



# **EVALUATION OF THE PERTH DRUG COURT PILOT PROJECT**

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## **EXECUTIVE SUMMARY**

The Perth Drug Court Pilot Project (PDCPP) commenced in December 2000 as a two year pilot project within the Perth Court of Petty Sessions. The PDCPP built on an earlier scheme for drug dependent offenders known as the Court Diversion Service (CDS). The PDCPP aimed to reduce the recidivism and drug dependence levels of offenders and provide a more cost effective approach to dealing with these offenders.

This report provides the first formal evaluation of PDCPP and is designed to assess the achievements of the PDCPP as well as to identify constraints affecting its operation. The report also highlights issues that will need to be considered for any future development of drug courts in Western Australia. The evaluation was conducted by the Crime Research Centre at the University of Western Australia in collaboration with the Planning, Policy and Review section of the Department of Justice. The findings are set out below under headings that relate to chapters of the report.

### **Design and Focus of the Drug Court (chapter 2 and 3)**

In contrast to most other Australian drug courts the PDCPP is geared towards early intervention. In terms of cost savings for the community and potential for crime reduction a focus on higher risk offenders is generally recommended. A focus on lower risk offenders also raises the danger of netwidening (providing a more intensive level of intervention than is necessary) and associated ethical issues.

### **Nature and Flow of Offenders through the Drug Court (chapter 5)**

Between its inception and 27 November 2002, 729 offenders had been referred to the PDCPP, with the number of referrals reducing substantially over time. The typical offender was a young, single, drug dependent non-Aboriginal male with limited education who was currently unemployed and facing multiple criminal charges. Almost half of these offenders were not accepted on to a drug court program. This was usually because they did not meet the eligibility criteria established for the court.

Of those placed on a program, just over half completed. Thus, in total, less than one in three offenders referred to the drug court went on to complete a programme. The more intensive the program (and theoretically the more serious the offending and drug use), the lower were the chances that the offender would complete the programme.

### **Recidivism and Drug Use (chapter 6)**

As there was no suitable comparison group against which to compare the recidivism of the drug court clients, a number of comparison groups were developed. Each of these presented obstacles to comparison but, when considered collectively, provide the best available estimate of the likelihood that the drug court had some impact.

Overall we found no significant differences between the recidivism rates of drug court offenders and any of their comparison groups. This may partly be an artefact of the small sample sizes and short periods of time available for the recidivism analysis. However, in regard to the central issue of recidivism, the current evaluation is not able to provide any substantial evidence of a reduction that can be attributed to the drug court program. Although the recidivism rates of offenders who had completed DCR/STIR were lower than those who were not accepted or terminated on these programmes, the graduates already had a lower risk of re-arrest before they entered the drug court programme.

Given the limitations on the current evaluation and the range of positive indicators it would be wrong to conclude that the PDCPP has failed to achieve its central objective. These findings reinforce the need for further recidivism analysis. It is recommended that such an analysis should be a central component of any future evaluation of the drug court.

### **Costs (chapter 7)**

The “costs” of the pilot drug court to DOJ were estimated in the order of \$3 million. This figure represents the costs over and above what would normally be involved in processing the offenders involved in the drug court. However, many of those placed on a drug court programme would normally have been sent directly to prison or

detention. It was concluded that the “new” costs associated with the drug court were largely offset by reductions in prison and detention costs for offenders and, therefore (given a large number of caveats) the costs of the drug court and traditional sentencing were roughly equivalent.

If we accept this position, the question of which approach (drug court or traditional) is most cost-effective is dependent upon the benefits that are achieved from each alternative. Although the recidivism analysis was not able to be conclusive in regard to which approach produced more “crime reduction”, there are good reasons to suspect that the drug court provides more benefits. These benefits are detailed in the report and include a range of impacts that are difficult to quantify such as engaging offenders in treatment, reducing their drug use and improving their health and well being.

### **Lack of Legislation (chapter 9)**

The most serious issues affecting the legitimacy of the drug court are not its focus nor its likely effectiveness but the lack of a legislative base. The legislation currently providing the legal basis for the operation of the drug court was not designed nor intended to be used in the ways it is by the drug court thus the legal base of the court is very tentative. However a proposed legal remedy (*Sentencing Legislation (Amendment and Repeal) Bill 2002*) will not address the problems of the drug court. Reliance on the provisions of section 16 of the Sentencing Act 1995 in combination with the Bail Act (1982) also limits the operation of the drug court to four to six months – a period most observers argue is much too brief.

### **Management (chapters 5, 8 and 10)**

Another major issue affecting the viability of the drug court concerns the lack of direction and management. The three key areas where a lack of management appeared to affect the drug court were: programme direction; collaboration and team management; and quality assurance. Management is needed to optimise the potential effectiveness of the drug court through the control and selection of referrals. Current

arrangements limit the available places on the drug court programmes and too many inappropriate referrals arrive at the drug court.

### **Access and Equity (chapters 5, 8 and 10)**

The intensive and onerous requirements of the current drug court do not work with individuals from certain groups. It is not surprising, therefore, that the PDCPP has engaged relatively few indigenous or juvenile offenders. Because of the particular design of the drug court it is not easy to imagine how it may easily be adjusted or expanded to encompass and embrace the needs of marginalized groups. It may be better to recognize the drug court approach in its current design as mostly suited to a largely white and adult offender group. This would allow for the design and development of more strategically focused approaches for special groups of offenders not adequately addressed by the drug court model. In the case of juveniles and indigenous offenders it is important to acknowledge that the main problem is not the lack of a suitable drug court or justice approach but the lack of suitable treatment facilities in the community.

### **Continuity of Treatment (chapters 8 and 10)**

There is often not a smooth transition for offenders who move from the drug court onto a community based sentence. The lack of “throughcare” or follow up has generated much criticism of the PDCPP. However this is not so much a failing of the drug court as a product of its problematic legislative base.

### **Recommendations (chapter 11)**

Organisationally the drug court should be seen and approached as part of a broad continuum of efforts aimed at the diversion of drug dependent offenders. We recommend that the approach to community drug treatment should be managed by Community and Juvenile Justice Services to provide services in close partnership with the Drug and Alcohol Authority and the drug treatment community.



## *Evaluation of the Perth Drug Court Pilot Project*

Specifically, in regard to the drug court, the first and most important reform is legislative. For a range of reasons the pre-sentence options that have been proposed are seen as unsuitable for the drug court. It is recommended that Western Australia develop a sentence based order along similar lines to the Victorian Drug Treatment Order which would provide for a judicially supervised order with strict conditions as an alternative to imprisonment. The development of this order would not replace the current services provided by the existing drug court. Rather, these should be retained so that drug dependent offenders could be engaged in treatment at the earliest possibility opportunity. This pre-sentence period will allow the sentencing magistrate to receive valuable information in regard to the suitability of a particular offender for a Drug Treatment Order. The four month period therefore complements the proposed changes by providing the court with an important testing and initial treatment period.

It is also recommended that a much firmer, accountable and responsible management structure be established to achieve the following benefits: a clear articulation of lines of accountability and responsibility; a mechanism to ensure an adequate supply of suitable approaches, requests or referrals for the drug court; an efficient and effective mechanism for providing a screening of referrals along agreed parameters of risk and responsivity; effective collaboration with qualified treatment providers; a mechanism to ensure the quality and intensity of treatment being provided; and a comprehensive monitoring and review system with clearly agreed parameters for exclusion or alternative referral.

In conclusion, the drug court represents a positive and innovative development by the WA Department of Justice that has not only found favor with the treatment community but has also established very positive partnerships that provide a sound base for the continuing development of community based approaches to dealing with drug dependent offenders.

# **1. INTRODUCTION**

In December 2000 the West Australian Department of Justice (DOJ) established the first drug court in Western Australia as a two year pilot project within the Perth Court of Petty Sessions. The Perth Drug Court Pilot Project (PDCPP) was established to assess the diversion of drug dependent offenders with a judicially case managed approach. The stated aims of the drug court were to:

1. Reduce recidivism and re-arrest rates;
2. Reduce substance use and addictions;
3. Reduce the number of offenders with substance use problems and addictions being imprisoned;
4. Reduce the post-treatment supervision requirements of offenders who have participated in a treatment programme;
5. Improve the life circumstances of offenders who participate in treatment; and
6. Cost savings to the community and government.

The pilot project also incorporated a plan for evaluation. An interim report was prepared at the end of the first 6 months of operation. A full evaluation was planned for the end of the two year pilot period. In November 2002, two years after the drug court began, the DOJ commissioned the Crime Research Centre (CRC) at the University of Western Australia to conduct the evaluation of the pilot project. This report presents the results of the evaluation.

## **1.1 Project Management**

The evaluation was conducted by staff at the CRC in collaboration with representatives of the Policy and Planning (Performance Analysis) section of the DOJ. At the CRC Dr David Indermaur served as team leader, Dr Lynne Roberts conducted the quantitative analysis, Dr Neil Morgan provided the legal analysis and Ms Giulietta Valuri assisted with the recidivism analysis and other components related to the arrest and imprisonment data base.

## *Evaluation of the Perth Drug Court Pilot Project*

At the DOJ the conduct of the evaluation was managed by representatives of the Performance Analysis section of the Planning, Policy and Review section of Community and Juvenile Justice Services. Originally this was Ms Karen Schmidt who finished in late December 2002 and the role was transferred to Ms Helen Liedel (Team Leader Review and Evaluation).

On 5<sup>th</sup> November 2002, at the commencement of the evaluation, a meeting was held between CRC and DOJ to clarify the parameters of the evaluation and to establish project management procedures. This meeting was attended by representatives of all the major sectors of the DOJ involved in the operation and evaluation of the drug court. At this meeting a project management plan was confirmed and a request was made that an interim report be provided. The plan for the evaluation was also presented to the meeting of the Drug Court Management Committee on 28<sup>th</sup> November 2002. Notifications and publicity for the evaluation were widely disseminated within the DOJ, including a section in the Department's newsletter "Just Us" (Volume 10, Number 1, 22<sup>nd</sup> January 2003, page 1) which invited comment from any workers who may have a particular view or interest in the drug court<sup>1</sup>.

The evaluators at CRC worked closely with representatives from the Planning, Policy and Review section of the DOJ in terms of the conduct of the evaluation. For the first three months of the evaluation weekly project management meetings were held with the key liaison person from Planning, Policy and Review. These meetings continued on a less frequent and formal basis for the last two months of the evaluation period as most of the key issues had been settled. Close consultation was also maintained with key individuals in the operation and evaluation of the drug court, including the drug court magistrate, the principal research officer, the co-ordinator of the drug court, the manager of Community Justice services (court services) and the manager of the Court Assessment and Treatment Services. The level of co-operation and support from all sectors of the DOJ was generous and a large range of material was quickly provided to the evaluation team.

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<sup>1</sup> A general invitation was made for anyone who wished to comment on the drug court to contact David Indermaur directly (e-mail address provided).

## **1.2 Key Objectives of the Evaluation**

There were six main objectives of the evaluation of the PDCPP.

1. To assess the achievement of project objectives.
2. To document and assess:
  - the quantity, effectiveness and efficiency of drug court operations;
  - processes for selection of treatment programmes, referral processes and programme completion rates and issues;
  - quality and effectiveness of throughcare, including timing and continuity of contact and treatment.
3. To identify legislative constraints on existing operations and options for addressing identified issues.
4. To comment on the extent to which the drug court model reflects existing theory and practice in relation to diversion services for drug dependent offenders.
5. To assess the appropriateness of the drug court pilot project for juvenile offenders.
6. To identify general issues that will need to be considered for future drug court or any other drug court operations in Western Australia.

## **1.3 Components of the Evaluation and Structure of the Report**

The evaluation of the PDCPP commenced in November 2002. The initial stages developed the scope and methodology of the evaluation. As foreshadowed above an interim report on the evaluation was provided to the DOJ in January 2003. This report summarized the available statistical and descriptive information on offenders referred to the drug court. The interim report was useful in providing an initial overview of the quantitative findings of the evaluation and providing a vehicle for comment and reflection on the nature and performance of the drug court.

## ***Evaluation of the Perth Drug Court Pilot Project***

The present report incorporates the interim report and provides a full evaluation of the PDCPP using all the available information. The content of the earlier report is mainly repeated in Chapter 5.

This report is divided into eleven chapters. This introduction (chapter 1) comprises the first chapter and is intended to describe the general nature of the evaluation and the process of management of the evaluation. The second chapter of the report comprises an overview of the literature on drug courts. The literature review begins with a description of the development of drug courts in the United States of America and their spread through other western countries. The focus then turns to developments within Australia. First the general development of diversion options for drug dependent offenders is described and then the development of drug courts in various states of Australia. The differences in Australian drug courts present a contrast in style and direction. These differences are considered with a view to their likely cost-effectiveness. The literature review is drafted very much as a component of the current evaluation and attempts to draw together the essential literature on evaluations of drug courts. In particular, the methodological difficulties faced by evaluations where randomised control groups are not available are highlighted. Even with randomised control groups there are often mistakes made comparing only program completers with a comparison group. These problems are described in detail. The literature review concludes with an overview of the developing field of best practice for drug courts.

The third chapter provides the essential descriptive and background material on the PDCPP. First, the history of the development of the drug court from its predecessor, the Court Diversionary Service (CDS), is outlined. Second the development phase, in particular the feasibility study, is outlined. Next the initial establishment of the drug court and its operation over the two year pilot period are outlined. Included in this section is an outline of the unique structure of the PDCPP which depends upon the collaboration of three separate sectors of the DOJ and an active partnership with agencies outside of the DOJ. Finally, the operational and legislative parameters of the drug court are described.

## *Evaluation of the Perth Drug Court Pilot Project*

The fourth chapter of this report sets out the methodology of the evaluation including the key aims, structure and focus of the evaluation. The evaluation comprised five major investigations each entailing their own methodological challenges. The first was the quantitative analysis of the operation of the drug court which provides a view of the actual operation of the court. The second investigation was the analysis of the recidivism of offenders referred to the drug court and the third investigation was to perform a cost-benefit analysis of the operation of the drug court. The fourth investigation involved the qualitative review of the drug court which involved consulting widely with stakeholders and workers. Finally, an analysis of the legislative provisions of the drug court was undertaken. The descriptions of the methodologies adopted in all these investigations include detail on the constraints that were placed on the evaluation.

The fifth chapter of this report provides a descriptive analysis of the PDCPP. This chapter represents a summary of the information presented in the interim report with some additional analyses conducted since the interim report was completed. This chapter provides the essential data on the performance of the PDCPP over the two years of the pilot, including the number, nature and result of referrals to the court. Also included are details on program placement, the performance of offenders on the various programs and the trends in referrals over the two years of the pilot.

The sixth chapter examines the effect of the PDCPP on re-offending using the most sensitive measure of recidivism, re-arrest. The recidivism rate of PDCPP clients is compared to the recidivism rates for other identified comparison groups. The challenges faced in assessing recidivism for a program so quickly after it has been implemented are dealt with by employing a mathematical technique known as survival analysis.

The seventh chapter of this report outlines the results of the cost-benefits analysis. The cost of the drug court is weighed against the documented (and speculated) benefits. The cost benefit analysis required extensive consultations with representatives of the Planning, Policy and Review section of DOJ. The analysis also needed to proceed on the basis of a number of assumptions in regard to the operations of the drug court, as the financial basis of the court was not always clear. These

assumptions are made explicit throughout the analysis so that they can be adjusted for the purposes of considering the costs and the benefits of an alternative form of the drug court.

The eighth chapter of this report details the qualitative component of the evaluation. The results of interviews and consultations with drug court workers, stakeholders (legal, treatment and justice), and drug court participants (offenders) are summarized. These broad ranging consultations highlighted some common themes in regard to the current operation of the drug court. There were also some differences in the concerns of the various groups. These are also highlighted. However eventually eight key themes emerged which encompass almost all of the views from each of the groups. These themes are detailed and provide a succinct summary of how the drug court is viewed by those who have some involvement with it.

The ninth chapter of this report contains the legal analysis of the PDCPP. This section is presented in two parts. The first part examines the current legislation, outlines perspectives on this legislation and identifies issues that need to be addressed. The legislative basis of the drug court is also compared to other states. The second part of chapter nine comprises an analysis of legislative amendments currently before Western Australian parliament that are considered by some to be a solution to the drug courts' legislative problems. These are the legislative changes contained in the *Sentencing Legislation (Amendment and Repeal) Bill 2002*. However, the reasons why the proposed legislative changes will not provide the solution the drug court needs is described in detail.

The tenth chapter of this report draws together the strands of the evaluation. Issues are addressed thematically and discussed. The major strengths and weaknesses of the PDCPP in terms of its stated objectives are reviewed. The performance of the PDCPP in terms of some nationally recognised parameters of best practice are also considered. This chapter is essentially a summary of the results of the evaluation.

The final chapter takes the discussion in Chapter 10 further and considers the particular challenges faced by the current drug court and what may be needed if it is to be continued or expanded. The chapter outlines some of the reasons why it is not

considered feasible to terminate the drug court and then suggests that the drug court be incorporated into an expanded and comprehensive strategy or plan for community based diversion of substance abusing offenders. The structural implications of this move are outlined as well as some of the wider access and equity issues that are entailed.

In drafting this report an effort has been made to maintain the evaluation report as a succinct and readable document. Materials that are relevant or related to the content of the chapters, but not strictly necessary, are relegated to the appendices. These appendices are listed by chapter so that they can be readily found and referred to. A glossary of abbreviations commonly used is provided in Appendix 1.1. References containing multiple authors are cited in the text by first author followed by et al. Full reference details are provided in the bibliography at the end of the main volume. Footnotes have been used where appropriate to provide necessary detail without detracting from the main emphasis or flow of a passage.



## **2. LITERATURE REVIEW**

### **2.1 Introduction**

This chapter will provide an outline of the literature relevant to the Perth Drug Court Pilot Project (PDCPP). The purpose of the review is to place the evaluation in the context of other developments around Australia and to a lesser extent internationally. The review will cover four main areas: the development of drug courts; the history of efforts aimed at the diversion of drug dependent offenders in Australia; the evidence for the effectiveness of drug courts; and the developing field of best practice in regard to planning and implementing drug courts.

The following section (2.2) will provide an overview of the drug court movement which, necessarily, focuses on the picture in the US but also covers the emerging drug courts in other English speaking countries. Section 2.3 provides the background to the emergence of drug courts in Australia - this is the broad range of diversionary services that have been developed over the past 20 years in Australia. The focus on diversion also places the current emergence of Australian drug courts in a wider contemporary context. In the next section (2.4) we summarise salient details of Australian drug courts in Australia. The following section (2.5) examines in more detail the critical issues to consider in evaluating the success of drug courts. One of the difficulties in this area is that evaluations are not able to be as conclusive as many of the decision makers would like, and the politics of the drug court movement is quickly overtaking the evidence of success in Australia, as it has in the US and elsewhere. In the absence of a substantial proof that drug courts “work” or certain aspects of drug courts “work” there is an emerging focus on “best practice”. The notion of “best practice” concerns the development of standards which allow administrators, practitioners and reviewers some basis for ensuring that programs are being maintained and delivered in a manner consistent with the best available knowledge. An overview of some Australian best practice principles for drug diversion programmes is provided in the final section of this review.

## **2.2 Drug Courts and the Drug Court Movement**

### ***2.2.1 United States***

Most histories of the drug court movement start with the court that emerged in Dade County, Florida, in 1989. The proliferation of Drug Courts throughout the United States over the ensuing decade has been truly phenomenal and gives rise to the aptly described Drug Court Movement. This movement is made up of the range of individuals working in, or associated with, these courts. Other indicators of the “movement” phenomenon include the rapid organisational and structural supports for drug courts and the degree of public and political advocacy for drug courts. Late in the 1990s the drug court movement burst the borders of the US and a variety of drug courts have been set up in other countries including Canada, the United Kingdom and Australia.

To provide some indication of the extent of the American drug court movement figures produced by the American University in a recent report are helpful (American University, 2001). This report notes that by the beginning of 2001:

- all 50 states within the US had implemented drug courts;
- 30 states had enacted legislation relating to the planning, operating and/or funding of drug courts, with a further 8 states having introduced legislation related to these matters;
- 10 states had court rules relating to drug courts;
- in total 697 drug courts were in operation, with a further 427 planned;
- 167 juvenile drug courts were operational and a further 113 were planned;
- a range of specialised drug courts (e.g. tribal drug courts, juvenile drug courts, and family drug courts) had emerged;
- an estimated 226,000 individuals had enrolled in adult drug court programs with 77,000 still enrolled and 74,000 having graduated;
- the overall retention rate across drug court programs was estimated to be 67%;
- the average rate of positive urinalyses for drug court program participants was 17%, while the comparable figure for non-drug court participants was 35% or more.

Just one year later, by beginning of 2002, the numbers cited above had increased substantially with 785 drug courts in operation in the US with further 453 being planned (American University, 2002). The point is that the American drug court movement is large and rapidly expanding.

The enthusiasm for drug courts and its quality as a “movement” has been examined by James Nolan (2001; 2002)<sup>2</sup>. Nolan considers many of the interesting dimensions of the drug court movement such as its relationship to contemporary culture and justice. This relationship encompasses the way drug courts both reflect contemporary concepts of justice and also break new ground. A discussion of such issues is valuable to a wider perspective of drug courts, however they are clearly beyond the scope of the present literature review. Suffice to say that there are dimensions of the drug court movement, of which the Perth court is one example, which invite further and deeper consideration in terms of criminal justice policy and the achievement of justice. Although the intention of drug courts to do good has rarely been questioned, a number of questions may arise about whose interests are served by the drug court, which conceptions of justice are reinforced and whether indeed it is possible to effectively merge the interests of justice and treatment without doing damage to either or both. It is also necessary to realise that the rapid spread of drug courts has not been a function of their proved effectiveness<sup>3</sup>, but because they represented “an idea whose time has come.”

