

Most commented about the level of support that was characteristic of the Drug Court Program but that they, as participants, had to work hard to make it work for themselves. One commented that 'if you are fair dinkum it's a good program. It won't work unless you do'. Another said 'I couldn't do it by myself'. Another participant commented that 'it is the hardest thing a drug-addicted person will do - if you want to do it they will help you'. Some commented that 'it is still our choice to do the Program'.

Several liked the different types of help and support on offer and 'having options rather than just drying out'. Some commented that previously we 'just had rehabs or methadone with no counselling'. They saw the Court as 'recognising there is a problem and not just throwing them (the offenders/users) away. They get nothing to help them in gaol'.

Many participants spoke about the Court itself and its positive role in their Program. 'It gives you a different perspective of the legal system - they treat us better and try to help us.' 'They are all right.' 'Before the only time I've been in Court is to go there to get sent to gaol.' 'A normal court looks on you as an animal.' 'Now I go and get a clap and praise.' The Court was seen as supportive and trusting. Another commented 'now I'm honest to the Judge. It's a big thing'.

Many of the participants commented about the number of people who are on a Drug Court program who have 'no intention of giving up (drug use). Then they decide it (the Drug Court Program) is too hard'. Some reportedly decide it is easier to serve their prison sentence rather than finishing their program. They commented that the people who were 'rorting the Program' were affecting the Program's chances of continuation.

Several participants also commented that overall 'the whole Program is a good idea despite the flaws'.

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APPENDIX A

PERSONS INTERVIEWED FOR THE STUDY ARE AS FOLLOWS:

Drug Court Team

Judiciary

Judge Gay Murrell SC

Judge Neil Milson

Judge Murrell's associate

Todd McGuffin

Drug Court Registrar

Juliette Critchley

John Castellan

Office of the Director of Public Prosecutions

Johanna Pheils

Peter Stanhope

NSW Police Service

Inspector Col Kennedy

Legal Aid Commission

Andrew Eckhold

Eleanor Thornton

NSW Probation and Parole Service

Pauline Smith

Corrections Health Service

Sue Jeffries

Corrections Health Service

Dr Paul Reid (psychiatrist)

Therese Sartor (Nurse Unit Manager, Detoxification Unit, MRRC)

Dr Anne Sefton (Director of Women's Health)

Probation and Parole Service (case managers)

Paula Philpott

Ros Cattell

APPENDIX A continued

Treatment providers

South Western Sydney Area Health Service

Sandra Sunjic (Drug Court coordinator)
Richard Douglas (counsellor)
Jody Butler (psychologist)
Rebecca Deane (psychologist)
Dr Gilbert Whitton (medico)

Western Sydney Area Health Service

Les Hook (Drug Court coordinator)
Dr Pat Bryant (medico)
Dr Jon Currie (WSAHS Drug and Alcohol coordinator)
Cossette Dean (psychologist)
Mary Ann MacDonald (counsellor)

Wentworth Area Health Service

Kevin Hedge (Wentworth AHS Drug and Alcohol coordinator)
Dr Martin Weltman (medico)
Cathy Addison-Wilson (Nurse Unit Manager –Drug Court)
Angela Keating (psychologist)

Jarrah House

Christine Doring (coordinator)

Westmount

Richard Grey (coordinator)

Wayback Committee

Andy Lorenzton (coordinator)
Melanie Hennes (counsellor)

APPENDIX B

INTERVIEW QUESTIONS

Police Inspector (Drug Court Team)

Your role in the Drug Court

- How long have you been with the Drug Court?
- What is your overall role? Are there any other police directly involved?
- How is it different to a normal Police role? What is good/bad about your role here?
- How has what you do changed from when the Drug Court started?
- Do you have a record system apart from COPS? How are Drug Court participants identified on COPS?

Eligibility/referral/assessment

- Are the program eligibility criteria appropriate? What do you think of them?
- Does the referral process operate effectively and efficiently? What steps have been taken to address any problems? What are the strengths of the current referral process?
- What is your involvement in determining eligibility?
- How does the Court determine whether an offender is a violent offender? When is this done?
- What do you think of the assessment process? What are the strengths of the current assessment process?
- How well does the waiting list work in comparison to the previous random allocation?

Program placement/detoxification

- How well does the detox process work? What is your role at this stage in the process?
- Are there any problems or things that could be improved at the detox stage?
- Do members of the Drug Court Team generally agree on who should and who should not be placed on the program? How are differences resolved?

Supervision

- What is your role once a person is on the Drug Court program?
- How well does the supervision and reporting and daily Program activities work?
- Are caseworkers and treatment providers performing all the functions originally envisaged for them (e.g. reporting of all breaches to the Drug Court)?
- Are participants generally accepting of the demands made by the Court?
- What are the strengths of the current supervision regime?
- Is communication between caseworkers, treatment, police, the Court etc. functioning effectively?