There are various reasons why the concept of drug court is so politically attractive at the present time. One appealing feature of the drug court is the implicit assumption of an approach that is both “tough” and “effective” in terms of saving money and reducing crime. This feature, or at least promise, of drug courts has two elements. First, much contemporary public policy on crime assumes that the “causes” of crime, especially property crime, are highly bound up with drug dependency problems of

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<sup>2</sup> For example see Nolan’s (2001) book “Re-inventing justice” which has recently been released in a second edition. See also Nolan (2002).

<sup>3</sup> Most drug courts were implemented before any body of evidence on the effectiveness of drug courts had accumulated, and, as we shall see, it is arguable that such evidence is still far from complete and may only affect certain types of drug courts and certain types of offenders.

offenders. Drug courts are thus attractive in that they are seen as going to the “heart” of the problem dealing with the underlying “causes” of crime. Secondly, drug courts capitalise on the perceived benefits of diversion and/or providing alternatives to imprisonment that are cheaper and perhaps more effective. The political prospects of being able to do more with offenders for less (cost) presents obvious political temptations. There are other reasons why drug courts are popular at the present time. The growing awareness that the courts are not providing an effective response to crime in sending offenders to prison is one reason. The belief that prisons are an ineffective and expensive response to crime has become mainstream. While an interest in justice/retribution will maintain the popularity of prison for violent and persistent offenders, there is an opportunity to present potentially more effective responses for those offenders who are not violent and who appear to have “personal” problems.

The American drug court movement has paved the way for the establishment of similar courts in other countries. The same dynamics outlined above which explain the popularity of drug courts in the US also appear in these countries. However these jurisdictions often have systems that have always been more receptive to treatment and so drug courts may in fact not “add” as much as they do in many American states. Furthermore, countries such as Australia and Canada have a far less punitive approach to drug users and offenders generally. These countries are more likely than most states in the US to consider imprisonment as a “last resort”. All this means that the wholesale importation of American style drug courts may be not be as simple or as beneficial as might otherwise be thought. Alternately it requires us to ask in more detail about the particular models or types of drug court that are adopted.

### ***2.2.2 Canada***

The first Canadian drug treatment court was opened in 1998 in Toronto as a collaborative venture between health authorities and criminal justice agencies. The project was funded by the federal government with the aims of crime reduction and a more cost effective criminal justice response<sup>4</sup>. In the first 18 months of operation 198 offenders were admitted into the court, however only 10 have graduated in this

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<sup>4</sup> The Canadian government has provided \$1.6 million over four years for the programme (Single et al, 2002).

period. La Prairie et al, (2002) provided the first review of the Toronto drug court and reported that retention rates were lower than the average for the US courts but not as low as those observed in NSW. These researchers found some evidence to suggest that the court may be less effective in engaging high risk offenders in treatment, despite the success in engaging less serious offenders.

La Prairie et al (2002) highlighted the differences between the Canadian context and the US criminal justice system in a way that gives much pause for thought when we are considering the value and the applicability of many of the American drug courts. For example, many of the US drug courts deal with individuals apprehended for simple possession and use charges of cannabis. These are charges that in Canada, like Australia, generally result in a caution or another sanction that is designed to be “harm-minimising”. This essential difference affects the relative cost effectiveness of the intervention as well as the likely motivation of the offenders.

### ***2.2.3 Scotland***

Scotland established its first drug court in October 2001 in the Glasgow Sheriff Court following the results of a working party established by the Scottish Department of Justice. Unlike many other drug courts the focus of the Glasgow court was more on the offender’s drug taking and well being, although one of the primary aims remained reduction in the level of drug related offending behaviour. A process evaluation of the first six months of operation of the Glasgow court was provided by Eley et al (2002) for the Scottish Executive. The review was very encouraging but pointed out some of the common difficulties experienced in the early stages of drug courts such as ensuring a sufficient and suitable flow of referrals.

Bean (2002) pointed out that the Scottish drug court operates in essentially the same way as other Sheriff courts and has the same range of powers. Following referral and assessment it orders either probation with a condition of drug user treatment or a Drug Treatment and Testing Order (DTTO). “The Scottish Drug User Treatment Court therefore pulls into it existing sentences but imposes on them the new Drug User Treatment Court practices” (p. 143). Conditions of probation are simply extended to incorporate drug treatment and testing. However the drug treatment court does offer more as outlined by Bean (2002, p 144):

- a specialist Bench, consisting of a Sheriff who will develop a considerable measure of expertise;
- a multi agency drug user treatment court team will oversee its operation and development;
- regular and random testing of offenders on all Orders, including probation;.
- regular reviews in court of offenders' progress;
- multi-disciplinary screening group and inter agency working;
- fast track procedures where the aim is to get the offender into Drug User Treatment Court within one month;
- initiation of all breach actions for non compliance by the bench; and
- use of sanctions at review.

#### ***2.2.4 England and Wales***

England and Wales do not yet have a formal drug court despite having a range of legislative and program options designed to divert drug using offenders from the criminal justice system and providing treatment for drug abusing offenders. As part of the 1998 *Crime and Disorder Act*, a special order (the Drug Treatment and Testing Order – DTTO) was created. This order enables a court to mandate drug treatment for a period of not less than six months and not more than three years. Drug testing and regular reporting are required as part of this order – which comprise two of the main elements of drug courts.

The first evaluation of the English scheme was commissioned by the British Home Office and completed by a group of researchers at Southbank University (Turnbull et al 2000). The evaluation looked at outcomes in three pilot areas of the UK for the period from October 1998 to March 2000. In this period 554 offenders were referred for assessment, 514 (93%) accepted for assessment, 288 (52%) proposed to the court for a DTTO and for 210 (38%) a DTTO was issued. By the end of March 2000 96 (46%) of the DTTOs had been revoked, and that number would naturally climb if the full period of the DTTO was considered rather than the cut off date of the end of March. The point is that the attrition rates are substantial, and although the researchers found that offenders retained on the programme showed evidence of lowered drug use

and criminal activity, the question arises as to whether these reductions would have occurred in any case with this special and select group of compliant offenders. The results of the evaluation of this English scheme will be discussed further in section 2.4

### ***2.2.5 Ireland***

The first drug court in Ireland was established in Dublin early in 2001. The original plan, as with the introduction of almost all drug treatment courts outside the US, was to run a pilot and then follow up with expansion if the pilot was successful. As Bean (2002) pointed out, the Dublin drug court is a bail bond court – it operates through the provisions of bail, however bail is allowed for a period up to two years. Like the PDCPP, because the offender has technically not been sentenced if he/she chooses or fails the conditions of bail (drug court) he/she can proceed to be sentenced.

Doubts have been raised about the success of the Dublin drug court. After two years only five offenders had successfully completed their sentence through the drug court (O'Brien, 2003, January 13th). Of the 88 referrals to the system, 37 were not deemed suitable, 14 dropped out of the programme, while another 33 are still either being assessed or in various stages of completion of the course (O'Brien, 2003). Apparently Department of Justice officials were disappointed with the results but still wanted to extend the model and a second drug court was to be established in Dublin to see if a more successful approach could be found (O'Brien, 2003).

### ***2.2.6 The drug court movement in perspective***

The drug court movement which germinated in the US has proved hugely popular not only spreading rapidly across the American states but also in other English speaking countries that tend to import the best and the worst of American criminal justice innovations. The enthusiasm for drug courts has not been a product of the results of evaluations of their effectiveness in reducing crime. A number of reasons to be cautious in too quickly and slavishly adopting American models that may not be suited to an Australian environment have been highlighted.

In many ways the actual programs offered through drug courts are not new and draw on decades of research on treating offenders and people with drug problems. The new

approach represented by drug courts is the much more intimate involvement of the courts in the management of treatment. This new approach is broadly referred to as “therapeutic jurisprudence” of which drug courts are usually seen to be a prime example<sup>5</sup>. The renewed focus is positive and can take advantage of many of the lessons that have been learnt from the accumulating research on correctional treatment and studies of diversion.

## **2.3 The Development of Diversionary Programmes for Drug Dependent Offenders in Australia**

### ***2.3.1 Introduction***

It is important to view the development of drug courts in the full range and history of diversion efforts in Australia. One of the reasons for this is to get clear about what a drug court is and what it is trying to achieve and how it relates to a whole range of similar ongoing efforts. Some clearly see drug courts as a form of “diversion”. Others, in contrast, see it as a rather late form of intervention.

The idea of diverting drug dependent offenders from any contact, or deeper contact, with the criminal justice system is consistent with the belief that it is better to deal with certain offenders on a therapeutic rather than punitive basis. Such an approach was more popular in the 1970s when a warmer attitude towards both “radical non-intervention” (Schur, 1973) on the one hand and rehabilitation programs on the other prevailed. However, public policy took a sharp turn to the right in the early 1980s. It is significant that in the late 1990s a new interest emerged in alternative and more meaningful ways of dealing with offenders. These approaches once again look to address the needs of the offender and minimise the damage that sometimes results from criminal justice intervention. The “therapeutic” approach is seen to be appropriate for certain groups of offenders such as drug offenders and juvenile offenders where personal issues are more readily seen to be the reason for the

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<sup>5</sup> Therapeutic jurisprudence describes a body of literature and a movement that is concerned with mobilizing the therapeutic effects of the court process (Wexler & Winnick, 1991). Other forms of therapeutic jurisprudence, or “problem-solving” courts, emerge where an alternative to the traditional criminal justice approach appears to be required (e.g. family violence courts, indigenous courts).



offending. It follows that a more effective response lies in addressing the personal problems of the offender rather than simply making things “worse” for them by sending them to prison. It is also notable that the renaissance of diversion comes with a distinct “tough love” flavour. This is perhaps not surprising as it was the labelling of treatment programmes as “soft on crime” that helped precipitate their demise in the 1980s.

### ***2.3.2 Diversion programmes in Australia***

Diversion programmes for drug dependent offenders in Australia have a relatively long history. The first explicitly named drug diversion programme developed in NSW in 1977. Although early indications were that it had not achieved its goals (Williams & Bush, 1982) a second diversionary strategy, the Drug and Alcohol Court Assessment Program was established in NSW two years later. Victoria also developed broadly based diversion programmes, however these were typically on the more secure legal footing of a post-sentence order (Skene, 1987). This post sentence order was created by section 13 of the *Alcoholics and Drug Dependent Persons Act 1968* (Victoria). Many offenders were dealt with by way of s13 orders<sup>6</sup> however it appears that s13 orders lost the confidence of the judiciary who believed the orders were not adequately supervised and breaches not reported (Skene, 1987).

Other states also developed diversion programmes for drug dependent offenders. South Australia developed the Drug Aid and Assessment Panel in 1984 (Lawrence & Freeman, 2002). In Western Australia the Court Diversion Service (CDS) was developed in 1988 by the Western Australian Drug and Alcohol Authority in co-operation with the Western Australian Department of Corrective Services. The CDS was the result of recommendations by a working party established a year earlier to examine the prospects for a drug diversion programme. The intention in establishing the CDS was to overcome some of the problems encountered in NSW by the DACAP, notably the lack of co-operation and collaboration between the agencies involved (Rigg and Indermaur, 1996). The thinking behind the establishment of the CDS was to “use the anxiety associated with the period preceding sentence to encourage drug

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<sup>6</sup> According to Skene (1987) almost 1300 between 1983 and 1986 inclusive.

users to engage in treatment”<sup>7</sup>. The CDS was also introduced as part of a package of measures designed to reduce the rate of imprisonment although its achievement in this regard was never monitored by the government (Rigg and Indermaur, 1996).

Two evaluations of the Western Australian CDS are available. Rigg and Indermaur (1996) provided a process evaluation of the CDS from 1988 to 1995. They found that treatment programs typically lasted 4 to 8 weeks and that the CDS had “become accepted as an established and credible service by a majority of those involved in its operation” (p. 257). The second evaluation (Ryder et al 2001) provided a quasi-experimental study of the CDS from January 1998 to June 1999. These researchers found that a measure of “motivation to change” and an absence of prior convictions were significant predictors of successful outcomes for participants. Ryder et al (2001) raised a number of important issues for the operation of the CDS. These included the low number of Aboriginal referrals and perceptions by legal practitioners and others that “offenders who engage in diversion programs and fail to complete the program are likely to receive a more severe sentence than if they had never engaged in the diversion program to begin with” (p. 73).

Australian diversionary approaches rapidly increased through the 1990s, particularly in regard to cannabis offences. Following the lead of South Australia, most Australian jurisdictions have developed arrangements to deal with minor cannabis offenders outside of the criminal court system.

### ***2.3.3 Australian diversion programmes in perspective***

In 1994 the Alcohol and Other Drugs Council of Australia prepared a report for the National Drug Crime Prevention Fund on alternatives to the prosecution of alcohol and drug offenders (The Alcohol and Other Drugs Council of Australia, 1994). The report included a review of literature on diversion within Australia and internationally, as well as the results from a telephone survey with 150 representatives from police, judiciary, alcohol and drug agencies, policy makers and 12 key

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<sup>7</sup> Rigg and Indermaur (1996 p. 248) also note that the term “crisis motivation” was frequently used by magistrates and community corrections officers interviewed as part of their evaluation of the CDS scheme. The use of this period of crisis was explicitly referred to in the CDS manual (Rigg and Indermaur, 1996, p 261).

informants. Key issues identified in the literature review in relation to diversion were labelling, net widening, the compromise of due process, the efficacy of the program to which offenders are diverted and the cost-effectiveness of programs. From the telephone survey (p 4) it was noted that:

*There is a general belief that the criminal justice system, as it currently operates, is inappropriate for the majority of alcohol and drug offenders. In this context, appropriate and well planned diversion programs are seen to offer some considerable hope for the future.*

Diversion programs in Australia were boosted by a Commonwealth initiative associated with the national anti-drugs initiative. The Council of Australian Governments (COAG) launched its “Diversion Initiative” in 1999, a four year programme with a budget of \$105m (linked to state co-operation and further state funding) for the States and Territories of Australia<sup>8</sup>. The “Initiative” comprises a range of programmes aimed at diverting drug using offenders from deeper involvement in the criminal justice system. Loxley and Haines (2003) provided an outline of these initiatives and this is reproduced in Table 2.1. Spooner and colleagues (2001) also provided an overview of recent diversion strategies in Australia and Makkai (2002) provided a recent review of the progress of the diversion initiatives (Makkai, 2002).

The differences discussed earlier as to whether drug courts are seen primarily as diversion, early intervention or correctional treatment no doubt underlay some of the tensions surrounding the question of whether or not the Commonwealth initiative has anything legitimately to do with drug courts or not. The degree to which drug courts are seen as a form of diversion or instead as a form of intensive supervision and treatment primarily will determine which group of offenders is seen as an appropriate target. The range of diversion programmes is best represented as a continuum. All drug courts can be situated at some point along that continuum, although not all drug

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<sup>8</sup> To get some idea of the relative size of this initiative and its relation to drug courts if the \$105 million was matched dollar for dollar by the states it would result in a pool of \$210 million. This would be 10 times the size of the allocations to drug courts from the governments of NSW, Queensland and Western Australia combined.

courts are situated at the same point. Although most Australian drug courts sit towards the serious end of this continuum drug courts in Australia, (and the US) vary considerably in terms of the level and degree of intervention and the type of clients they deal with. In fact Australian drug courts are sometimes used in the way they are in many American jurisdictions for dealing with relatively minor offenders<sup>9</sup>.

The question of whether diversion initiatives (including drug courts) really do divert or simply add levels of complexity and supervision, fostering the growth of the criminal justice system (i.e. netwidening) is a serious one. Particularly where minor offenders are involved, providing treatment services runs the risk of increasing the number of individuals that come into some contact with the criminal justice system or its related agencies as well as the depth of the contact. This is because the system extends itself out to “capture” or involve itself more intensely with a group who previously would have no (or limited) contact with the system. Sarre (1999) highlighted the potential for diversionary services to result in “wider nets” (more people in system), “denser nets” (increased intensity of intervention) and “different nets” (new services supplementing rather than replacing existing services). Sarre noted that diversionary schemes have not resulted in a reduction in the numbers of people entering the criminal justice system – which should be a key performance indicator for the success of such schemes.

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<sup>9</sup> One of the PDCPP programmes (the BIR programme) deals with cannabis offenders, some facing their second charge for simple possession.

**Table 2.1 Diversion programs by jurisdiction from Loxley and Haines (2003)**  
(Source: <http://www.health.gov.au:80/pubhlth/nds/nids/diversion>)

STATE	Pre court Diversion	Court Diversion	Youth
NSW	<b>Cannabis Cautioning Scheme</b> <ul style="list-style-type: none"> <li>adults possessing not less than 15 gms</li> <li>may not receive more than 2 cautions</li> <li>second caution includes mandatory telephone education/counselling</li> </ul>	<b>Magistrate's Early Referral into Treatment (MERIT)</b> <ul style="list-style-type: none"> <li>early court intervention scheme for adults</li> <li>drug treatment under bail prior to sentencing</li> </ul>	<b>Young Offenders Scheme</b> <ul style="list-style-type: none"> <li>police can caution or conference instead of arrest</li> </ul> <b>Youth Drug Court</b> <ul style="list-style-type: none"> <li>linked to Young Offenders Act</li> </ul>
VICTORIA	<b>Police Diversion at Point of Arrest:</b> combines 2 cautioning programs: <ul style="list-style-type: none"> <li><b>Cannabis Cautioning</b> with provision of information and education</li> <li><b>Drug Diversion</b> to assessment and treatment</li> </ul> Only 2 cautions permissible.	<b>Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT):</b> <ul style="list-style-type: none"> <li>referral by police to clinician at magistrates court</li> <li>diversion to treatment as bail condition</li> </ul>	<b>Court Diversion at Point of Sentence – Deferred Sentencing:</b> <ul style="list-style-type: none"> <li>aged 17 – 25</li> <li>sentence deferral for 6 months to attend treatment</li> </ul>
QUEENSLAND	<b>Police Diversion for cannabis offence:</b> <ul style="list-style-type: none"> <li>for 50 gms or less to assessment and education/brief intervention</li> </ul>		<b>Police Diversion for cannabis offence:</b> <ul style="list-style-type: none"> <li>available to juvenile offenders</li> </ul>

*Evaluation of the Perth Drug Court Pilot Project*

STATE	Pre court Diversion	Court Diversion	Youth
WESTERN AUSTRALIA	<b>Cannabis Cautioning And Mandatory Education System:</b> <ul style="list-style-type: none"> <li>first time offenders</li> <li>referral to individual or group education.</li> </ul> <b>Police Diversion for other drug offences:</b> <ul style="list-style-type: none"> <li>first time offenders committing simple drug offences.</li> <li>referral to compulsory assessment and treatment.</li> </ul>	<b>Brief Intervention Regime</b> <ul style="list-style-type: none"> <li>pre-sentence option for offenders with a single cannabis charge</li> </ul> <b>Supervised Treatment Intervention Regime:</b> <ul style="list-style-type: none"> <li>pre-sentence option for offenders who have a substance abuse problem and who are charged with a minor offence</li> <li>treatment for 3 – 6 months</li> </ul>	<b>Police Diversion:</b> <ul style="list-style-type: none"> <li>available to juveniles.</li> </ul> <b>Drug Court:</b> <ul style="list-style-type: none"> <li>established within the Children's Court.</li> </ul>
SOUTH AUSTRALIA	<b>Education/Assessment/Treatment</b> Series of options for people apprehended by police for possession of illicit drugs.		<ul style="list-style-type: none"> <li>Diversion of young people and Indigenous youth is a priority</li> </ul>
TASMANIA	<b>1<sup>st</sup> level Cannabis Diversion:</b> <ul style="list-style-type: none"> <li>for first time offences</li> <li>cautioning and education materials</li> </ul> <b>2<sup>nd</sup> level Cannabis Diversion:</b> <ul style="list-style-type: none"> <li>for second offence</li> <li>cautioning and diverted to early intervention counselling</li> </ul> <b>3<sup>rd</sup> level Cannabis Diversion and Diversion of Other Drug Offences:</b> <ul style="list-style-type: none"> <li>Third cannabis offence or other drug use/possession</li> <li>diversion to assessment and treatment</li> </ul>		All levels available to youth

## **2.4 Drug Courts in Australia**

### **2.4.1 Introduction**

Makkai (2002) pointed out that drug treatment courts did not develop in Australia in the same way as they did in the US. While US drug treatment courts developed as part of a judicial “grass roots” movement, in Australia their introduction came about through the activities of various senior bureaucrats and policy makers exploring ways to provide more appropriate treatment options and/or address the drug crime problem. Many of the drug courts were also introduced, or at least “sold”, as a cost cutting measure aimed at reducing the number of offenders being sent to prison.

The first Australian drug court opened in NSW in 1999. This was followed by the opening of courts the following year in Queensland, South Australia and Western Australia. Queensland plans to extend its court to two more locations in northern Queensland. Most Australian jurisdictions have fully funded their drug court pilot projects although the level of funding varies greatly<sup>10</sup>.

### **2.4.2 New South Wales**

The NSW drug court which commenced in February 1999 as a pilot and incorporated a randomised control study design was based on the US Drug Court model and was specifically supported by legislation<sup>11</sup>. The court operates in Western Sydney and receives referrals from 11 local and 4 district courts in the western part of Sydney. Freeman (2003 p.2) describes the unique development of the NSW drug court:

*In late 1998 the NSW Cabinet Office formed an inter-departmental Drug Court Working Party to design an Adult Drug Court. The Working Party was made of representatives from the NSW Attorney General's Department, Health, Legal Aid, Director of Public*

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<sup>10</sup> NSW spent \$13.5m over a two year period on its pilot. Queensland committed \$6.3m to a 30 month trial. The West Australian state government provided \$5.5m over four years to the drug court, with \$2.7m devoted to the two year pilot and the remainder to be committed if the pilot was successful (Freiberg, 2002a).

<sup>11</sup> *The Drug Court Act 1998 (NSW)*.

## ***Evaluation of the Perth Drug Court Pilot Project***

*Prosecutions, Police, Probation & Parole. But, one factor that set this initiative apart from previous criminal justice programs was the inclusion of evaluators (the Bureau of Crime Statistics and Research) at the outset of the planning process.*

The legislation allowed for a one year program with three phases with reducing attendances required in court. Lawrence and Freeman (2002) noted a variety of implementation problems: potential conflicts of interest for legal aid lawyers; an absence of social workers on the team; no training for the team in drug and alcohol issues; problems with information sharing; conflicts between treatment and legal issues; the high cost of program non-compliance; lower than expected referral rates; problems with the supervision and reporting of urine tests; and the problem of drug court clients getting access to treatment services before non-offenders.

The NSW program was very much located at the “hard end”. Many participants enter the programme from prison and exit the programme (if terminated) back into prison. The program itself is tough and long which may help explain the much lower retention rates than observed in typical US programs<sup>12</sup>.

The NSW Bureau of Crime Statistics and Research monitored key aspects of the Court and provided quarterly reports and a series of process evaluation reports (Freeman, 2001, 2002; Taplin, 2002) followed by a rigorous outcome evaluation (Lind et al 2002). The outcome evaluation was carefully planned and involved measuring reductions in recidivism (between those placed on the drug court compared to a matched group that was not) and a cost-benefit analysis. The outcome evaluation found a significant difference between the two groups in relation to the time taken by the drug court group to commit their next drug offence. This result depended on comparing the two groups in terms of equivalent exposure, thus correcting for the advantage the imprisoned group would have because they were unable to re-offend whilst in custody.

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<sup>12</sup> Only 10 participants graduated in the first 17 months, and the percentage of persons terminated from the program within the first year of treatment was over 60% (Freeman, 2003).



The outcome evaluation showed a modest success and the slightly better performance of the treated group became more meaningful when the costs of imprisonment compared to treatment were calculated. Lind et al (2002) identified some important areas for improvement which could substantially improve the performance of the drug courts – these are discussed in more detail in section 2.4.4.

### **2.4.3 South Australia**

The South Australian Drug Court began as a two year pilot program based in Adelaide Magistrate's Court in May 2000 and aimed at adults with significant drug problems who have committed offences that would probably attract a term of imprisonment<sup>13</sup>. The Court builds on the remand provisions available in South Australia which allow a deferral of sentence for a period of up to 12 months. The South Australia drug court programme was launched as a state initiative designed to complement the aims of the Commonwealth "Tough on Drugs" strategy."<sup>14</sup> Although initially scheduled to run for two years the programme has been extended to December 2003 (Harrison & McRostie, 2002:3).

In addition to the normal implementation problems the South Australia drug court faced some particular difficulties. A moratorium was placed on receiving new referrals to the court on 15<sup>th</sup> November 2000 and not lifted until 14<sup>th</sup> May 2001. In the first stage (May to November 2000) there were 313 referrals involving 308 distinct individuals. In the period following the lifting of the moratorium (May to December 2001) the referral rate was much lower (only 83 in this period). Less than half of all referrals went on to participate in the program and the transfer rate was higher in the first 6 months of the programme than after the moratorium. By December 2001, of the 150 clients admitted to the drug court programme, 18% had graduated and 14% were

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<sup>13</sup> Harrison and McRostie, 2002 p. 3.

<sup>14</sup> This provides some evidence of the connection between the Commonwealth diversion programmes mentioned in the previous section and the nation wide implementation of drug courts. This connection is important not only for the way drug courts are conceptualised but also for their funding and the review or evaluation of diversion initiatives undertaken by the Commonwealth.

still active. This amounts to a programme completion rate of 15% if we consider the number of programme graduates as a percentage of referrals<sup>15</sup>.

#### **2.4.4 Victoria**

Interestingly there appears to have been a resistance to the establishment of drug courts in Victoria that is not apparent in other jurisdictions. Firstly, the Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) scheme was thought to be sufficient for Victoria's needs<sup>16</sup>. Secondly, the authoritative Drug Policy Expert Committee established under the leadership of Professor Penington advised the government against the establishment of Drug Courts, partly out of a concern that it would be focused at the hard end and consequently "lower end" drug using offenders would be neglected (Freiberg, 2002b).

As part of a broader review of sentencing and following the Penington review Freiberg (2001b) produced a discussion paper exploring the value of a range of sentencing options for drug affected offenders and recommended introduction of a new post-conviction sentencing order known as the Intensive Drug Supervision Treatment Order (IDSTO). This new order was based on two key assumptions. First, that it is "necessary and right for the courts to provide for serious interventions into the lives of offenders" (p. 10). Second, that the order encompass "the key features of the drug court model" (p. 11). The IDTSO was to provide flexibility regarding length of order, conditions imposed and consequences of breach.

Freiberg addressed the issue of the range of criminal justice responses to offenders with drug problems, and looked at drug courts not in isolation but as one response amongst a range of appropriate and potentially helpful responses. Freiberg developed a plan or chart (based on a similar one produced by Spooner et al, 2000) which could be used in other jurisdictions to plot the range of criminal justice responses from

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<sup>15</sup> For those who were terminated the average length of stay on the programme was around five months.

<sup>16</sup> See Table 2.1 for detail on the CREDIT scheme. Freiberg (2002b p. 283) cited Heale and Lang (2001) who explained that the CREDIT program was established after the decision was made "that the US drug treatment court model was inappropriate for the Victorian context".

cannabis cautioning to intensive treatment in prison and following release from prison. This plan in essence recognises that courts need to have access to a wide range of options and to apply them as needed if the management of offenders in the style of therapeutic jurisprudence is to be successful. As Freiberg (2001b, p17) noted:

*The various options outlined below create a series of pathways for offenders between existing programs, the 'normal' courts exercising their existing sentencing powers and the DDC [designated drug court] utilizing the proposed new sentencing power. There need not necessarily be any single pathway, as the direction and speed of an offenders progress through the system will be dependent upon his or her needs and the seriousness of the offence. It is envisaged that a person could come before the DDC as a first offender charged with a serious offence directly following arrest, or as a recidivist offender directly or referred by other courts.*

Freiberg's "pathway" approach has the potential to merge the range of treatment options including the drug court with other operations of the court and appears to offer more flexibility and more power to drug courts.

The Victorian "Drug Court" was eventually established as a three year trial at the Dandenong Magistrate's Court in May 2002. This Court was established with its own enabling legislation (*Sentencing (Amendment) Act 2002(Vic)*) which created a new division of the Magistrate's Court and a new sentencing order - the Drug Treatment Order (DTO). The custodial part of DTO is suspended unless activated by Court for non-compliance or cancellation of order. The treatment and supervision parts of DTO remain active for a period of two years. The legislation clearly states that the DTO is intended to be used when a sentence of imprisonment is warranted. The DTO establishes the terms for treatment and supervision and also for a term of imprisonment, if the offender fails to succeed on treatment the custodial sentence can be activated without further ado. Unlike other Australian drug courts the Victorian court targets both drug and alcohol dependent offenders sentenced in Magistrate's court.

The initial resistance to drug courts in Victoria may well have been beneficial to the Victorians allowing them to benefit from developments in other states and giving time for a careful consideration of what it is drug courts hope to achieve and how to ensure those aims will be met. The discussion paper developed by Freiberg (2001b) provided the Victorian parliament with a thorough and careful consideration of all the options and extensive work on sentencing mechanisms that would serve the purposes of the court. As a result the Victorian model is being seen as something of an alternative to the NSW drug court model and may be more suitable for some other Australian States.

### **2.4.5 Queensland**

In Queensland a pilot drug court was introduced in January 2000. The Queensland statute governing the operation of the drug court (*The Drug Rehabilitation (Court Diversion) Act 2000 (Qld)*) authorises the drug court to operate at three Magistrates Courts in the Brisbane area Beenleigh, Ipswich and Southport<sup>17</sup>. The statute states explicitly that those suitable for processing in the drug court are those “likely” to be imprisoned (Freiberg, 2002a). The Queensland legislation provides for a sentencing disposition (the Intensive Drug Rehabilitation Order - IDRO) as a form of suspended sentence. The offender is in effect sentenced to a period of imprisonment and the IDRO serves to allow the imposition of a range of conditions governing the suspension. At the termination of the IDRO – through successful or unsuccessful completion of the stated conditions - the magistrate issues a final sentence.

The legislation and associated procedures are designed to ensure that in Queensland those dealt with by the drug court are likely to truly be at the “hard end” and would otherwise serve a term of imprisonment. However the drug court is a division of the magistrates court (Freiberg, 2002a). Freiberg noted that John Costanzo, the first Queensland drug court magistrate, argued that the Magistrates court was the right level of jurisdiction to place the drug court because it had access to a greater number of drug dependent offenders and allowed for faster and cheaper processing than the

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<sup>17</sup> Queensland Department of Justice and Attorney General website on the drug court [http://www.justice.qld.gov.au/courts/factsht/qc\\_fact3.htm](http://www.justice.qld.gov.au/courts/factsht/qc_fact3.htm).

District Court. Freiberg also made the point that the Queensland legislation does not specifically exclude alcohol dependents.

The point discussed earlier that there is intense interest in some quarters to present drug courts as a “tough” rather than a “soft” option is illustrated by the following segment from the Queensland government website in regard to the drug court<sup>18</sup>:

***Is the Drug Court program a ‘soft option’?***

*No. Offenders accepted for the Drug Court program must undergo intensive rehabilitation for about 12–18 months.*

*The length of time depends on the progress made by each individual, and the type and extent of their drug dependency. Then their original sentence is reviewed and a final sentence imposed, which may or may not include imprisonment.*

*Participants must be willing to take part in all parts of the program, including treatment and courses and they must obey the strict conditions set by the court. Offenders who disobey the court’s conditions risk prison.*

The Queensland model has a number of potential problems. These include the unspecified duration of the IDRO and the fact that many conditions can be issued as part of the IDRO. Freiberg (2002a) noted that these conditions could be oppressive and the Queensland regime is the most onerous in Australia. It is quite possible that the obligations placed on offenders are unrealistic and will “set them up to fail”. There may also be an ethical (or “best practice”) problem with the Queensland regime in that those who may otherwise have been sentenced to a non custodial order will be accelerated up to the IDRO to get them on the drug court.

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<sup>18</sup> Queensland Department of Justice and Attorney General website on the drug court [http://www.justice.qld.gov.au/courts/factsht/qc\\_fact3.htm](http://www.justice.qld.gov.au/courts/factsht/qc_fact3.htm).

#### **2.4.6 Western Australia**

In December 2000 the Western Australian DOJ established the drug court as a pilot project. The implementation of the drug court followed the results of a feasibility study (Edith Cowan University, 1999) into the establishment of a Western Australian drug court which was commissioned by the Western Australian Ministry of Justice and the West Australian Drug Strategy Office. Although the feasibility study presented a strong case for locating the court at the District Court level at the Central Law Courts<sup>19</sup>, the court was established within the Court of Petty Sessions. The existing CDS was transformed into the Court Assessment and Treatment Service (CATS) to provide services to the drug court<sup>20</sup>. This decision to locate the court at the Petty Sessions level appears to have been influenced by the desire to capitalise on the success of the CDS.

The WA drug court<sup>21</sup> was designed to provide a comprehensive diversion service with three programs aimed at different types of drug abusing offenders. At the very “low” end a “Brief Intervention Regime” was designed as a simple education disposition for those with minor cannabis charges. Second, a “Supervised Treatment Intervention Regime” was designed for minor offenders with substance abuse problems and to cover the client group previously serviced by the CDS. Finally, a new “high end” program designed for those requiring intensive supervision and who might otherwise be facing a term of imprisonment was developed, this is referred to as the “Drug Court Regime” (DCR).

Much of the original planning of the drug court (in particular in relation to the new group – DCR) was predicated on changes to legislation that were recommended in the feasibility study. However these legislative changes were never introduced and this has been the source of much discontent. The main cause for complaint is that without

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<sup>19</sup> Chapter 3 provides the full details of these recommendations.

<sup>20</sup> CATS continue to provide the diversionary services offered by CDS in a reduced capacity. It provides diversionary services for referrals from other metropolitan courts.

<sup>21</sup> More precisely referred to as the Perth Drug Court Pilot Project (PDCPP). The pilot is actually restricted to cases heard at the Central Law Courts in Perth city.

legislation the DCR is limited to six months from the time of first appearance<sup>22</sup>. This only allows an effective treatment period of four months following the assessment period. Airey & Wiese (2001 p.12) argued that the program length is too short “to measure true ‘success’ and to deal fully with the complexity of the issues often underlying drug use”. Other difficulties they noted include: a large waiting list (4 to 8 week wait); a shortage of rehabilitation services; an absence of secure detoxification facility with psychiatric services access; and an absence of culturally appropriate detoxification facilities for Aboriginal people. The “Issues paper” prepared for the WA Community Drug Summit (held in 2001) also mentioned the low rate of referral of Aboriginal people to drug court (Community Drug Summit Office, 2001).

Drug court Magistrate Julie Wager has worked as a fierce advocate for the court and produced a number of papers on various aspects of the drug court for a wide variety of audiences (Wager, 2001a, 2001b, 2002a, 2002b, 2003). These papers describe the operation of the drug court, its benefits and also the problems, particularly in finding support from the government through legislation to allow the full operation of the drug court as it was intended. The major issue of the inadequate length of the program is highlighted in this series of papers. Resource and staffing issues (e.g. the need for more CATS officers, the restrictions imposed by the CATS caps<sup>23</sup> and the subsequent under-utilisation of other court resources and the commonwealth funding) are also discussed<sup>24</sup>.

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<sup>22</sup> Under the deferred provision of section 16(2) of the Sentencing Act 1995 (WA).

<sup>23</sup> Because of the intensive nature of the drug court work, the Court Assessment and Treatment Service (CATS) team has placed a cap on the number of drug court clients they could supervise (15) and this effectively controls the number of available places.

<sup>24</sup> Other issues discussed include: management problems (lack of involvement of the Drug Court Steering Committee and senior officers in the Department of Justice); collaboration and communication problems; programme issues (from the low number of referrals to procedural problems and the need for “positive activities” for those not in residential programs); lack of accommodation for defendants who have an initial suitability for drug court and are awaiting a drug court regime; and the lack of an evaluator (lack of data entry and monitoring data quality, and agreed performance indicators etc).

#### ***2.4.7 Australian juvenile drug courts***

Although originally designed for adults, in a number of jurisdictions the drug court model has been adapted for application to juveniles. A drug court for juveniles commenced in July 2001 in Western Sydney (Cobham and Campbelltown). The court operates under the framework of the existing Children's Court and combines intensive judicial supervision and case management of young offenders who are charged with criminal offences that result from alcohol or drug use (Graham, 2000a). Graham (2000a) reports that it was estimated that there would be eight referrals to initial assessment at the youth drug court per week. From these initial referrals only half were expected to go on to in-depth assessment and two to three to be accepted onto the program. The PDCPP also encompassed services to the Children's Court in Western Australia so that juveniles with substance abuse problems could be dealt with by a special sitting of the Children's Court and provided with services through the CATS team. As with the adult court in Western Australia this new operation did not involve any new legislation and served mainly to provide an enhanced level of service for juveniles and a special focus for the Children's Court.

Cooper (2002) noted that as of mid 2002 there were over 225 juvenile drug user treatment courts in the US and more than 100 in planning stages. Cooper, in her review of US juvenile drug courts, noted the observation (often made by treatment providers) that encouraging juvenile offenders to undertake treatment is usually a more challenging task than encouraging adults. This is for a number of reasons quite apart from the fact that there is a greater reluctance to hold out punishment as the stark alternative. For example, the level of motivation is generally a lot less for juveniles compared to adults. Furthermore, there is a more complex task of working to counteract the powerful effect of peer groups in the social environment of the juvenile as well as working with families that may be at various stages of dysfunction.

In many ways the intensive case management approach and a concern with treatment over punishment marries ideally with the approach preferred when dealing with juvenile offenders. Indeed, because the drug court approach is so similar to the general juvenile justice model, the question arises as to what drug courts have to offer



over and above what does, or should, already exist in regard to the processing of juveniles.

Juvenile drug courts differ from adult drug courts in some important ways. First, the whole approach to juvenile justice is already much more welfare and treatment oriented than adult courts. Second juvenile courts are more flexible and are not able to be so demanding as a lower level of responsibility and insight is expected. Third, juvenile drug courts involve the family more, where a functioning family is present. Other particular challenges concern the fact that many juveniles will not be at a point where they are “ready to change” and thus motivational counselling and other support may be appropriate to a degree that it is not in adult courts.

#### ***2.4.8 Australian drug courts in perspective***

There are a number of points of similarity and difference between the Australian drug courts. An overview of the Australian drug courts is provided in Table 2.2. The issue of where precisely to locate the drug court on the diversion continuum and which group of offenders to target remains a matter of essential difference between Australian drug courts. Many of the purported benefits of drug courts are expressed in terms of preventing the expensive use of imprisonment, yet all drug courts in Australia (except in NSW) are located at a magistrates court, a level of court that more often than not produces non custodial sentences. Freiberg (2002a p. 5) argued in relation to drug courts in Australia that “The choice of Magistrates’ Court in most jurisdiction would appear puzzling, if the drug courts were aiming at the more serious offences where offenders are likely to be sent to gaol.”<sup>25</sup>

Makkai (2002) pointed out the drug treatment courts that have emerged in Australia share with their US counterparts some of the most innovative elements of drug courts such as the notion of prosecution and defence working together rather than in an

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<sup>25</sup> To ensure that the introduction of drug courts in the Magistrates court in Victoria did not lead to sentence inflation Freiberg (2000) emphasised the “principle of proportionality” and argued that “a drug court judge cannot inflate a sentence which would otherwise be appropriate in order to bring an offender under their jurisdiction, no matter how beneficial the court considers that the treatment regime may be for that offender” (p. 229).

adversarial way, early identification and placement on treatment programs, frequent drug testing and ongoing involvement of the magistrate or judge with the offender. Perhaps one important difference between the US and Australian experience is that Australia has always had a fairly well developed range of treatment options and a number of mechanisms to encourage offenders into treatment. In Australia the case management aspect provided by the drug court was not quite as necessary as a good system of case management had already been developed and agencies had a history of trying to work together. What is new is that the magistrate or judge should become the “case manager” and become involved in the minutiae of the treatment and life circumstance of the offender.

Makkai (2002) identified three main “implementation hiccups” that have afflicted the establishment of drug courts in Australia. First, it appears that all the Australian drug courts, some more than others, have had difficulty developing the required data bases to allow for proper management and evaluation. This relates to the more general problem of management and the policing of standards. In the US the Drug Courts Program Office in the Federal Department of Justice plays this role to some extent. A similar body would be welcome in Australia, but it is difficult to imagine how it may operate unless it was monitoring the expenditure of Commonwealth funds.

Second, various problems have also arisen in a core aspect (maybe the key aspect) of the drug courts - the provision for random urine testing. Problems from financing the tests to information sharing the results to sanctions (for “dirty” urines) have been experienced.

The third major problem is that providing a high level of monitoring and intervention with a particularly difficult client group actually escalates the problems from non compliance to case management. Providing for more intensive engagement with this group multiplies the opportunities for tension and failure. The level of input required from justice and treatment agencies was perhaps not appreciated before the programs began and have generally led to lower numbers of offenders being processed than planned.

One of the interesting issues that is highlighted by a comparison of drug courts around Australia is the question of whether to exclude alcohol or other substance abuse problems. Notably Victoria and Queensland include alcohol but other states exclude it. Logically there appears to be no grounds for privileging one form of substance abuse over another. There are two main reasons usually advanced for the exclusion of alcohol. First drug courts are often popular because they provide a focus on those drugs that many believe are associated with a greater degree of dependence. Second, drug courts are usually introduced with a manageable and select group of offenders in mind<sup>26</sup>. However both these arguments may be flawed. Firstly the degree of dependence is not strictly determined by the type of substance involved. Secondly, and perhaps more importantly, if the interest is in restricting numbers, better criteria could be developed along the lines of risk and responsivity<sup>27</sup> to maximise the potential benefits of treatment. It remains possible that the focus on illicit drugs makes the drug court more politically attractive and saleable.

Different patterns of drug use between Australian states may affect the comparability and applicability of different drug court models. Data on the drug use patterns of arrestees has been collected for four years now and shows some consistent differences in drug use by criminals in NSW, Queensland and Western Australia (Makkai and McGregor, 2003).<sup>28</sup> In Western Australia the most common drug of use (apart from cannabis use which is generally the most common drug in all sites) is amphetamines,

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<sup>26</sup> “The Western Australian Drug Court specifically excluded alcohol in order to make the pilot manageable in terms of numbers, though it accepted that alcohol dependence could be dealt with if it occurred in the context of illicit drug use (Western Australia: Department of Justice)” (Frieberg, 2002a: p. 8).

<sup>27</sup> The principles of risk and responsivity have become embedded in the thinking of those planning and evaluating correctional programmes. These principles emerged as prime issues to attend to in the literature that asserted correctional treatment “works” – but not with all offenders all of the time. Indeed to make sense of the value of correctional treatment one needed to adopt a “triage” approach ensuring that the group to be treated was of sufficiently high risk to allow effects to be demonstrated and to avoid the squandering of treatment resources on offenders who were unlikely to re-offend in any case. For an update on this literature see Hollin (2002) and McGuire (2002).

<sup>28</sup> This research is known as DUMA or “Drug Use Monitoring in Australia” and is coordinated by the Australian Institute of Criminology (AIC). Full details of DUMA findings can be found at the AIC website ([www.aic.gov.au](http://www.aic.gov.au)). Western Australia (East Perth lock up), Queensland (Southport) and NSW (Bankstown and Parramatta) have collected data since 1999. Other sites, including two in South Australia, started collecting data in 2002.

in New South Wales it is opiates while in Queensland there appears to be roughly equal levels of opiates and amphetamines. The differences are quite large and are likely to effect the operation, if not the applicability, of the drug court model in Perth compared to Sydney and Brisbane.