APPENDIX B continued

Program compliance

- What are the main steps taken by the Drug Court to ensure program compliance?
- What is your role in this stage?
- Have the steps taken to ensure program compliance been adequate/appropriate/fair? What are the strengths of the current system for ensuring program compliance?
- How important is urine testing in this process? How well is it being conducted compared to earlier?
- Is the Drug Court always informed of program breaches (e.g. when a participant is arrested and brought before another court)?

Sanctions and Rewards

- What is the predominant aim of the sanction and reward process? Is it being achieved?
- What are the strengths of the current system of rewards and sanctions?
- What are the advantages and disadvantages of the suspended versus immediate sanction systems?
- Has the sanctioning process operated efficiently and effectively? If not why not?
- Are sanctions and rewards consistently and appropriately applied? Are sanctions of urine testing/the threat of prison/the threat of more intensive supervision been successful in deterring illicit drug use? If not, why not?

Progress through the Program

- What is your role in the graduation process? Are participants being graduated appropriately?
- When are people terminated? What is your role at this stage? Are participants being terminated appropriately?
- Are participants progressing through the program as expected?

Overall assessment of Program

- What makes a difference to participant outcomes in the Drug Court Program?
- Does the Drug Court system work as an alternative to gaol?
- What is your opinion of the Drug Court as it is now compared with how it was before? What problems still need to be resolved? Are there any other ways the Program could be improved?

APPENDIX B continued

Area Health Service Treatment Providers

Background

- When did your treatment program become involved with the Drug Court?
- Roughly how many Drug Court participants do you have at the moment? Has that changed? Why?
- What treatment do you provide to Drug Court participants? (methadone, naltrexone, anything else?)
- What do you provide those on methadone? How does it differ from the methadone treatment given to other people? Do they get take-aways, pharmacy pick-ups etc?
- What do you provide those on naltrexone? How often and where do they pick up their doses? How are there other doses supervised? How does it differ from the naltrexone treatment given to other people?
- Which treatment is the most successful? How well have people gone on naltrexone?
- Who is the prescriber?

Admission

- Do you have any say in who starts treatment here from the Drug Court? At what stage do you first see the participants?
- Do you do your own assessments? Has there been anyone start who you have thought unsuitable? Are their eligibility criteria appropriate?
- Do Drug Court participants get priority for admission into your treatment?
- Do those from the Drug Court differ from your normal clientele?
- What do you think of the admission process? Does going through detox make a difference when they start?

Supervision

- What do you do with the Drug Court clients once they are on your program? What is your role in the program?
- Do you provide any counselling/case management? How do the Probation & Parole caseworkers work in with what you provide? What if a person needs extra interventions e.g. health, psychiatric help?
- How well does treatment work in the early stages when participants are required to attend courses etc?
- By whom do doses get determined? Does the Court get involved in doses?
- Are there any particular problems with clients picking up within the dosing hours? What are the hours?

Sanctions

- Are the sanctions imposed by the Court appropriate? How do they affect you as treatment providers?

APPENDIX B continued

Urine testing

- How often do you have to collect urine samples? How does it differ from your normal clientele?
- How well is the urine testing working now? Is it appropriate/necessary?
- How do issues such as failing to provide urines etc. get dealt with?

Terminating participants

- Do you have a say in whether people are terminated or not from their program? If they are sent to gaol what happens to their methadone treatment?
- Are people left on who should be terminated and vice versa?
- What if you are dosing someone who is unmanageable or violent?

Overall assessment of Program

- What problems have there been with the Drug Court, Probation & Parole etc? What has worked well?
- How well does the communication between you, Probation & Parole and the Court work?
- How well does it work now compared with how it was earlier?
- What makes a difference to participant outcomes in the Drug Court Program? What treatment works best?
- Does the system work as an alternative to gaol?
- What is your opinion of the Drug Court as it is now compared with how it was before? What problems still need to be resolved? Any other ways the Program could be improved?

Drug Court participants

- How long have you been on a Drug Court program?
- What treatment are you getting?
- What phase are you in?
- What have been the *best* things about your Drug Court program so far?
- What have been the *worst* things about your Drug Court program so far?
- What do you think of the:
 - initial court appearance?
 - admission process e.g. detox?
 - treatment e.g. methadone etc?
 - counselling, groups and case management?
 - ongoing supervision by the Court, treatment, Probation & Parole including urine testing?
 - sanctions and rewards?
 - criteria for advancing phases and terminating?
- How well has the Drug Court program worked for you?