**Table 2.2 A quick comparison of Australian drug courts**

	State				
	NSW	Qld	SA	WA	Vic
<b>Date Started</b>	1999	2000	2000	2000	2002
<b>Special Legislation?</b>	Yes	Yes	No	No	Yes
<b>Evaluations<sup>1</sup></b>	completed	1	2	3	4
<b>Length of Pilot (Yrs)</b>	2+	2+	3+	2+	3
<b>Location of Court<sup>2</sup></b>	D	M	M	M	M
<b>Length of program (months)</b>	24	18	12	6	24
<b>State funding \$millions/yr</b>	13.5/2	6.3/2.5	NA	5.5/4	NA
<b>1. Evaluations</b> 1 = Underway, Australian Institute of Criminology; 2 = underway SA Office of Crime Statistics, interim report available; 3 = Crime Research Centre; 4 = tendered.					
<b>2. Location of court</b> D= District (higher court); M = Magistrates court					

## 2.5 Evaluation of the Success of Drug Courts

### 2.5.1 Introduction

There is now a growing body of literature focusing on the crucial question “Do drug courts work?”<sup>29</sup> In approaching this body of literature it is possible to distinguish between individual evaluation studies and those that provide summaries or reviews of

<sup>29</sup> E.g. Belenko (1998, 2001); Peters and Murrin, (2000); Goldkamp et al (2001). For a recent and comprehensive collection see Harrison et al (2002). In Australia the most advanced evaluations have been conducted by the team at the NSW Bureau of Crime Statistics and Research (e.g. Lind et al, 2002).

evaluations. Some of the general reviews are those that attempt to summarise or make sense of the large number of individual evaluation studies. The much cited Belenko reviews (Belenko, 1998, 2001) and the reviews by the American University (American University, 2001, 2002) discussed throughout this review are popular because they appear to give a summary view of the evaluations. However these summaries mask substantial differences between evaluation studies and the fact that most of the evaluation studies suffer from major methodological flaws that disallow a simple kind of accumulation of evidence or attempt to ascertain what the “balance” of the evidence suggests.

The biggest complication is that most evaluation studies are limited because suitable comparison groups are not available. A second methodological flaw is that follow up times are not sufficiently long. A third is that outcome measures are not sufficiently robust (measuring convictions not charges). Finally, most of the US studies are limited to convictions that occur in the state or county under consideration, so that offenders who move from their local area and re-offend are not counted. Lind et al (2002 p.2-6) provide a good summary of these methodological difficulties. Table 2.3 provides a snapshot of the major published American evaluations of drug courts between 1994 and 2002. Most of these studies and their methodological problems are summarised in Lind et al (2002).

In terms of the effectiveness of drug courts the source normally cited for the American drug courts are the two meta analyses conducted by Belenko (1998, 2001). In his 1998 paper Belenko included 59 evaluations of 48 drug courts and in his 2001 review he updated the earlier study with 37 published studies between 1999 to 2001. Belenko restricted his analysis only to external evaluations as one check on methodological rigor. In his 2001 review Belenko observed:

- a relative paucity of empirically sound and comprehensive research on drug court operations and impacts (p. 6);
- a high degree of local satisfaction with the drug court models (p. 51);
- across evaluations, an average of 47% of drug court participants graduated from the program (range 36% to 60%);

**Table 2.3 Major published American evaluations of drug courts 1994 – 2002<sup>30</sup>**

<b>Authors</b>	<b>Year</b>	<b>State</b>	<b>Methodological Issue/comment</b>	<b>Outcome or indication</b>
Goldkamp	1994	Florida	<b>1, 2</b>	<b>A</b>
Deschenes et al	1995	Arizona	<b>4</b>	<b>C</b>
Gottfredson et al	1997	Washington, DC	<b>3</b>	<b>A</b>
Granfield et al	1998	Colorado	<b>4</b>	<b>B</b>
Vito& Tewksbury	1999	Tennessee	<b>1</b>	<b>A</b>
Applegate & Santana	2000	California	<b>1</b>	<b>A</b>
Miethe et al	2000	Las Vegas	<b>1</b>	<b>B</b>
Breckenridge et al	2000	New Mexico	<b>4</b>	<b>C</b>
Peters & Murrin	2000	Florida	<b>4</b>	<b>C</b>
Brewster	2001	Pennsylvania	<b>1</b>	<b>A</b>
Martin and Frenzel	2001	Nebraska	<b>5</b>	<b>C</b>
Wolfe et al	2002	California	<b>4</b>	<b>B</b>

**Key:**

**Methodological problems:** 1= insufficiently matched control groups;  
2 = insufficient or unclear follow up times;  
3 = insufficient controls between experimental group & control group;  
4 = sufficient controls and follow up period;  
5 = matched control groups but prior arrest history not controlled.

**Level of support:** A = impossible to say because of methodological problems;  
B = inconclusive or no significant effect;  
C = significant effect.

<sup>30</sup> Most of the methodological problems identified in this table were identified in the literature review provided by Lind et al 2002.

- drug court impacts may fluctuate over time (evaluations focusing only on the initial phase of drug court implementation, as many evaluations do, may provide a misleading view of how a court may function once it has reached a more stable operational phase) (p. 27);
- “relatively low” drug use and recidivism rates while participants are on a drug court program and reduced recidivism rates post-program;
- cost savings analyses have reported savings in comparison to standard sentencing, but Belenko noted that straight diversion may be less expensive and less intrusive for low risk offenders and achieve similar outcomes as drug courts; and
- qualitative studies of juvenile courts suggest that a number of juvenile courts have faced implementation or operational problems.

Belenko (1998) listed a range of benefits of drug courts for which evidence was accumulating. Most of these related to non crime reduction benefits such as facilitating access to treatment for drug abusing offenders; reductions in drug abuse; and facilitating co-operation and partnerships between the criminal justice system, substance abuse treatment professionals, and other social service providers. However, Belenko concluded that there was also evidence for real crime reduction in terms of cost savings, at least in the short term, from reductions in jail time and prison use, court and other justice system costs, and reduced criminality.

The US Drug Courts Program Office initiated a nationwide evaluation of drug courts focusing on 14 drug treatment courts. The evaluation conducted by the RAND group (Turner et al., 2002) found that drug courts did meet most of the criteria listed as indicative of effective drug treatment courts. However the one component that was most difficult to meet was the monitoring and evaluation of the achievement of program goals and effectiveness.

### ***2.5.2 A closer look at methodological challenges facing the evaluations of drug courts***

Goldkamp and colleagues pointed out that the question “do drug courts work?” has three distinct components. First, the question essentially asks us to compare the operation of the drug court to some alternative (usually previous) operation such as “regular probation”. Second, for almost all decision makers the key indicator of success is crime reduction, as reflected in reductions in re-offending of drug court participants. Third, another measure of success, but clearly a secondary one, is cost reduction (Goldkamp et al 2001).

The focus is therefore clearly on the reductions in re-offending and the costs required to achieve these reductions. Also important, if such success can be demonstrated, is the question of which particular component of the drug court was active in producing reductions in re-offending. This is important because it may be possible that the active component of the drug court may be something relatively simple and cheap, and if this is the case it may be possible to re-configure the drug court operation to achieve the same effect in terms of crime reduction at less cost.

Although there is enough encouraging evidence to support the promise of drug courts, much more work is needed to isolate which groups of offenders are best served by this approach and which particular models or components are relevant to positive outcomes. Goldkamp et al (2001) argued that evaluations of drug courts need to be informed by a typology of courts and break away from the assumption that all drug courts are essentially the same. This perspective is very similar to the approach to evaluation advocated by Pawson and Tilley (1997) in their “realistic evaluation” model – trying to trace a particular mechanism to a particular outcome. Given the variety of models of drug courts and the variety of groups of offenders that are addressed the appropriate question to ask is not “do drug courts work?” but “which types of drug courts work with which types of offenders in which circumstances?” This re-phrasing or re-configuration of the question clearly draws on the lessons from the “what works” literature on correctional treatment<sup>31</sup>.

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<sup>31</sup> See McGuire (2002) and a range of work by the Canadian school of Bonta, Andrews and Gendreau which is nicely summarised in Hollin (2002). Johnson et al



Probably the biggest single point of confusion in assessing the efficacy of drug courts relates to the establishment of a fair comparison group. Goldkamp et al (2001) noted that many studies compare programme completers with those in a matched control group. However, this is an invalid comparison. Out of any cohort of offenders placed on a drug court programme there will be one group that goes on to comply and complete the programme and a group that drops out or is rejected. If we simply compare the successes with the whole of the cohort placed in the comparison (control) group we will be comparing a group of “successes” with a mixed bag in the other group. In other words we need to counter the argument that the drug court programme does nothing but allows for the selection or sorting within the treatment group in terms of some personal variable such as compliance which is related to risk but independent of the intervention effect<sup>32</sup>. If the drug court programme has anything active to offer to the criminal justice system it must demonstrate a capacity to lift the mean (the average performance) of the whole cohort of offenders placed on the drug court programme. Thus it is important to demonstrate an effect over and above any natural sorting that will occur. Obviously, for a fair test it is important that the socio-demographic variables and legal factors of the cohort placed in the drug court programme be the same as the cohort placed in the comparison group. This may seem obvious and logical, but the operation of many drug court programmes include eligibility criteria that reject some of the key high risk groups (such as those with a history of violence). A number of evaluations raise the prospect that if the selection issue is not handled carefully drug courts could actually increase risks of recidivism. Miethe et al (2000) found that risks of recidivism for drug court participants in a Las Vegas drug court were actually higher two years following the intervention than a matched control group. Notably Miethe et al compared groups placed in the drug court or not (i.e. cohort comparison method) not simply examining program successes with a control group. Table 2.4 provides a brief checklist for ensuring a fair comparison between a drug court cohort and a comparison cohort in order to test the effectiveness of the drug court intervention.

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(2000) compared the two literatures and their observations are discussed in section 2.4.5.

<sup>32</sup> In other words the active factor is not a product of the intervention. However the procedures adopted by the drug court such as continual monitoring discover or “find” this relevant variable making it more likely that amongst program completers there will be a much greater proportion of those who would have done better “anyway”.

**Table 2.4 Checklist of factors needed for a fair test of the effectiveness of a drug court in producing a crime reduction effect.**

1. **A meaningful outcome measure** (a measure of success) is determined and is capable of being measured. This is either re-offending, re-arrest or re-conviction measured at least two years after the completion of the intervention or a reliable calculation of the probability of recidivism using a mathematical technique such as failure rate analysis.
2. **A meaningful comparison group.** This should be at least a matched comparison group that has exactly the same range of socio demographic and legal variables as the group placed on the drug court. Every effort needs to be taken to ensure there remain no threats to the integrity of the comparison. For example it is not sufficient to compare a group who did request treatment with a similar group where there is no evidence of a request for treatment – the request for treatment would signify an important difference in the readiness or motivation for change that would corrupt the comparison.
3. **The comparison needs to be fair.** To be fair a comparison needs to be made between the cohort of individuals placed on the drug court at the very first instance of placement prior to any assessment and a matched comparison group. The many points of attrition from the first point of placement have the effect of sorting through to a group of offenders who were always more likely to succeed. For an active component of the drug court to be demonstrated all the drop outs and rejects need to be included in because their equivalent matched pair in the comparison group is still in that group.
4. **All the components** of the drug court treatment that the treatment group received but the comparison group did not receive needs to be **documented**. It is not possible without further analysis to know what aspect may produce a positive outcome if one is achieved. It may be that some procedure or treatment that is not formally part of the drug court programme produced the impact.
5. **Any other factor** which may affect the comparison needs to be considered, this includes “exposure time” (those in prison will have less opportunity to offend than those not in prison).

### ***2.5.3 Implementation obstacles***

Almost all evaluations and reviews of evaluations point to a range of common implementation problems. These implementation problems mainly relate to data, management and practice. Many of these problems can be seen as a function of the conflicting needs and interests of practitioners and evaluators. To ensure that the right group is targeted in the way planned it is essential that thorough data bases be maintained. This has been found vital to ensure that it is the target group that is

recruited and not some other group. For example, Listwan et al (2002) completed a survey of 11 drug courts in Ohio and found that assessment procedures were a weak area for many courts. Listwan recommended courts could improve their assessment procedures and maximise potential effectiveness by adopting a standardized risk and need instrument that includes criminogenic needs in addition to substance addiction.

In reviewing the introduction of the Drug Treatment and Testing Order in England and Wales Turnbull et al (2000) identified a series of issues that would affect the anticipated national roll out of the scheme. The lack of effective inter-agency work was identified as the single most important factor to address. The second problem identified was the lack of sufficient referrals and screening of referrals at the very first point in the process: “It is important both to stimulate the flow of referrals and to minimise the proportion of inappropriate referrals” (p ix). The assessment process was also found wanting, with a need for tighter selection criteria and a more explicit and robust screening mechanism. The need for an effective “triage” approach that rejects both those likely to fail and those that need little help was suggested as was the need for a specific diagnostic tool to achieve this<sup>33</sup>. It was also found that there was a need for a procedure to better match individuals to treatment programs, and a need for better monitoring and management of the performance of the schemes. Furthermore and perhaps relevant to any expansion of drug courts in Australia the evaluators noted (p: viii):

*In order to aid a successful roll out the Home Office and probation areas will have to invest heavily in the selection and training of staff, achieving clarity of roles, team building activities and planning better assessment procedures and treatment programmes.*

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<sup>33</sup> A tool that has been found elsewhere to be useful for this purpose is the Level of Supervision Inventory developed by Canadian psychologists. This tool serves as both an objective measure of risk and also an indicator of “need”. The most recent version of this instrument (the LSI-R) was published by Andrews and Bonta (1995) who provide vital information on the relation of LSI-R scores to recidivism.

#### ***2.5.4 Evaluation of Australian programs***

In terms of evaluations of Australian drug courts the work of the NSW Bureau of Crime Statistics and Research stands out. Apart from the interim evaluation of the drug court in South Australia<sup>34</sup> the only publicly available evaluations of drug courts in Australia come from the team at the NSW Bureau of Crime Statistics and Research which has produced a series of high quality evaluations of the NSW Drug Court<sup>35</sup>. The most advanced evaluation of an Australian drug court was published in February 2002 (Lind et al, 2002). One of the reasons why the NSW evaluations are so impressive and will not be emulated elsewhere in the nation is that they provided for a true randomized control group. The cost effectiveness evaluation is itself quite challenging. As noted earlier it is important that the comparisons are made between the whole cohort that is placed in the drug court condition rather than focus only on that group who for whatever reason manage to graduate from the program. When the test is restricted to a cohort comparison the NSW drug court program still showed some gains over the non drug court alternative, in particular significant differences were found in the time taken to reoffend with a drug offence.

When some of the benefits of the drug court (such as the improvements in health and well-being) are considered in addition to the modest crime reduction benefits that were demonstrated the case for the drug court becomes stronger. Further there are reasons to believe that the drug court could be fine tuned to improve its cost effectiveness. Lind et al, (2002 p. 66) argued that the cost effectiveness of the court could be improved

1. by improving the ability of the court to identify those offenders who will benefit from the programme and those that will not;

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<sup>34</sup> Harrison and McRostie, 2002.

<sup>35</sup> Freeman et al (2000) provided an overview of the first year of operation of the drug court. Briscoe and Coumarelos (2000) provided an update with an analysis of program flows. Freeman (2001, 2002) provided two reports on the health and well being of drug court participants. Taplin (2002) reported on the findings of a process evaluation of the court. Lind et al (2002) provided the evaluation of the cost effectiveness of the court.

2. through the effective and speedy termination of those offenders who demonstrate that they are unsuitable for the drug court programme;
3. by improving the match between offenders and treatment programs;
4. by developing more realistic graduation criteria; and finally
5. through improving the level of co-ordination between agencies involved in the program.

Evaluation was an integral part of the planning of the NSW drug court. This enabled evaluators to work closely with drug court planners to ensure the development of adequate data bases and to facilitate the required access to the courts. Further, good planning allowed a sequenced “roll out” of evaluations from process to outcome evaluations thus overcoming the temptations in many jurisdictions to provide an evaluation in some ways too soon and too late. Too soon in the sense that insufficient time has elapsed from the point where the court has become stabilised to measure anything substantial<sup>36</sup>. Too late in the sense that unless evaluators are involved at the very beginning the necessary data bases are not developed to allow proper tracking and documentation of what has happened to whom.

### ***2.5.5 Conclusion***

Part of the problem that permeates most treatment efforts at all levels of the criminal justice system with criminal offenders is that unrealistic expectations develop. The revisions of the “what works” literature examining more closely the potential benefits of correctional treatment have suggested that some programmes do “work” with some offenders some of the time. However, success in this context largely reduces to a demonstrable reduction impact on recidivism rates that is much less than many would hope for (in the order of 10 to 20 per cent). There is a good body of knowledge which is encouraging and endorses the “intensive treatment” approach of drug courts. However, the key lessons learnt from decades of research are that the target groups

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<sup>36</sup> Observations that evaluations are often forced on too early have been made by a number of observers (e.g. Peters and Murrin 2000; Goldkamp et al 2001).

need to be carefully selected, the treatment needs to be well designed, intensive (high dosage) and the programme needs to be implemented fully as planned (treatment integrity).

Johnson et al (2000) provided a useful guide for the planning of drug court programs based on what is known from the research on “what works” in terms of correctional treatment. As Johnson and colleagues pointed out, the more novel aspects of the drug court such as weekly appearances in court and regular testing may attract interest and assist with monitoring but they are unlikely to be the active ingredient in producing real changes in the offender and reductions in the likelihood to offend. These researchers discuss the following components of effective intervention that could serve a guide for drug court planners:

1. a strategy for classifying clients according to their risk levels;
2. treatment referrals should be based on a behavioural model and use cognitive techniques;
3. programs need to be sufficiently intensive to affect behavioural change;
4. programs need to incorporate a continuum of care for clients that includes aftercare services; and
5. the quality, intensity and integrity of treatment services needs to be monitored.

## **2.6 Best Practice**

Best practice in the diversion of drug offenders in general, and drug courts in particular, is an important area which brings together lessons from management, evaluation and practice. A forum organized by the Alcohol and Other Drugs Council of Australia (ADCA) in Canberra in October 1996 brought together 50 representatives from various government departments around Australia involved in the diversion of drug offenders. Out of the ADCA forum some important principles were developed that are useful in guiding the development of best practice in drug diversion:

1. the principle of harm reduction underpins good diversion practice;

2. diversion should be seen as initiating the process of social change rather than simply treating drug problems; and
3. a broad range of options should be available for diversion allowing different levels of intervention according to the needs of the offender and the seriousness of the offence.

There were a range of other principles with a special focus on the importance of clear communication between stakeholders, the involvement of all relevant groups in planning of diversion options, clear documentation and meaningful guidelines for workers. Importantly there was a statement (Alcohol and Other Drugs Council of Australia, 1996: p.2-4) that:

*good diversion practice will not compromise the rights the offender would enjoy during the normal course of the criminal justice process, in particular the rights to procedural fairness, the right to appeal and protection from self incrimination.*

A focus on best practice principles provides a much needed and useful guide in sorting through some of the important issues at the interface of the criminal justice system and offender treatment. For example the high level of judicial interaction raises questions about the probity of a magistrate or judge adopting a role some might see as a counsellor and the issues this raises (e.g., in terms of transference and countertransference). A focus on best practice principles also focuses on the need to develop empirically derived screening instruments for drug courts (Miller and Shutt, 2001) to avoid the typically very large non-completion rates.

Another “best practice” principle (Alcohol and Other Drugs Council of Australia 1996, p.3) that may be hard for many Australian programs to achieve concerned accessibility:

*While particular diversion programs should be carefully targeted, good diversion planning will ensure a range of well targeted programs are*

*available to offenders, regardless of their age, preferred substance, gender, cultural background, geographic location and economic status.*

And similarly with the principle concerning “follow up” (Alcohol and Other Drugs Council of Australia 1996, p.3):

*Good diversion programs will ensure that appropriate follow up services are made available to offenders once their legal obligations have been fulfilled.*

Another particular ethical concern relates to the prospect that an offender may be “boosted” to a more serious level of charge or sanction to get them into the drug court (Clarke, 1999).

The full list of the ADCA best practice principles is provided as Appendix 2.1. The systematic adoption of best practice principles to the implementation of Australian drug courts may help them remain focused in terms of the target group and the form of the intervention. This will maximise the likelihood that they will contribute to both offenders and the community. Importantly a best-practice informed policy may prevent drug court from drifting into the dangers of netwidening and/or increasing the level of involvement of the criminal justice system where this is not beneficial. These principles could, therefore, serve a useful purpose at the current time and could be facilitated by the development of a national association or perhaps a federal body that would assist in the development and assessment of this new form of diversion.

## **2.7 Conclusion**

This review of the literature on drug courts has focused on the development of Australian drug courts and some of the critical issues in planning for the evaluation of the effectiveness of drug courts. The review illustrates that there are many issues to consider and that there are substantial challenges in attempting to test the effectiveness of drug courts. It is not possible to conclude at this time that the crime reduction benefits of drug courts have been proven. Although most evaluations are unable to comment on the ultimate effectiveness of the drug courts, most have



highlighted certain implementation difficulties and point to the steps that can be taken to improve the efficiency and the effectiveness of the courts.

Notwithstanding the similarities between most drug courts, they differ in two very important ways. First, different types of clients are involved, from first time cannabis users or drunk drivers in some US drug courts to very serious persistent property offenders who have been sentenced to a period of imprisonment. Apart from the different offender groups, programs themselves range from simple information sessions on the one hand to intensive ongoing, highly demanding programmes stretching over a year or more. To consider all these different types of program as one treatment option and then ask “do they work?” is farcical. Another factor hindering the collation of data on the effectiveness of drug courts is the general lack of sufficiently robust research designs that allow the formation of fair comparison groups. However, despite the relatively recent emergence of drug courts in Australia, the New South Wales evaluations have performed very well and allowed an important Australian contribution to the literature.

### **3. THE PERTH DRUG COURT PILOT PROJECT**

#### **3.1 The Development of the Perth Drug Court Pilot Project**

Interest in developing a drug court in Western Australia was expressed in the late 1990s. A Project Steering Committee was formed with representatives of the Western Australian DOJ and the Western Australia Drug Strategy Office. A feasibility study (Edith Cowan University, 1999) was commissioned and completed in March 1999. Three options for the location of the District Court were examined: the District Court, the Court of Petty Sessions, or through a Commissioner of the District Court. The report recommended a drug court be established in Western Australia, located within the jurisdiction of the District Court at the Central Law Courts<sup>37</sup>, and serviced by the Court Diversion Service<sup>38</sup>. However it was eventually decided to locate the court within the Court of Petty Sessions. Magistrate Julie Wager was appointed as a special magistrate for the drug court in October 2000. The drug court commenced on 4 December 2000. The existing CDS was largely absorbed into the Court Assessment and Treatment Service (CATS) at this time<sup>39</sup>.

The Perth Drug Court Pilot Project (PDCPP) was established to accommodate the diversion of a range of drug abusing offenders, from minor to serious. Three major diversion programmes were developed to be administered by the drug court. These are described in section 3.4.

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<sup>37</sup> Edith Cowan University (1999, Recommendations 5.1.1 at page 35 and 5.2.1 at page 37). In section five of the feasibility study the various advantages and disadvantages of locating the court within the jurisdiction of the District Court on the one hand or the Court of Petty Sessions on the other are considered. The conclusion that the drug court should be based under the jurisdiction of the District Court is reiterated in the conclusion to section six (page 59-60) which considered the appropriateness and flows to the planned drug court.

<sup>38</sup> Edith Cowan University (1999 page x -xi) Recommendations 5.6.1 at page 43.

<sup>39</sup> CATS continue to provide the diversionary services offered by CDS in a reduced capacity. It provides diversionary services for referrals from other metropolitan courts.

### **3.2 Structure of the PDCPP and its Position within the DOJ**

There are four key components of the PDCPP: the courts (adult and juvenile); the judiciary; CATS; and the evaluation management provided by Planning, Policy and Review. These four components of the PDCPP straddle two major divisions of the corporate structure of the DOJ. The Court Services division is responsible for the running of the courts and providing services to the judiciary. The Community and Juvenile Justice Division is responsible for CATS and thus most of the services provided by the drug court. The evaluation of the PDCPP including the completion of the DVD has been the responsibility of the Planning Policy and Review section of the DOJ, which also structurally comes under the Executive Director, Community and Juvenile Justice.

There is currently no central management position covering all of the components of the drug court described above. Instead, there are two committees overseeing the drug court, the Drug Court Management Committee and the Drug Court Steering Committee. The Drug Court Steering Committee was established to plan the PDCPP, but (as far as we can ascertain) has met only once since the inception of the court. At this meeting (in July 2002) the agenda of Steering Committee included: the legislative progress; evaluation; input into the drug strategy; and addressing the issue of federal funding. The operations of the PDCPP are provided with operational management through the Drug Court Management Committee which is made up of a large number of senior staff from a range of branches of the DOJ as well as a number of members of the Judiciary. The evaluation plan was presented to a meeting of the Drug Court Management Committee on the 28<sup>th</sup> November 2002.

### **3.3 Legislative Parameters**

The PDCPP provides post-conviction, pre-sentence judicial case management for drug dependent offenders. Under the section 16 (2) of the *Sentencing Act 1995 (WA)* courts have the power to defer sentencing for up to six months. Under the *Bail Act 1982 (WA)* conditions can be imposed during the period of sentence deferral. The

drug court uses the combination of deferred sentencing and imposition of Bail conditions to operate as a pre-sentence diversion for offenders who have pleaded guilty to charges they face. The details and legal issues associated with the use of the Sentencing Act and Bail Act for the purposes of the drug court are explored in detail in Chapter 9.

### **3.4 Drug Court Programs**

The Perth Drug Court Pilot Project provides three programs.

- **Brief Intervention Regime (BIR):** a pre-sentence option for offenders who plead guilty to a second or subsequent charge for cannabis possession and/or possession of a smoking implement. The intervention consists of attending three group sessions of a drug educational treatment program provided by Community Drug Service Teams.<sup>40</sup>
- **Supervised Treatment Intervention Regime (STIR):** a pre-sentence option for drug dependent offenders who plead guilty to minor offences. The intervention consists of treatment of drug dependency and supervision.<sup>41</sup>
- **Drug Court Regime (DCR):** a pre-sentence option for drug dependent offenders with more serious offending or drug dependence. The intervention consists of treatment of drug dependency and supervision. The intervention is more intensive than that provided on STIR.

There are separate referral and program processes for:

- drug dependent adult offenders referred for BIR;
- drug dependent adult offenders referred for STIR/DCR; and
- drug dependent juvenile offenders referred for DCR.

Each of these is outlined in the next section.

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<sup>40</sup> Drug Court Working Document. BIR Protocols and Procedures. 4 December 2000.

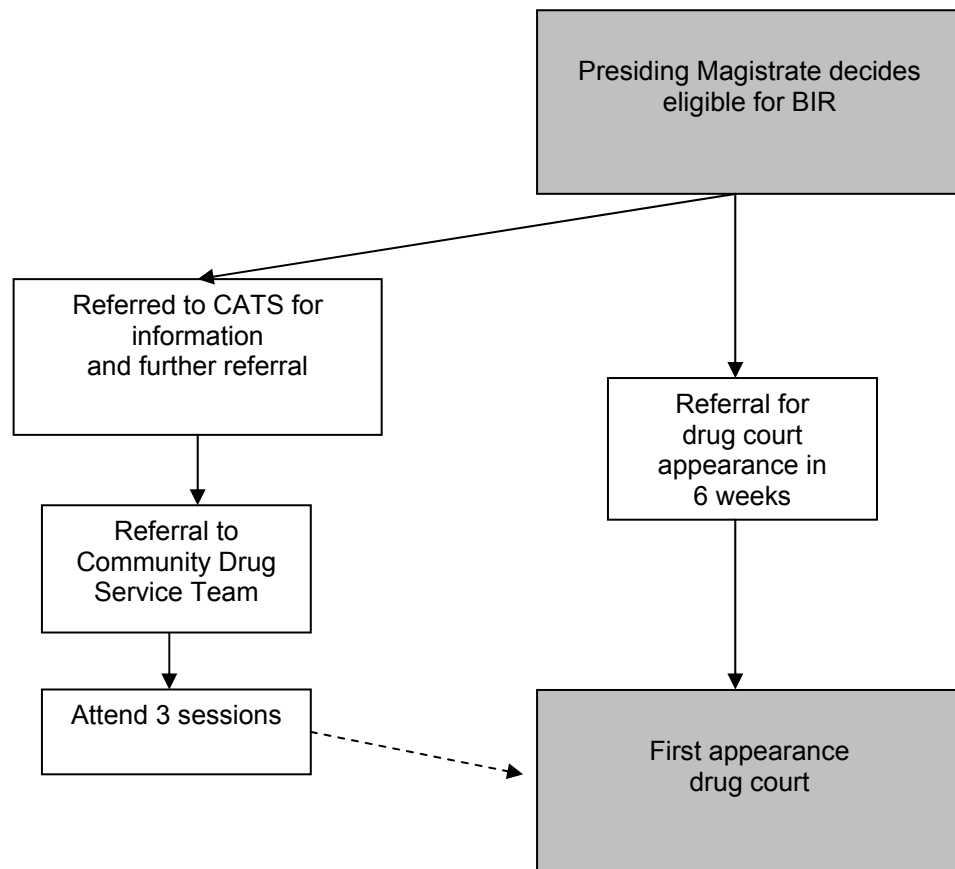
<sup>41</sup> A recent initiative, POPSTIR, has been introduced in the courts and is designed to replace STIR.

### 3.5 Drug Court Processes

#### 3.5.1 BIR

Adult offenders can be referred to the drug court for BIR from the Perth Courts of Petty Sessions. Offenders are directed by the presiding magistrate to report to CATS for information and referral to a Community Drug Service Team for placement on a drug educational treatment program. The offender appears before the drug court magistrate for sentencing six weeks after their referral to CATS<sup>42</sup>. The referral process is depicted in Figure 3.1.

**Figure 3.1. Referral process for BIR.**



The program consists of attending three group sessions covering:

- assessment of cannabis and other drug use and related problems;

<sup>42</sup> BIR Protocols and Procedures. 4 December 2000.

- motivational intervention addressing both cannabis use and offending behaviour;
- decision making about cannabis use;
- development and implementation of a personal action plan; and
- relapse and prevention management.<sup>43</sup>

### ***3.5.2 STIR and DCR for adult offenders***

Currently<sup>44</sup>, adult offenders can be referred to the drug court for consideration for placement on STIR or DCR from Courts 37, 38 and 56 of the Perth Central Law Courts (Petty Sessions). The criteria for referral to the drug court include:

- complaints bear a Perth complaint number;
- the offender pleads guilty for each complaint referred;
- the offender is dependent on an illicit drug and;
- the offender is willing to undertake treatment.

The main exclusionary criteria are:

- drug trafficking and serious organised drug offences;
- offenders facing mandatory imprisonment or who will face imprisonment regardless of the outcome of the drug court program;
- sex offenders;
- offenders requiring ongoing intensive psychiatric or psychological intervention; and
- offenders with a history of violent or sexual assaults<sup>45</sup>.

Offenders are remanded to appear before the drug court magistrate at the earliest possible date. The offender is required to attend an information session prior to their first appearance before the drug court magistrate. The first appearance is adversarial. The case for and against the case being accepted on to the drug court is argued by

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<sup>43</sup> Drug Court Working Document. BIR Protocols and Procedures. 4 December 2000.

<sup>44</sup> Processes and procedures have evolved over time. The current procedures (as of December 2002) are outlined here. There have been various caps placed on the number of referrals that CATS will process.

<sup>45</sup> Drug Court Working Document. Amended Referral Guidelines 13 May 2002.

prosecution and defense with the magistrate having the final say as to whether to accept the case for consideration.

The details on the procedures governing a particular offenders passage through various appearances and reviews is provided for offenders at their first appearance at the drug court. At the first appearance offenders are required to attend an information session where all the processes are explained and offenders are provided with a “kit” of information. The description of the processes as presented to the offender is included at Appendix 3.1.

Offenders deemed by the drug court magistrate to be ineligible for the drug court are sentenced, returned to the referring court for sentencing<sup>46</sup> or remanded for sentencing. The drug court magistrate remands offenders who meet the legal eligibility criteria for the drug court for 21 or 28 days and refers them to CATS for a full screening and assessment.

CATS undertake assessment and screening of all offenders. The stated aim of this screening is to provide “the core information required to identify prospective drug court clients, evaluate their eligibility and begin the treatment process”<sup>47</sup>. In addition, each offender is referred for psychological screening<sup>48</sup>. CATS prepare a written report for the Court on each offender based on the screening and assessment. At their next appearance, the magistrate decides whether an offender will be accepted on to a drug court program (STIR or DCR), will be remanded for further assessment or not be accepted onto a drug court program. Offenders not accepted onto a drug court program are sentenced.

The critical points in determining whether an offender is accepted onto the drug court from Courts of Petty Sessions are depicted in Figure 3.2. The first critical point is

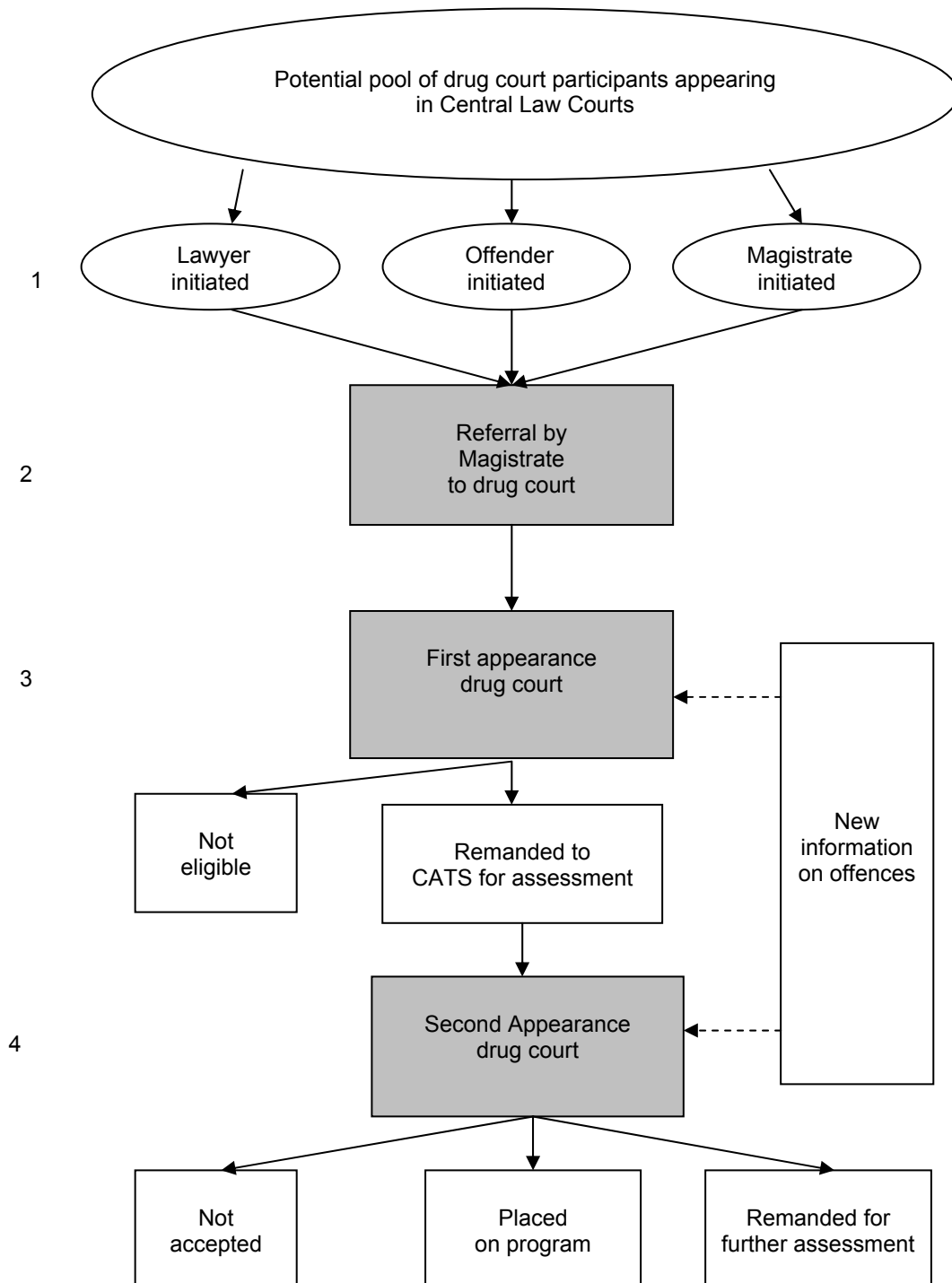
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<sup>46</sup> Magistrate Wager advised that in the past year (2002) inappropriate referrals have been referred back to the referring court for sentencing.

<sup>47</sup> Drug Court Working Document. Screening Manual, p. 2.

<sup>48</sup> This is a recent occurrence. Early in the project only some offenders were referred to a psychologist for screening.

**Figure 3.2. Decision points in the referral process for DCR and STIR**



whether an offender is informed of the drug court as an option that may be applicable to them. The offender may learn about the drug court through promotional material (e.g. posters and pamphlets) or through other offenders, their lawyer or the presiding magistrate.



The second critical point occurs when the presiding magistrate decides whether the offender should be referred to the drug court. This decision may be affected by factors including the attitude and/or beliefs of the magistrate and caps placed on referrals<sup>49</sup>. A magistrate either receives a request to refer a matter to the drug court, or initiates a referral to the drug court. Theoretically, the magistrate provides a filtering mechanism to ensure that only referrals meeting the eligibility criteria established by the drug court are referred. In practice, this does not always happen.

The third critical point occurs at the offender's first appearance in the drug court, when the drug court magistrate makes an assessment of the offender's eligibility for the drug court. The fourth critical point occurs at the offender's second appearance, where the drug court magistrate, based upon the assessment reports, decides whether an offender will be placed on the drug court. At any time during this process, new information on charges may come to light (e.g. violent offences) that mean the offender no longer meets the eligibility criteria for the drug court.

For offenders who are accepted, the period spent on DCR or STIR is for a maximum of four months (Petty Sessions referrals) or six months (District Court referrals) following the assessment period<sup>50</sup>. During this period, the offender must comply with treatment and supervision requirements, including regular urinalysis. Case review meetings are held on a regular basis. A breach point system had been implemented in recognition that "a participant will lapse as part of successful therapeutic intervention"<sup>51</sup>. However, if an offender accrues 20 breach points they are terminated from their program<sup>52</sup>.

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<sup>49</sup> Caps have been placed on referrals to keep the caseload per CATS Officer to 15. The actual number of clients in the caseload of the 6 CATS officers in February 2002 was 63, of whom 25 were in assessment, 23 were currently on DCR, 1 on STIR and 4 on BIR. The remainder were continuing clients (7) and CDS clients (3). On average, each CATS officer had 9 potential or current drug court clients.

<sup>50</sup> Under the Sentencing Act 1995 (WA) courts have the power to defer sentencing for up to six months. For referrals from Petty Sessions this period begins from the point at which pleas are taken. For referrals from the District Court, the period begins from the point when the offender is arraigned.

<sup>51</sup> Drug Court Policy Document. Breach Points. 12 December 2000.

<sup>52</sup> Magistrate Wager advised that lower limits may be applied for some offenders. Offenders on parole or facing an "indicated sentence" of 18 months imprisonment or

An offender may be terminated from DCR or STIR by the drug court magistrate. The offender is then sentenced by the drug court magistrate or referred back to the District Court for sentencing. Offenders who complete the supervision and treatment period are also sentenced by the drug court magistrate or referred back to the District Court for sentencing. Sentencing takes into account the offender's progress during the supervision and treatment period. It was intended that offenders who successfully completed the requirements of their program would receive a non-custodial sentence.

### **3.6 Documentation used by the Drug Court<sup>53</sup>**

There are two main files used by the drug court: the CATS file and the Court File (held by the Judicial Support Officer). The Court file is also referred to as the "Drug Court File". It contains the standard court documents: Bail Papers, complaints and offence history provided by the police and the statement of material facts. In addition special forms developed for the drug court include the record of appearances at the drug court, special provisions or stipulations and a record of points deducted or added. The "indicated sentence" (which is unique to the drug court) is noted on the magistrates endorsement or directly on the complaint. There is no separate form for recording the indicated sentence.

The main documents held on the CATS file are the personal contract; the file summary sheet; the psychological assessment results; the general assessment report; urinalysis results; case notes taken by the CATs officer; and copies of correspondence/communications with agencies for referral to treatment as well as a range of other documents. In addition the CATS file typically contains a report from the TOMS database managed by the Prisons Branch and the CBS report generated by the Community and Juvenile Justice Services. One other report may also appear: a report on court history maintained by the Court Services Branch<sup>54</sup>.

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more are given lower limits. This is a recent initiative, balancing the needs of therapeutic intervention and community protection.

<sup>53</sup> We are indebted to the Manager of the Court Assessment and Treatment Service for his explanation of the various files and the procedures governing the transmission of information. As this explanation is not set out in any of the documents which we examined, the manager's detailed explanation was most useful and it forms the basis for this section of the report.

<sup>54</sup> This is a new reporting system.

The communication between the courts and CATS is now expedited through the use of an e-filing request and this form is also held on the CATS file. This form is the main enabling document to start a CATS file and CATS involvement in the case.

The common data base, the DVD, is the electronic data base used for management, review and research purposes. Data is entered onto the DVD through two sources – directly by the Judicial Support Officers (JSOs) at the court and also by the CATS team. JSOs enter basic court data such as court appearances and bail details. The CATS team enters all the other data including treatment details and urinalysis results. When a case is referred to CATs for assessment (from the drug court magistrate) the CATS manager assigns the case to a CATS officer and at the same time initiates a referral to the psychologist for a psychological assessment. Ideally the psychological assessment should be passed up to the CATS officer to allow the completion of a comprehensive report back to the court. However, timing and scheduling issues have sometimes resulted in the psychological report not being ready in time and in some cases resulted in two parallel reports being delivered to the magistrate (psychological and CATS). Following the assessment period the drug court magistrate receives the CATS report and if a drug court programme (DCR or STIR) is recommended a personal contract is formed and signed. CATS then supervise the offender and manage the case file. At the termination or completion of the programme the file is handed over to the receiving CCO and it becomes the regular Community Corrections file.

### **3.7 The Drug Court Regime for Juvenile Offenders**

The Children's Court acts as a separate drug court for drug dependent juvenile offenders. Only juvenile offenders whose charges are serious enough to be sentenced by a judge are considered for referral to the drug court. Initially (the first five months) only offenders for whom a direct causal link between drug use and offending could be established were eligible. It is no longer necessary to establish a casual link, but drug

use must still be an issue. Referrals may come from the judge, defence lawyer, prosecution lawyer or court services.