APPENDIX C

Drug Court Undertaking

The Undertaking requires the participant to accept a number of Program conditions, including:

- committing him/herself fully to his/her Drug Court program, accepting that this program will take priority over all other commitments;
- being of good behaviour;
- not committing any criminal offence;
- obeying all directions given to him/her by the Drug Court, any member of the Team, his/her treatment provider or his/her case manager;
- not using any prohibited drug or associating with anyone who uses prohibited drugs unless he/she is permitted to do so by either the Court or his/her case manager;
- not using or having any item used in the administration of prohibited drugs;
- not using any prescription medication unless prescribed by a doctor specifically for him/her; and, informing the case manager of any medication prescribed by a doctor;
- not using alcohol or any legal drug which may interfere with his/her ability to participate fully in his/her program; understanding that he/she may be subject to a sanction for having a blood alcohol level exceeding 0.05;
- providing any urine, breath, sweat or saliva for analysis when to do so; understanding that he/she may be asked to submit to a urine test twice or three times per week during Phase 1, twice per week during Phases 2 and 3, but that he/she may be directed to submit to additional tests; and, understanding that attempting to provide a false sample is a serious breach of his/her program which will lead to either a significant sanction or even termination of his/her program;
- punctually attending all relevant appointments as directed, including Drug Court sittings, treatment, counselling, personal development courses, educational courses;
- receiving, whenever possible, general medical treatment from one medical practice; through his/her case manager, advising the Court of the name, telephone number and address of that medical practice; and, advising the doctor that he/she is undertaking a Drug Court program;
- providing a detailed medical certificate from his/her usual medical practice to the Court for any Drug Court commitment which cannot be met due to illness; the certificate is to include a statement by the doctor that he/she is aware that the participant is undertaking a Drug Court program and that the participant is too ill to attend the commitment;
- authorising any doctor providing a medical certificate to provide the Court or his/her case manager with any information requested regarding his/her medical condition and treatment;
- understanding that providing a medical certificate will not necessarily be accepted as an adequate excuse for not meeting a Drug Court program commitment;
- not using any prescribed medication unless it is prescribed for him/her by a doctor; informing his/her case manager about any prescribed medication and providing the case manager with the name and telephone number of the doctor who prescribed the medication;

APPENDIX C continued

- residing at the address documented in the undertaking; and, sleeping at that address every night unless given prior approval by the Court or his/her case manager;
- not changing his/her residential address without prior approval by the Court; and, immediately notifying his/her case manager if his/her telephone number is changed;
- if he/she has been admitted into a residential rehabilitation treatment centre, he/she is to attend Court at the first opportunity following his/her discharge from that centre; any failure to do so will lead to a severe sanction or perhaps to the termination of his/her program;
- accepting any home visit, with or without prior notice, by his/her case manager, his/her treatment provider or anyone connected with the Drug Court;
- agreeing to pay any reasonable treatment or program fees imposed by the Drug Court; he/she will be given prior notice of such fees;
- not working for any law enforcement authority;
- not visiting any prisoner without the prior approval of the Drug Court or his/her case manager;
- not going within one kilometre of Cabramatta railway station unless travelling through Cabramatta on a train;
- reporting, at the first opportunity, any breach of his/her program to his/her case manager, treatment provider and the Court; and,
- accepting that he/she will be sanctioned for non-compliance with his/her program conditions with the maximum sanction for any breach being 14 days imprisonment.

Following these program conditions, the Undertaking requires the participant to understand that:

- the Drug Court may change his/her program conditions and impose new conditions;
- he/she has the power to request that the Drug Court change any existing or proposed program condition if he/she is not satisfied with it;
- completion of his/her program will take at least 12 months, that he/she will not progress from one phase to the next until he/she completes the requirements of that phase, and that he/she will be attending Court every week during the first phase;
- his/her case manager and treatment provider will provide the Drug Court with regular progress reports which will be considered by the Drug Court Team at a meeting prior to his/her appearance in court; but he/she will not attend these meetings;
- his/her case manager, treatment provider and others connected with his/her program (with the exception of his/her solicitor) will notify the Drug Court of any suspected breach of the program, providing details of the suspected breach;
- he/she can request a laboratory check of any urine, breath, sweat or saliva test results which he/she disputes, agreeing to pay for this laboratory check if it confirms that he/she has used a drug (including medication) which is contrary to the conditions of his/her program;

APPENDIX C continued

- any suspected breach of his/her program may result in the Drug Court issuing a warrant for his/her arrest;
- any breach of his/her program will incur a sanction of up to 14 days imprisonment and that he/she cannot appeal against any sanction imposed;
- the Drug Court can terminate his/her program and that he/she cannot appeal against the termination of his/her program;
- he/she can request that the Drug Court terminate his/her program; and,
- if his/her program is terminated, the Drug Court will re-consider his/her initial sentence, but being aware that the final sentence will not be greater than the initial sentence.