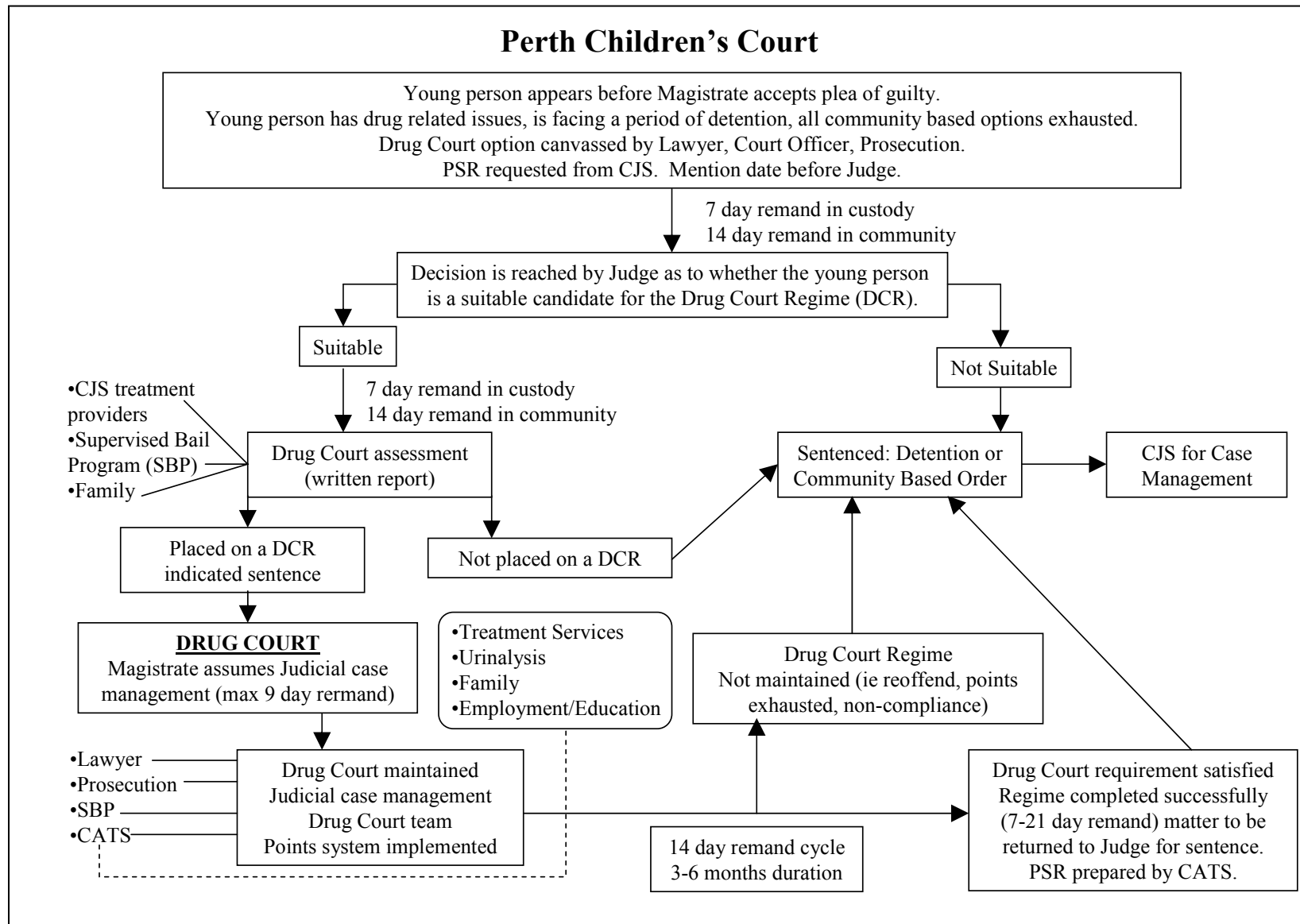
The President of the Children's Court refers eligible offenders to CATS for an assessment by a Senior Juvenile Justice Officer. This assessment must be completed within one week for offenders in custody, or two weeks for offenders in the community. At their next appearance, the President of the Children's Court decides whether or not the juvenile offender will be accepted on to DCR. Juvenile offenders accepted onto the program are typically given an indicated sentence of detention. Juvenile offenders not accepted onto DCR are sentenced.

Once placed on the drug court regime the juvenile offender must comply with treatment and supervision requirements, including regular urinalysis. A designated magistrate from the Children's Court supervises offenders once per fortnight. Case management is provided by a Senior Juvenile Justice Officer.

Juvenile offenders who are terminated from DCR are sentenced by the President of the Children's Court. Juvenile offenders who complete the supervision and treatment period are also sentenced by the President. It was intended that juvenile offenders who successfully completed the requirements of their program would not receive a sentence of detention.

Figure 3.3, provided by the DOJ, depicts the flow of referrals through the drug court of the Children's Court.

Figure 3.3 Flows of referrals for the drug court for the Perth Children's Court



## **4. METHODOLOGY OF THE EVALUATION**

### **4.1 Introduction**

This chapter provides an overview of the procedures used in the evaluation of the PDCPP. It presents the focus and key aims of the evaluation and the structure of the evaluation. The separate investigations that constitute the evaluation are outlined. More detailed information on the methodologies used in each investigation is available in later chapters of the report (Chapter 5 for descriptive analysis, Chapter 6 for recidivism analysis, Chapter 7 for cost-benefit analysis, Chapter 8 for qualitative review and Chapter 9 for legal analysis). Constraints of the evaluation are identified and the ways in which they limit the findings are discussed.

### **4.2 Objectives of the Evaluation**

The overall objective of the evaluation was to “assess the effectiveness and efficiency of the drug court pilot project”. Within this overall objective, specific objectives related to evaluating whether the PDCPP:

- reduced recidivism and substance use in offenders;
- reduced the number of offenders with substance use problems and addictions being imprisoned;
- reduced the post-treatment supervision requirements;
- improved the life circumstances of offenders; and
- resulted in cost savings to the community and government.

Additional aims of the evaluation were to:

- Document and evaluate drug court operations, processes and outcomes;
- Identify and address legislative constraints and general issues regarding drug courts in Western Australia;
- Assess the appropriateness of the drug court for juvenile offenders; and
- Evaluate the drug court in terms of existing theory and practice on diversionary services for drug dependent offenders.

### **4.3 Development of the Evaluation Plan**

In preparation for the evaluation of the PDCPP, members of the CRC evaluation team:

- Met with key stakeholders within the drug court;
- Observed the operations of the drug court;
- Obtained agreement on the evaluation plan;
- Obtained access to the data, documents and files required for the evaluation;
- Arranged access to staff, stakeholders and offenders for interviews; and
- Obtained ethics approval for the planned evaluation from the University of Western Australia Human Research Ethics Committee.

Based on this early preparation, the CRC developed an evaluation plan to meet the stated objectives. This plan was approved by the Planning, Policy and Review section within the DOJ. Throughout the evaluation period the CRC consulted closely with the Planning, Policy and Review section of the DOJ over any changes to the evaluation plan. The structure of the current report was developed in consultation with representatives of the Planning, Policy and Review section within the DOJ.

### **4.4 Structure and Elements of the Evaluation**

The evaluation can be broken down into five discrete parts. These are:

- a descriptive analysis of the drug courts;
- a recidivism analysis;
- a cost-benefit analysis;
- interviews and consultations with drug court workers, stakeholders and clients; and
- a legal analysis

Together, the five parts provide a quantitative, qualitative and legal evaluation of the PDCPP. The methodology for each stage of the evaluation is outlined below.

#### ***4.4.1 Descriptive analysis***

The descriptive analysis of the PDCPP was designed to provide quantitative information on offender characteristics and the flow of offenders through the drug court (referrals, placements on programs, activity on programs and outcomes).

Data for these analyses were provided by the DOJ from the DVD and CHIPS databases. This was supplemented by manual reviews of files by drug court staff where required. The CRC experienced considerable and unexpected time delays in obtaining the complete data-set required for this evaluation.

The dataset obtained covers offenders referred to the drug court from the inception of the drug court on 4 December 2000 to 27 November 2002. A complete data set required for a full evaluation was never obtained. There are large amounts of missing data for some key variables (e.g. indicated sentences, treatment types).

Data was analysed using SPSS 11.5.0. A range of descriptive and inferential statistics was used. Information relating to specific statistical tests and significance levels is provided in footnotes throughout the report.

The essential statistical description of the drug court provides the basic picture of the drug court and its operations, and was produced as an interim evaluation report to the DOJ on 31 January 2003.

#### ***4.4.2 Recidivism of drug court clients***

Reducing recidivism and re-arrests was a major aim of the PDCPP. In order to determine if a significant impact in re-arrests has been achieved by the PDCPP, it is necessary to have comparison group(s) against which the performance of the drug court clients can be gauged<sup>55</sup>. Ideally, an evaluation such as this would have data available for a non-intervention or control group. This could have been achieved through the random allocation of drug offenders to the drug court or a control group at the referral stage,

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<sup>55</sup> The reasons for this are fully discussed in Section 2.4.2 of the literature review.



such as occurred in the New South Wales drug court (Lind et al, 2002). In the absence of such a control group, a range of sources were considered for their suitability for use as comparison groups. Two groups were selected as providing the best available comparisons. These are described below.

A third group, CDS offenders were also considered as a potential control group. These offenders were referred to CDS between January 1998 and August 1999<sup>56</sup>. This group consisted of 374 offenders who had contact with the CDS for an average of 64 days. This group was rejected as a comparison group for a number of reasons.

First, there were major differences in the methodology used in the CDS and drug court recidivism analyses. The CDS recidivism analysis was based on convictions. This means that there is the potential for convictions from previous arrests to be counted as reoffending. This also means that a comparison of recidivism rates across the two studies are not comparing “like with like” as the measure of recidivism used for drug court offenders is rearrests. Rearrests occur prior to convictions, and only a proportion of arrests result in convictions. Further, the recidivism analysis of CDS offenders excluded offenders who had been imprisoned, while the recidivism analysis of drug court offenders did not. In addition, the CDS recidivism analysis did not use survival analysis techniques<sup>57</sup>.

In addition to these methodological differences, there were differences in the demographics between the two groups. The most important of these were differences in the number of charges faced. CDS offenders faced an average of 7 charges while DCR and STIR offenders faced an average of 13 and 6 charges respectively. Based on this limited information, CDS offenders appear closer in nature to STIR than DCR participants.

The two groups also differ in their drug of choice. The majority of CDS offenders (77%) nominated opiates as their drugs of choice. In comparison, only 42% of drug

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<sup>56</sup> Full details of this group are contained in Ryder, et al., 2001.

<sup>57</sup> The original plan was to conduct a new recidivism analysis for CDS offenders based on rearrests using survival analysis. DOJ was unable to locate identifying information for this group so this was not possible.

court offenders nominated opiates, with 49% nominating amphetamines as the drugs of choice.

The combination of methodological, offending and drug use differences was considered sufficiently problematic to make a comparison of reoffending between the two groups invalid and CDS was dropped as a comparison group.

### ***Comparison groups***

The CRC maintains a longitudinal apprehension database of all persons apprehended in Western Australia since 1994<sup>58</sup>. This is part of an integrated database the Centre maintains using the Integrated Numerical Offender Identification System (INOIS) that can be used to track offenders through the criminal justice system<sup>59</sup>. The longitudinal apprehension database can also be used to estimate the likelihood of re-arrest according to specified parameters such as offence history, age and gender.

Using the CRC longitudinal apprehension database two comparison groups were selected. The first group, **matched offenders**, was selected using an iterative algorithm to match on sex, indigenous status, number of prior arrests, age, offence type (3 digit ANCO<sup>60</sup> code) and location (metropolitan area)<sup>61</sup>.

In order to assess the equivalency of the matched offenders to the drug court offenders, the two groups were compared on key variables. The two groups did not differ in composition in terms of sex, indigenous status, geographic location or arrest count. The

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<sup>58</sup> This data is supplied to the Crime Research Centre courtesy of the Western Australia Police Service. Please see Appendix 4.1 for the caveats that have been placed upon the release and use of police data in this report.

<sup>59</sup> See Ferrante (1993) for further information on the development of the database.

<sup>60</sup> Australian National Classification of Offences (ANCO) provides a universal hierarchical framework for classifying offences for statistical purposes. ANCO codes, rather than the more recently developed ASOC codes, were used for programming reasons.

<sup>61</sup> Where exact matches could not be found, parameters in the algorithm were loosened in the following order: ANCO, age and prior arrests. Where more than one match was returned, the matched arrest closest in date to the commencement on the drug court for the drug court offender was selected. Where the best match was a) an offender who had been referred to the drug court or b) an offender who had already been selected as the best match for another drug court offender, a further match was sought.

two groups were similar, but not identical in the most serious offence of the arrest on which they were matched. Ninety percent of the pairs matched exactly on ANCO code for the most serious charge, 3.8% matched at ANCO division level and 4.1% at ANCO section. For the remaining six cases (2.1%) offenders were not able to be matched on offence category. The dates of arrest for offenders immediately prior to commencement on the drug court ranged from December 2000 to April 2002. In comparison, 72.4% of the arrest dates of interest for the matched offenders comparison group were in 1999 or 2000<sup>62</sup>.

The second group, **matched drug offenders**, was also selected using this process with the additional essential criterion that the offender had been apprehended for a drug offence<sup>63</sup>. This additional criterion was used as a proxy measure of drug use/dependency as this is not recorded in the CRC longitudinal apprehension database.

In order to assess the equivalency of the matched drug offenders to the original drug court group, the two groups were compared on key variables. The two groups did not differ in composition in terms of sex, indigenous status, geographic location and arrest count. The two groups were similar, but not identical in the most serious offence of the arrest on which they were selected. The large majority (84.5%) of offenders were matched on exact ANCO code for the most serious charge, 4.5% matched at ANCO division and 7.2% at ANCO section. For the remaining eleven cases (3.8%) offenders were not able to be matched on offence category. 62.4% of the arrest dates of interest for the matched drug offenders comparison group were in 1999 or 2000.

In just over half of the cases (55.2%), the offender selected for the matched offenders group, was also the offender selected for the matched drug offenders group. This means that these offenders were the best match based on offence history and also had previous arrest(s) for drug charges. In all other cases in the matched offenders group, the best match on offending history did not have previous drug charges.

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<sup>62</sup> A cut-off date of 31 December 2000 was in place for the selection of the comparison groups.

<sup>63</sup> This was defined as an arrest associated with any of the following ANCO codes: possession and use (613 - 619), deal or traffic (653 - 659), manufacture/grow (663 - 669).

The comparison groups were judged against the checklist of factors needed for a fair test of the effectiveness of a drug court in producing a crime reduction effect (see Table 2.3 in Chapter 2). The results of this comparison are presented in Table 4.1 and indicate that the comparison groups to be used in the recidivism analysis only partially meet the requirements for a fair test. It needs to be stressed that neither of the comparison groups alone, or together, provide an ideal comparison, as neither enable a direct comparison of “like with like”. The failure to identify comparison groups prior to the commencement of the drug court means that it would never be possible to ascertain that the groups did not differ on key attributes (e.g. degree of drug dependency or readiness to change) that may affect reoffending. Given their weaknesses as comparison groups, further measures against which success could be measured were also identified.

**Table 4.1 Rating of comparison groups suitability for a “fair test”**

<b>Checklist</b>	<b>Meets Requirements</b>	<b>Comments</b>
Meaningful outcome measure	Yes	Re-arrests used as recidivism measure Survival analysis methodology used
Meaningful comparison group	Partial	Matched on demographics and offending history Not matched on drug use history, readiness to change or requesting treatment Time differences between drug court offenders and comparison groups
Comparison needs to be fair	Yes	Matched offender and matched drug offender for every drug court offender in recidivism analysis
Components of treatment documented	Partial	Components of drug court treatment are documented Unknown if any members of comparison groups underwent treatment
Exposure time	Partial	Time in prison excluded for drug court offenders Majority of time in prison excluded for comparison groups

*Other comparative measures*

Two further sources of information were selected against which to assess the recidivism rates of PDCPP participants. Valuri, et al., (2002) used survival analysis to provide estimates of the likelihood of rearrest for persons arrested by the police in Western Australia for at least one drug offence during the period 1989 to 1999. The first source of information, **recidivism rates for all drug offenders**, provides information on the probability of reoffending within 12 months for this group. The ultimate probability of rearrest for drug offenders with no prior offences, “drug only” prior offences and “mixed” (drug and other) prior offences are available from this source.

Using the CRC’s integrated database and the Adult Actuarial Risk Instrument<sup>64</sup>, an assessment of the probability of rearrest can be made for an offender based on their gender, age at arrest, arrest cardinality (count of each arrest event), indigenous status and most serious offence for which arrested. For each offender referred to the drug court, risk estimates based on the arrest immediately prior to the referral to the drug court were obtained. This second source of information, **risk estimates for offenders referred to the drug court**, will be utilised as a “pseudo control group” (that is, the recidivism odds for this group upon referral to the drug court program act as the control against which actual recidivism is measured) .

This measure provides perhaps the most realistic “comparison group” in the absence of an experimental design utilising random assignment. In the process of calculating the risk, the rearrest rates of the group of offenders most closely matched to each drug court offender on gender, age at arrest, arrest cardinality, indigenous status and most serious offence are calculated. This is in contrast to the two comparison groups selected, where only one offender is identified as the match for each offender.

Combined, the two comparison groups, the pseudo control group and information on recidivism rates for all drug offenders, provide a web of information against which the success of the drug court, in terms of the recidivism rates of drug court participants, can be viewed. While alone, none of these measures provide sufficient power for

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<sup>64</sup> The Adult Actuarial Risk Instrument was developed by Max Maller at the Crime Research Centre.

comparative purposes, a consistent pattern of difference between the recidivism rates of offenders referred to the drug court and the other groups would provide a helpful indication of the effect of the drug court and is the best available mechanism of achieving some judgement of effectiveness in the absence of a randomised control group. Ultimately, in the absence of a trial involving a randomised control group, such a methodology could be employed to provide an ongoing monitoring of the drug court.

#### ***4.4.3 Cost-benefit analysis***

The cost benefit analysis draws upon financial statements and budgets to provide an estimation of the total cost of the drug court from its inception until 30 September 2002. A subset of offenders referred to the drug court (the group upon which the recidivism analysis is based) were selected for a comparison of the cost of their drug court involvement with the likely costs had they not been referred to the drug court.

The methodology adopted the six standard procedures for conducting a cost benefit analysis, as outlined by Chisholm (2000). These six steps are:

1. Defining the scope of the analysis;
2. Estimating the program effects;
3. Estimating the value of all costs and benefits;
4. Calculating the present value and assessing profitability;
5. Describe and incorporate the distribution of costs and benefits; and
6. Conducting a sensitivity analysis.

#### ***4.4.4 Qualitative review***

A major component of the evaluation was the investigation of the views and perspectives of offenders, workers associated with the drug court and significant stakeholders. This component of the evaluation was designed to capture the perspectives of all those closely affected by the Drug Court. Four groups of informants were identified: offenders involved in the Pilot Project, workers (legal and justice), stakeholders in the justice community and stakeholders in the legal community. The methodologies used with each of these groups are described in detail in chapter 8 (also

see Appendix 8.1). The methodology adopted for consulting stakeholders in the legal community is addressed in Section 4.4.5 below.

The perspectives of offenders currently involved in the PDCPP were obtained using semi-structured interviews. Offenders were approached outside the drug court or in the CATS treatment facility and asked to participate in the research.

The perspectives of workers and stakeholders in the justice community were also primarily obtained using semi-structured interviews. Where stakeholders outside of the justice system had little detailed knowledge of the drug court the semi structured schedule was replaced by a telephone interview. Surveys were sent to CCOs/JJOs who had dealings with drug court clients.

The full description of the approach methodology detailing not only the procedure adopted but the mechanisms undertaken to ensure that the human rights of all individuals were protected are contained in our submission to the University of Western Australia's Human Research Ethics Committee (Appendix 8.1).

#### ***4.4.5 Legal analysis***

The legal analysis was designed to identify and address a range of issues associated with the current operations of the drug court and future options. Three methodologies were utilised in the legal analysis. The first consisted of scrutiny of legislation and case law in Western Australia and other jurisdictions and scrutiny of other core documentation. The second component consisted of semi-structured interviews with key stakeholders in the legal community involved with the PDCPP. These interviews were conducted face-to-face or by telephone with individuals and groups. The third approach involved consultations with expert commentators in the drug court field.

#### ***4.4.6 Synthesis of research findings***

Following completion of the five main elements of the evaluation (descriptive analysis; recidivism analysis; cost-benefit analysis; legal analysis; and interviews and consultations with drug court workers, stakeholders and clients) the research findings are synthesised in a manner that is relevant to the objectives of the evaluation. The aim

of this review process was to reflect on the lessons learnt and to discuss issues that would be relevant to any decisions concerning the continuance of the drug court.

#### **4.5 Constraints of the Evaluation**

This evaluation suffered from a number of constraints. Some of these were clear from the outset of the evaluation. Others become clear only after the evaluation began. The major constraint, clear from the onset of the evaluation, was the lack of a randomised control group against which to compare the outcomes for drug court offenders. Constraints unexpected at the time of commencement of the evaluation were the difficulties and time delays experienced in obtaining the quantitative data crucial to the evaluation. The CRC evaluation team and representatives of the Planning, Policy and Review section of DOJ worked within these constraints to provide a thorough evaluation of the drug court that makes best use of the available data. The findings in relation to the recidivism analysis and related cost benefit analysis however, must remain tentative. Wherever possible we have adapted the analysis to take account of these data limitations and provided a range of estimates that should serve as a reliable guide to decisions makers.



## 5. DESCRIPTIVE ANALYSIS

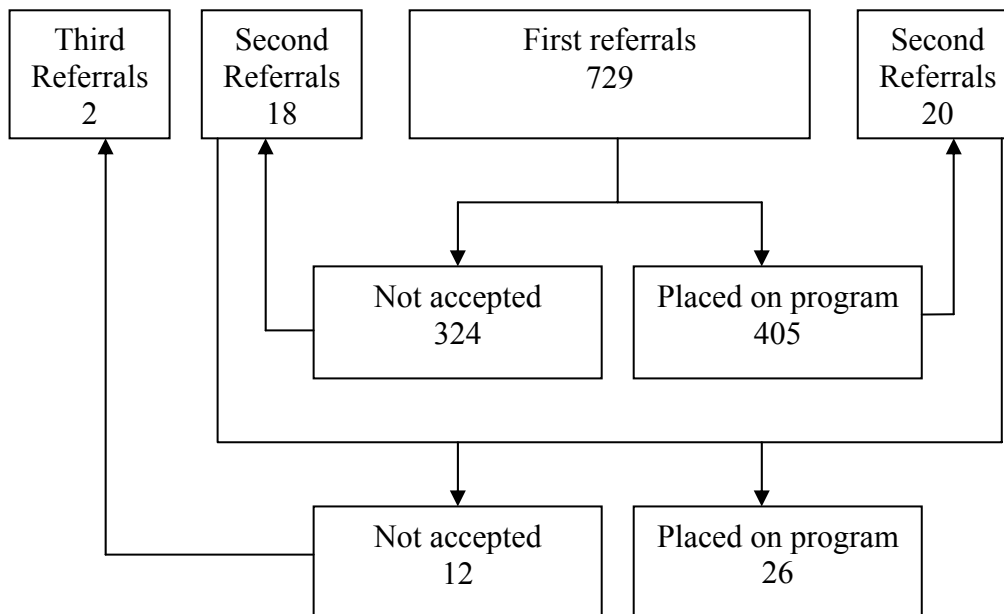
### 5.1 Introduction

This chapter of the report provides a descriptive analysis of the flow of offenders through the PDCPP. Much of this information was presented in the Interim report, and has been supplemented in this chapter with additional analyses.

### 5.2 Referrals to the Drug Court

Between its inception on 4 December 2000 and 27 November 2002, 729 offenders had been referred to the PDCPP. This represents an average of 30 offenders referred per month. In all there had been 769 referrals to the drug court for this period as some offenders were referred more than once. The process of re-referral is graphically depicted in Figure 5.1.

**Figure 5.1 The referral and re-referral of offenders to the drug court**



There is a significant amount of missing data<sup>65</sup> for the 38 persons who were referred to the drug court on more than one occasion<sup>66</sup>. There appears to be some confusion over what constitutes a second or further referral and program placement<sup>67</sup>. Given these limitations, in all further analyses reported data for the first referral and placement only is used.

**Table 5.1 Referrals to the drug court by type of court and date**

Period	Court of Petty Sessions			District Court			Children's Court			Total Referrals	
	N	% <sup>68</sup>	Month ave	N	%	Month ave	N	%	Month ave	N	Month ave
Dec 2000	17	89.5	17				2	11	2	19	19
Jan-Mar 2001	111	90.2	37	8	6.5	3	4	3.3	1	123	41
Apr-Jun 2001	99	87.6	33	3	2.7	1	11	9.7	4	113	38
Jul-Sep 2001	112	93.3	37	5	4.2	2	3	2.5	1	120	40
Oct-Dec 2001	77	87.5	26	5	5.7	2	6	6.8	2	88	29
Jan-Mar 2002	68	75.6	23	10	11	3	12	13	4	90	30
Apr-Jun 2002	58	78.4	19	10	14	3	6	8.1	2	74	25
Jul-Sep 2002	48	73.8	16	12	19	4	5	7.7	2	65	22
Oct-Nov 2002	35	94.6	18	1	2.7	0	1	2.7	0	37	19
TOTAL	625	85.7	26	54	7.4	2	50	6.9	2	729	30

The majority of first referrals (85.7%) to the drug court came from the Court of Petty Sessions, a further 54 (7.4%) came from the District Court and 50 (6.9%) from the

<sup>65</sup> The DVD database does not have the facility to enter data for more than one referral per offender as it was not envisioned during the development stage that this would be necessary. All original data for the 38 offenders was overwritten in the DVD database. The original data was re-entered where possible for the purposes of this evaluation.

<sup>66</sup> The placements and outcomes for the 38 persons referred to the drug court on more than one occasion are presented in Appendix 5.1.

<sup>67</sup> Information provided by CATS indicates that second referrals includes three groups of offenders:

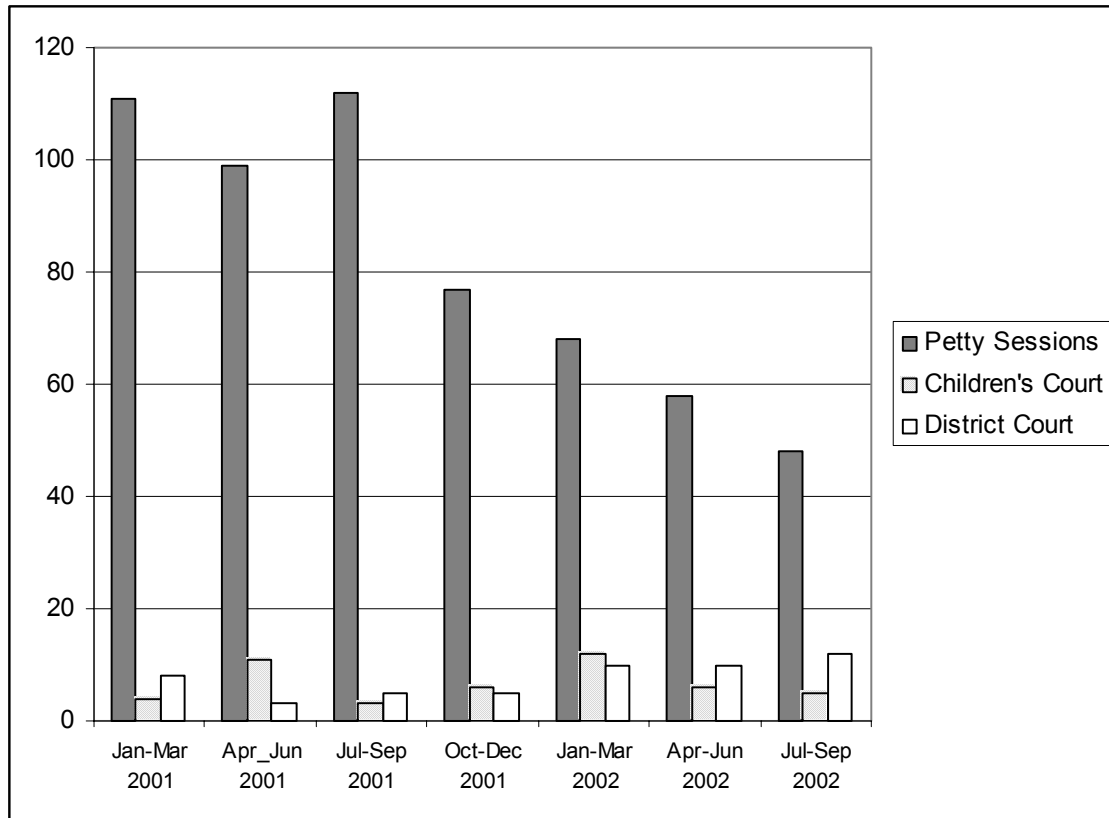
- Offenders who have been referred to the drug court on a second occasion
- Offenders who have been picked up on Bench Warrants after a significant amount of time has lapsed, and
- Offenders who have been remanded in custody and have then re-engaged with the drug court.

Further confusion over their status is evidenced by some of these offenders re-starting the drug court with no breach points, and others starting back with the level of breach points they had previously.

<sup>68</sup> Percentage of referrals refers to the percentage of all referrals for that particular time period.

Children's Court. The breakdown of referrals by court across time is presented in Table 5.1. The total number of first referrals has reduced substantially over time<sup>69</sup>. The number of referrals from the District Court increased in 2002 from previous levels, but still remains a very small percentage of all referrals. This is graphically depicted in Figure 5.2.

**Figure 5.2 Referrals to the drug court by type of court January 2001 to September 2002**



### **5.2.1 Charges referred to the drug court**

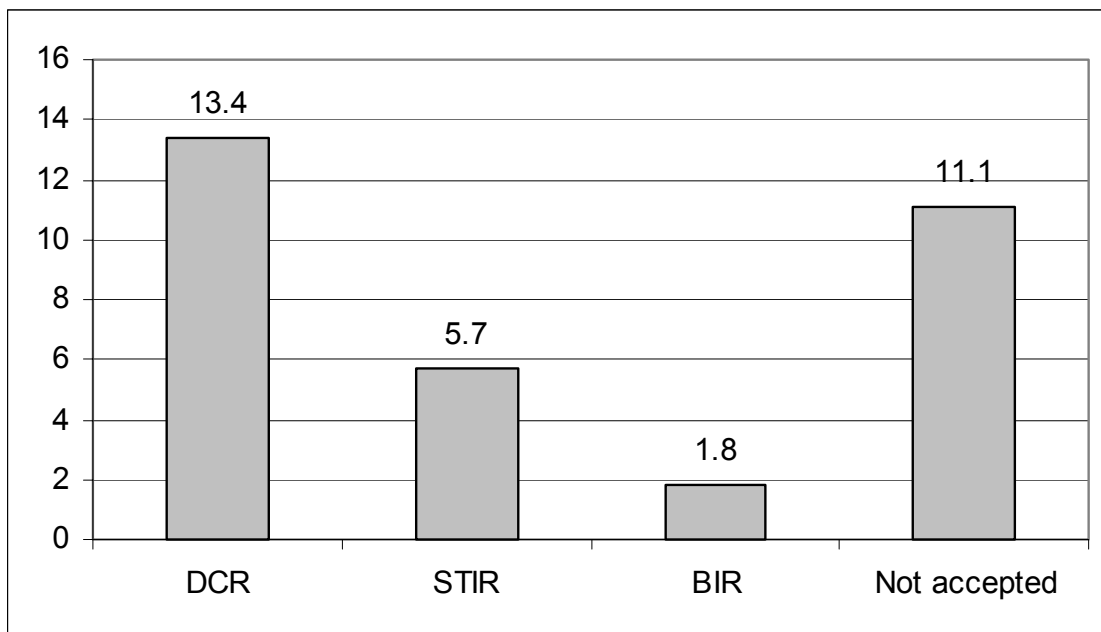
Each offender referred to the drug court is referred for specific charges. The CHIPS database was used as the source of information on offences that were heard in the drug court. Charges recorded in the CHIPS database as listed for hearing in the drug court were analysed to assess the types and number of charges for each offender referred to

<sup>69</sup> A cap was placed on the number of referrals from the Court of Petty Sessions in December 2001.

the drug court. Charge details for 616 offenders are presented here<sup>70</sup>. The total number of charges for this group was 6608, representing an average of eleven charges per offender.

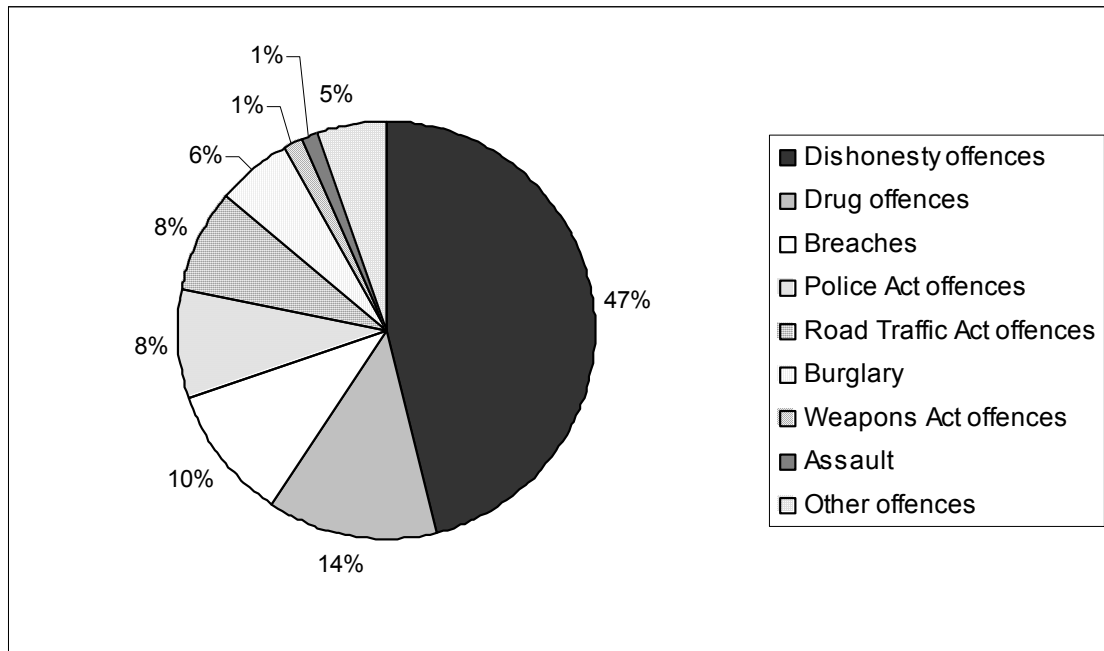
The mean number of charges per offender was broken down by program. This is graphically depicted in Figure 5.3. The numbers of charges reflect the intensity of the programs, with offenders placed on DCR facing more than twice the number of charges (mean = 13.4, std dev = 15.6) than offenders placed on STIR (mean = 5.7, std dev = 9.3), who in turn faced more than three times the number of charges than offenders placed on BIR (mean = 1.8, std dev = 1.0). Offenders not accepted onto a program faced an average of 11.1 (std dev = 12.7) charges.

**Figure 5.3 Average (mean) number of charges referred to the drug court by program**



<sup>70</sup> The data for the 616 offenders presented was identified in the database as being listed for hearing in the drug court. It was difficult to ascertain with any degree of accuracy which charges were referred to the drug court for offenders where drug court listing was not indicated in the CHIPS database. Therefore, these offenders were excluded from this analysis.

**Figure 5.4 Charges referred to the drug court**



Charges were grouped by type and are presented graphically in Figure 5.4<sup>71</sup>.

The majority of charges (47%) were for dishonesty offences (intent to defraud, stealing and receiving stolen property) and drug offences (14%).

The charges referred to the drug court were grouped by legislation and type and presented for each program (Table 5.2). Consistent with the criterion for referral, the majority of charges for BIR Offenders (92%) were related to the possession of drugs. The majority of charges for other offenders fall under the Criminal Code. Dishonesty offences accounted for the large majority of these Criminal Code charges.

### **5.3 Screening and Assessment**

At the first appearance the drug court magistrate may reject the application for drug court if the offender is deemed ineligible, or else refer the offender to the CATS team for screening and assessment of suitability for DCR or STIR<sup>72</sup>. In total, 129 offenders

<sup>71</sup> Note that most offenders had multiple charges.

<sup>72</sup> BIR clients are referred to CATS directly from the referring magistrate (see 3.6.1).

**Table 5.2 Charges referred to the drug court by program**

<b>Status</b>	<b>Not acc.</b>		<b>BIR</b>		<b>STIR</b>		<b>DCR</b>		<b>Total</b>	
<b>Number of Offenders</b>	<b>293</b>		<b>64</b>		<b>22</b>		<b>225</b>		<b>616</b>	
	<b>N</b>	<b>%</b>	<b>N</b>	<b>%</b>	<b>N</b>	<b>%</b>	<b>N</b>	<b>%</b>	<b>N</b>	<b>%</b>
<b>Criminal Code</b>	<b>1679</b>	<b>52</b>	<b>1</b>	<b>.9</b>	<b>87</b>	<b>69</b>	<b>1796</b>	<b>60</b>	<b>3631</b>	<b>55</b>
Intent to defraud	615	37			50	57	809	45	1519	42
Stealing	540	32			29	33	613	34	1195	33
Burglary	224	13	1	100	2	2	157	9	386	11
Assault	70	4			1	1	20	1	93	3
Receiving stolen property	163	10			5	6	157	9	331	9
Other	67	4					40	2	107	3
<b>Misuse of Drugs Act</b>	<b>388</b>	<b>12</b>	<b>102</b>	<b>88</b>	<b>29</b>	<b>23</b>	<b>341</b>	<b>11</b>	<b>864</b>	<b>13</b>
Possession	285	73	94	92	17	59	186	55	586	68
Sale or supply	78	20	2	2	11	38	33	10	124	14
Prescription fraud	20	5					114	33	134	16
Other	5	2	6	6	1	3	8	2	20	2
<b>Police Act</b>	<b>280</b>	<b>9</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>2</b>	<b>272</b>	<b>9</b>	<b>561</b>	<b>8</b>
Unlawfully obtain goods	72	26			1	33	84	31	160	29
Name/address charges	82	29			1	33	48	18	131	23
Wilful damage	28	10					62	23	90	16
Disorderly/threatening	21	8					23	8	44	8
Possession with intent	19	7			1	33	15	6	35	6
Unlawfully on premises	16	6	1	100			20	7	37	7
Resisting arrest/police	21	8					7	3	30	5
Escape legal custody	13	5					4	1	17	3
Other/unknown	8	3					9	3	17	3
<b>Road Traffic Act</b>	<b>298</b>	<b>9</b>	<b>4</b>	<b>3</b>	<b>2</b>	<b>2</b>	<b>214</b>	<b>7</b>	<b>534</b>	<b>8</b>
No MDL	156	52	3	75			123	57	294	4
Vehicle registration offences	30	10					29	14	59	1
Name/address charges	23	8	1	25			20	9	48	1
Dangerous driving	31	10					8	4	39	1
Refusing police directions	24	8					12	6	36	1
Misleading police/licensing staff	8	3					11	5	19	0
Driving under the influence	5	2					5	2	10	0
Other	21	7			2	100	6	3	29	0
<b>Bail Act 1982</b>	<b>307</b>	<b>10</b>	<b>6</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>203</b>	<b>7</b>	<b>530</b>	<b>8</b>
Breach of bail	285	93	5	83			177	87	477	90
Other	22	7	1	17			26	13	53	10
<b>Sentencing Act</b>	<b>133</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>75</b>	<b>2.5</b>	<b>215</b>	<b>3</b>
Breach of community order	133	100					74	99	214	100
Other							1	1	1	0
<b>Weapons Act 1999</b>	<b>50</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>32</b>	<b>1</b>	<b>84</b>	<b>1</b>
Possession of weapon	24	48	1	100	1	100	19	59	45	54
Other	26	52					13	41	39	46
<b>Other acts<sup>73</sup></b>	<b>110</b>	<b>3</b>	<b>1</b>		<b>4</b>		<b>71</b>		<b>189</b>	<b>3</b>
<b>Total Charges</b>	<b>3245</b>		<b>116</b>		<b>126</b>		<b>3004</b>		<b>6608</b>	<b>100</b>

<sup>73</sup> Other acts were Criminal Investigation (Identifying People) Act 2002, Crime Act, Court Security and Custodial Services Act 1999, Explosives and Dangerous Goods Acts, Firearms Act 1973, Government Railways Acts, National Health Act, Prostitution Act 2000, Restraining Orders Act 1997, Road Traffic Code (WA), Road Traffic Regulations and Social Security Acts.

had their application for drug court rejected without a referral to the CATS team for assessment. Of these, the majority (62%) were deemed not to meet the eligibility criteria. A further 24.7% chose not to proceed with the drug court option (presumably on the basis of information received or further consideration following the initial referral by the court).

In theory, offenders referred to the CATS team for consideration of placement on DCR or STIR receive a full screening and assessment interview, while those referred for the BIR do not<sup>74</sup>. All persons accepted on to STIR and the majority of those placed on DCR (94.6%) had been assessed<sup>75</sup>. Of those persons referred to the CATS team for assessment, but who were not later accepted onto a treatment program, approximately one-quarter (25.6%) were not assessed by the CATS team. It is not clear from these figures why these offenders were not assessed.

A screening manual outlining drug court assessment procedures and a drug court Interview Schedule were developed for screening and assessing referrals to the drug court. The main components of the Interview Schedule are:

- demographic information;
- Drug Severity Index;
- Offender Profile Index;
- Texas Christian University (TCU) Drug Screen; and
- Readiness to Change Questionnaire.

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<sup>74</sup> Only three offenders placed on the BIR were given a full assessment. One possible explanation of this anomaly is that these 3 BIR offenders were assessed for possible placement on DCR or STIR but instead (for some reason which is unknown) were placed on BIR.

<sup>75</sup> From the database we are unable to determine if the ~5% of offenders for whom there is no assessment data were not assessed or simply did not have their assessment information entered into the DVD database. In all cases the individual had been referred to CATS for assessment.

### **5.3.1. Demographics of offenders**

Basic demographic details were available for all offenders who were referred to the PDCPP. In this section the demographic details are compared for four groups of offenders:

- offenders who were not accepted on to a program;
- offenders accepted onto BIR;
- offenders accepted onto STIR; and
- offenders accepted onto DCR.

The basic demographics for these four groups are presented in Table 5.3<sup>76</sup>. Demographics for the small number of offenders currently being assessed are not shown separately, but are included in the total figures. From these demographics a picture of the ‘typical’ referral to the drug court emerges. This typical offender is a young, single, non-Aboriginal male with limited education who is currently unemployed.

Statistical comparisons were made across the four groups of offenders. There were no significant differences across the four groups in terms of gender or indigenous<sup>77</sup> status composition<sup>78</sup>. Offenders placed on DCR were significantly younger (average age 25 years) than those not accepted onto a drug court program (average age 27 years)<sup>79</sup>. No juveniles were placed on BIR or STIR.

### **5.3.2 Drug use**

Information on drug use was available only for offenders who had undergone a full screening and assessment interview by the CATS team. In total, 499 offenders completed the TCU drug screen. Possible scores on the TCU Drug Screen range from

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<sup>76</sup> Information on the number of dependent children has been excluded as this field was poorly completed (more than 70% missing data) on the DVD database. We will recommend this be made a mandatory field in future database revisions.

<sup>77</sup> STIR was removed from the indigenous analysis due to the small cell sizes.

<sup>78</sup> Chi Square analyses were used for this analysis.

<sup>79</sup>  $F(3,710) = 5.39, p < .001$ . DCR:  $M = 24.9$ , std dev = 6.0. Not accepted:  $M = 27.0$ , std dev = 7.0. Scheffe post hoc multiple comparisons.



**Table 5.3 Offender demographics by program type**

	<b>Not accepted</b>		<b>BIR</b>		<b>STIR</b>		<b>DCR</b>		<b>Total</b>	
	N	%	N	%	N	%	N	%	N	%
<b>Gender</b>										
Female	68	21.0	20	18.5	6	25.0	65	25.0	168	23.0
Male	256	79.0	88	81.5	18	75.0	195	75.0	561	77.0
<b>Ethnicity</b>										
Non-Aboriginal	273	88.9	98	90.7	22	91.7	214	89.2	617	89.2
Aboriginal	26	8.5	5	4.6	1	4.2	20	8.3	55	7.9
Unknown	8	2.6	5	4.6	1	4.2	6	2.5	20	2.9
<b>Age Status</b>										
Adult	308	95.1	108	100.0	24	100.0	227	87.3	679	93.1
Juvenile	16	4.9					33	12.7	50	6.9
<b>Age group</b>										
15 - 20	68	21.0	39	36.1	6	25.0	85	32.7	200	27.5
21 - 25	99	30.6	37	34.3	8	33.3	72	27.7	221	30.4
26 - 30	71	21.9	13	12.0	6	25.0	67	25.8	158	21.7
31 to 35	51	15.7	9	8.3	1	4.2	25	9.6	87	12.0
36 +	33	10.2	10	9.3	3	12.5	11	4.2	61	8.4
<b>Education Level</b>										
Year 8 or less	23	7.1	3	2.8			22	8.5	48	6.6
Year 9	42	13.0	6	5.6	1	4.2	54	20.8	107	14.7
Year 10	55	17.0	23	21.3	8	33.3	78	30.0	167	22.9
Year 11	18	5.6	19	17.6	3	12.5	42	16.2	83	11.4
Year 12	18	5.6	16	14.8	8	33.3	25	9.6	69	9.5
Tertiary	16	4.9	14	13.0	4	16.7	19	7.3	53	7.3
unknown	152	46.9	27	25.0			20	7.7	202	27.7
<b>Marital Status<sup>80</sup></b>										
Single	139	42.9	73	67.6	20	83.3	185	71.2	423	58.0
De facto	36	11.1	3	2.8			39	15.0	80	11.0
Engaged	3	0.9					5	1.9	8	1.1
Married	3	0.9	2	1.9	2	8.3	11	4.2	19	2.6
Separated	4	1.2	4	3.7	1	4.2	2	0.8	11	1.5
Divorced	4	1.2	1	0.9	1	4.2	3	1.2	9	1.2
Widowed			1	0.9			2	0.8	4	0.5
Unknown	135	41.7	24	22.2			13	5.0	175	24.0
<b>Employment Status</b>										
Not employed	300	92.6	108	100.0	16	66.7	219	84.2	656	90.0
Employed	24	7.4			8	33.3	41	15.8	73	10.0

<sup>80</sup> Marital status was freely recorded in the database and some of the categories recorded here may overlap. We will recommend fixed categories be developed for future database revisions.

0 to 9, with a score of 3 or greater indicating “relatively severe drug-related problems”, approximately equivalent to a DSM<sup>81</sup> drug dependence diagnosis (TCU Institute of Behavioural Research, 2002). The majority of offenders (97.4%) scored 3 or greater<sup>82</sup>. A marked ceiling effect occurred, with more than half of offenders (63.7%) scoring 8 or 9. Perhaps because of this, there were no significant differences in scores on the TCU across programs<sup>83</sup>.

Offenders were asked which drugs had caused them the most serious problems in the six months prior to their arrest. Across programs, the majority of offenders nominated amphetamines or heroin as their most problematic drug. For those placed on DCR, 48% nominated amphetamines and 38% heroin. Forty three percent of offenders placed on STIR nominated amphetamines, with an equal number nominating heroin. For those not accepted onto a program, amphetamines were nominated by 52% and heroin by 36%. This is consistent with the reported higher prevalence of amphetamine than heroin use in Western Australia (see Section 2.3.8 of Chapter 2).

In terms of preferred method of administration, both amphetamines and heroin were usually injected (amphetamines 90%, heroin 96%), with a smaller number of offenders inhaling (amphetamines 5%, heroin 1%) or taking these drugs orally (amphetamines 5%, heroin 3%).

Offenders were asked about their drug use history. Table 5.4 presents for each type of drug the age at which the drug was first used, the age at which regular use began and the percentage of offenders who had used the drug. More than 90% of offenders had used alcohol, cannabis and amphetamines. Typically, use of alcohol, cannabis and inhalants began in the early teens (ages 13 to 15). Use of the two most problematic drugs, amphetamines and heroin, typically began in the late teens. The use of other drugs typically began in the late teens to early twenties.

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<sup>81</sup> DSM's provide diagnostic criteria for the most common mental disorders and are widely used in psychiatry and psychology.

<sup>82</sup> There were problems with the scoring of the TCU Drug Screen on the DVD database. The total score was recalculated for all offenders. We recommend the scoring mechanism currently used be examined to identify the source of the error.

<sup>83</sup> Means and standard deviations: DCR 7.7 (3.5), STIR 7.0(3.5), not accepted 7.1 (4.0).

**Table 5.4 Self-reported drug use history of offenders**

Substance	DCR N=245			STIR N=24			Not accepted N=143		
	% used drug	Age first used	Age regular use	% used drug	Age first used	Age regular use	% used drug	Age first used	Age regular use
Alcohol	92	13.6	15.6	88	13.6	16.2	89	13.6	15.3
Cannabis	95	13.7	14.8	100	14.5	15.8	96	14.0	15.5
Inhalants	18	14.2	13.1	8	13.5	13.5	16	15.1	13.2
Hallucinogens	73	16.2	15.9	75	18.5	23.0	68	16.4	17.2
Amphetamine	96	17.4	19.6	96	19.5	21.2	94	17.6	19.2
Uppers	25	17.7	16.5	42	22.1	25.7	27	18.2	17.6
Downers	47	18.2	18.7	58	21.4	21.7	50	18.6	19.0
Ecstasy	55	18.5	18.5	75	21.2	19.1	53	19.8	21.6
Heroin	70	19.1	19.7	58	19.9	20.4	74	19.6	19.9
Other opiates	27	19.7	20.8	21	23.6	25.5	30	20.3	20.3
Cocaine	24	20.8	21.3	29	21.1	23.8	26	21.1	18.8
Other drugs	8	21.6	25.5	8	22.5		9	21.4	22.5

Offenders were asked how frequently they had used each drug. The results are presented by program in Table 5.5. The majority of users of heroin and amphetamines used the drug at least daily.

Offenders were also asked how long it had been since they had last used each type of drug. The results are presented by program in Table 5.6. Across the three programs, alcohol and cannabis were the drugs most commonly self-reported as used in the past week.

Offenders self-reported the minimum and maximum amount spent of drugs per week. The results are presented by program in Figure 5.5. For each individual, the median point between minimum and maximum per week was calculated. Medians ranged from 0 to \$25,000 per week. There was no significant difference in the self-reported amount spent on drugs each week between the three groups.

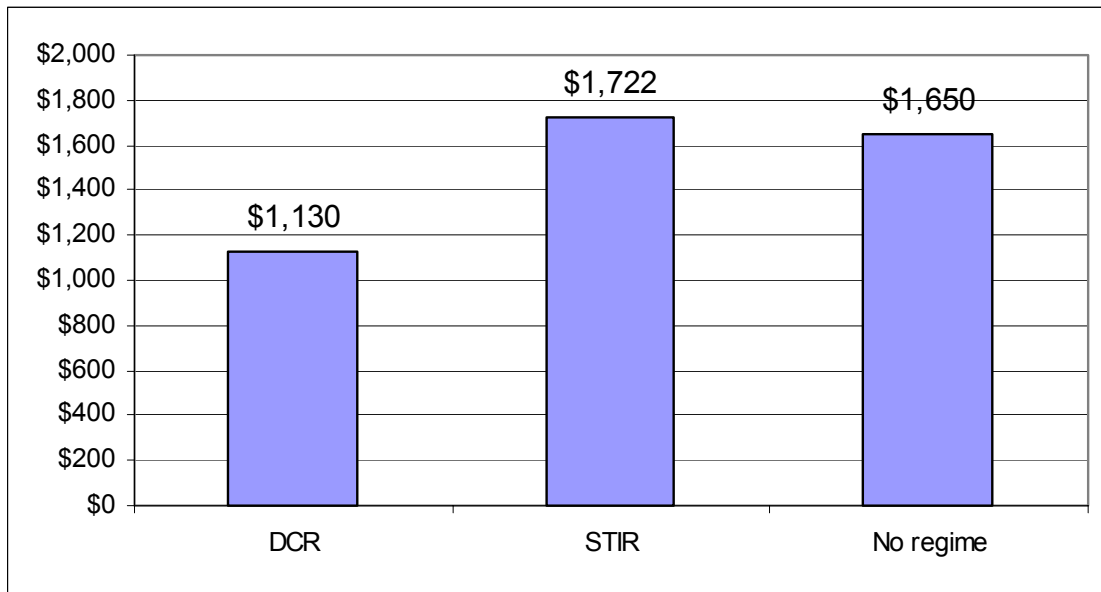
**Table 5.5 Frequency of drug use by drug type and program**

Program	Frequency of Use					
	< weekly		weekly		daily	
	N	%	N	%	N	%
<b>DCR</b>						
Alcohol	47	25	84	45	55	29
Cannabis	22	10	44	20	138	64
Inhalants	12	44	6	22	9	33
Hallucinogens	73	58	36	29	15	12
Downers	17	21	9	11	51	64
Uppers	25	51	11	22	13	27
Ecstasy	54	59	23	25	14	15
Amphetamine	13	7	34	17	131	67
Heroin	11	8	10	7	105	76
Other opiates	18	36	5	10	23	46
Cocaine	7	21	2	6	1	3
Other drugs	9	69	3	23	1	8
<b>STIR</b>						
Alcohol	4	19	12	57	5	24
Cannabis	2	8	6	25	14	58
Inhalants					2	100
Hallucinogens	12	80	2	13	1	7
Downers	3	25	2	17	6	50
Uppers	4	50	3	38		
Ecstasy	13	76	4	24		
Amphetamine	2	10	2	10	17	81
Heroin			2	15	9	69
Other opiates	1	20			4	80
Cocaine	2	33	3	50	1	17
Other drugs						
<b>No Program</b>						
Alcohol	24	22	39	36	42	39
Cannabis	9	7	20	16	90	74
Inhalants	5	36	3	21	6	43
Hallucinogens	25	47	23	43	5	9
Downers	10	22	9	20	21	46
Uppers	6	26	9	39	8	35
Ecstasy	30	63	8	17	7	15
Amphetamine	10	8	27	23	73	61
Heroin	9	11	4	5	61	72
Other opiates	6	22	4	15	14	52
Cocaine	10	50	2	10	8	40
Other drugs	3	43	2	29	2	29

**Table 5.6 Length of time since last drug use by drug type and program**

	Time since last use										
	last day		last week		last month		last year		> one year		Total
	N	%	N	%	N	%	N	%	N	%	N
DCR											
alcohol	3	1.8	62	36.7	27	16.0	65	38.5	12	7.1	169
cannabis	12	6.4	74	39.6	47	25.1	45	24.1	9	4.8	187
inhalants			1	10.0	3	30.0	2	20.0	4	40.0	10
hallucinogens	1	2.4			5	12.2	15	36.6	20	48.8	41
downers	6	7.9	18	23.7	17	22.4	30	39.5	5	6.6	76
uppers	1	3.4	6	20.7	3	10.3	14	48.3	5	17.2	29
ecstasy			4	5.6	11	15.5	37	52.1	19	26.8	71
amphetamines	6	2.9	54	26.5	69	33.8	69	33.8	6	2.9	204
heroin	4	3.1	27	20.8	33	25.4	52	40.0	14	10.8	130
other opiates	2	4.3	7	14.9	13	27.7	19	40.4	6	12.8	47
cocaine					8	28.6	14	50.0	6	21.4	28
other drugs					3	23.1	7	53.8	3	23.1	13
STIR											
alcohol	2	11.8	5	29.4	6	35.3	4	23.5			17
cannabis			12	54.5	6	27.3	3	13.6	1	4.5	22
inhalants									1	100.0	1
hallucinogens							3	100.0			3
downers			1	7.7	2	15.4	8	61.5	2	15.4	13
uppers			2	25.0	1	12.5	4	50.0	1	12.5	8
ecstasy			2	18.2	1	9.1	6	54.5	2	18.2	11
amphetamines			4	18.2	12	54.5	5	22.7	1	4.5	22
heroin			3	23.1	3	23.1	5	38.5	2	15.4	13
other opiates			1	20.0	2	40.0	1	20.0	1	20.0	5
cocaine					1	33.3	1	33.3	1	33.3	3
other drugs					1	100.0					1
Not accepted											
alcohol	2	2.2	38	41.8	20	22.0	24	26.4	7	7.7	91
cannabis	7	6.2	54	47.8	31	27.4	19	16.8	2	1.8	113
inhalants					2	33.3	1	16.7	3	50.0	6
hallucinogens	1	8.3					3	25.0	8	66.7	12
downers	3	6.3	13	27.1	16	33.3	14	29.2	2	4.2	48
uppers			3	16.7	5	27.8	8	44.4	2	11.1	18
ecstasy			2	5.3	8	21.1	23	60.5	5	13.2	38
amphetamines	1	0.8	46	39.0	35	29.7	36	30.5			118
heroin	1	1.2	21	25.9	17	21.0	34	42.0	8	9.9	81
other opiates	1	3.7	5	18.5	9	33.3	11	40.7	1	3.7	27
cocaine					1	10.0	6	60.0	3	30.0	10
other drugs	1	20.0	1	20.0			2	40.0	1	20.0	5

**Figure 5.5 Amount (mean) spent on drugs per week by program**



Offenders were also asked to report on the sources of income for their spending on drugs. The results are presented in Table 5.7. STIR offenders were less likely to use social security as a form of income to support drug use than other offenders<sup>84</sup>. No other significant differences between groups were found.

**Table 5.7 Sources of income used to support drug use by program**

Source of income	DCR		STIR		Not accepted	
	N	%	N	%	N	%
Stealing	148	63	11	46	78	57
Burglary	73	31	5	21	28	20
Dealing	100	43	14	58	55	40
Prostitution	11	5	1	4	10	7
Social security	163	69	11	46	99	72
Savings	66	28	7	29	29	21
Paid work	101	43	13	54	51	37
Other	20	9	2	8	15	11

### **5.3.3 Readiness to change**

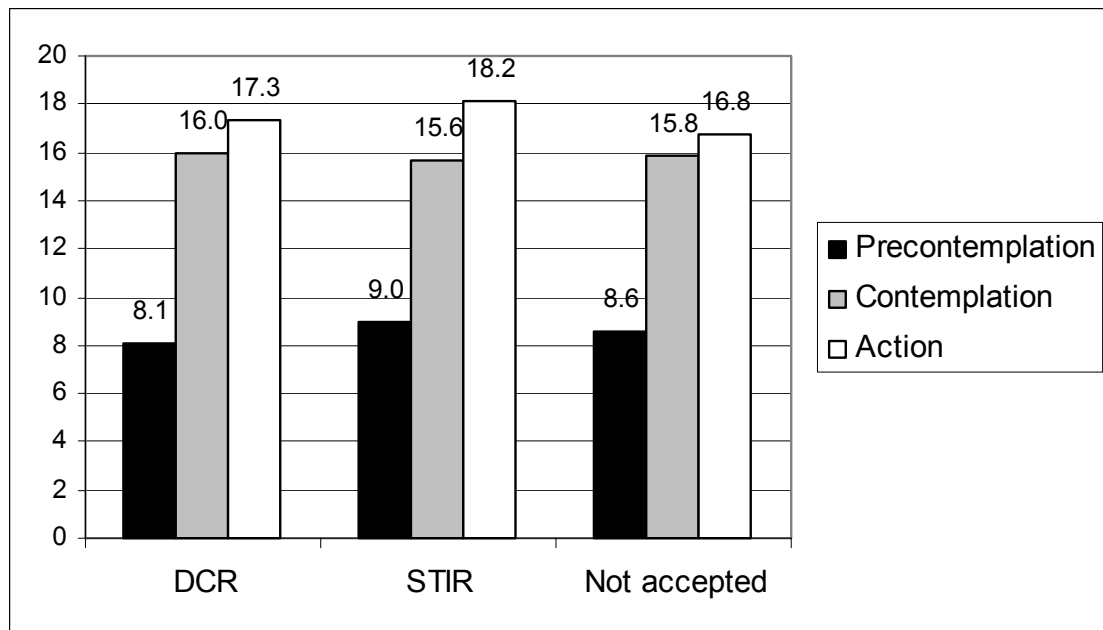
The Readiness to Change Questionnaire (RTCQ) was used to assess offenders' motivation and readiness for treatment for their drug use<sup>85</sup>. This questionnaire is based

<sup>84</sup>  $\chi^2(2)=6.5$ ,  $p<.05$ .

<sup>85</sup> Information on scales, scoring and stages were obtained from the Drug Court Screening Manual.

on a popular model of motivation (Prochaska & DiClemente, 1992). The questionnaire provides scores on three scales (precontemplation, contemplation and action) that can be used to assess the readiness of an offender for treatment. Each scale score has a possible range from four to 20. In terms of this model of therapeutic intervention, an individual's "readiness to change" progresses from precontemplation (have not yet come to the point where change is considered necessary) to contemplation (thinking about the need for change) to action (planning or undertaking change).

**Figure 5.6 Mean scale scores on the Readiness to Change Questionnaire**



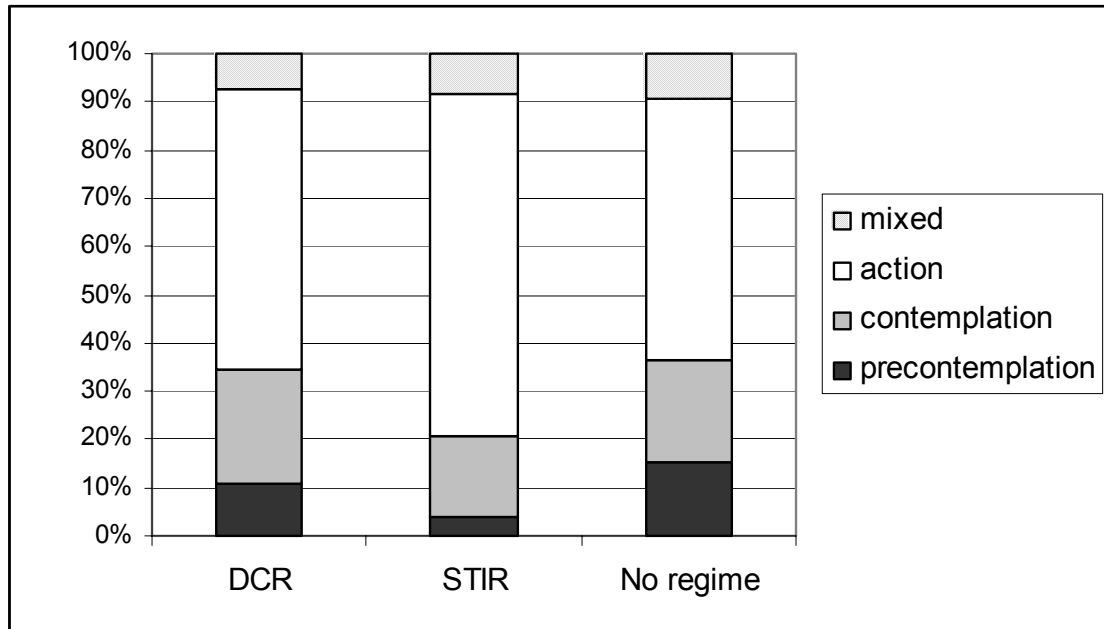
Mean scale scores were calculated for each of the three groups of offenders. The results are presented in Figure 5.6. There were no significant differences in pre-contemplation or contemplation scores between the three groups. However, STIR participants (mean = 18.2, std dev = 2) scored significantly higher on the action scale than offenders not placed on a program (mean = 16.8, std dev = 2.6)<sup>86</sup>.

The stage of change (precontemplation, contemplation or action) an offender is said to be in is reflected by the scale with the highest score. Offenders in the precontemplation stage have not yet recognised their drug use as problematic. Offenders in the contemplation stage are currently evaluating their drug use. Offenders in the action stage recognise they have a drug problem and are planning or undertaking change. The

<sup>86</sup>  $F(2,382)=4.3, p<.05$ . Scheffe post hoc multiple comparisons.

results are presented in Figure 5.7. The majority of offenders in each group were classified as being in the Action stage.

**Figure 5.7 Stage of change by program**



The combination of significantly higher scores on the action scale and the greater percentage of offenders that fall into the action category for STIR offenders in comparison to the other two groups suggest that STIR offenders have higher motivation and are more ready for treatment than the other two groups.

Caution needs to be exercised in interpreting these results. The validity of this measure in the context of coerced treatment is unknown. It is possible that offenders may provide the “right” answers to enhance their chances of being placed on the drug court program. Notwithstanding this caution, STIR offenders appear more treatment-ready than those placed on DCR.



### 5.3.4 Offender profiles

The Offender Profile Index (OPI) is a screening instrument widely used in drug courts and other correctional institutions to assess an individual's stake in conformity<sup>87</sup>. It provides classifications in seven areas<sup>88</sup>: family support, education, work, home stability, criminal justice involvement, psychological functioning and previous treatment. A total score can also be calculated. Assessment data on the Offender Profile Index (OPI) was available for 411 offenders. OPI area classifications are presented by program in Table 5.8.

**Table 5.8 OPI area results by program**

Offender Profile Index	DCR		STIR		Not accepted	
	N	%	N	%	N	%
<b>Family Support</b>						
minimal	100	41.7%	13	54.2%	52	36.6%
moderate	93	38.8%	8	33.3%	61	43.0%
high	47	19.6%	3	12.5%	29	20.4%
<b>Education</b>						
minimal	51	21.3%	2	8.3%	29	20.6%
moderate	69	28.8%	1	4.2%	49	34.8%
high	120	50.0%	21	87.5%	63	44.7%
<b>Work</b>						
minimal	236	99.6%	24	100.0%	136	99.3%
moderate					1	.7%
high	1	.4%				
<b>Home Stability</b>						
minimal	29	12.4%	3	12.5%	24	17.5%
moderate	182	78.1%	20	83.3%	99	72.3%
high	22	9.4%	1	4.2%	14	10.2%
<b>Stake in non-criminal behaviour</b>						
minimal	14	6.4%	1	4.2%	10	7.7%
moderate	154	70.6%	20	83.3%	79	60.8%
high	50	22.9%	3	12.5%	41	31.5%
<b>Psychological functioning</b>						
minimal	23	9.5%	3	12.5%	17	12.0%
moderate	129	53.5%	15	62.5%	81	57.0%
high	89	36.9%	6	25.0%	44	31.0%
<b>Stake in treatment outcome</b>						
minimal	187	84.2%	22	95.7%	109	82.0%
high	35	15.8%	1	4.3%	24	18.0%

<sup>87</sup> Information on the OPI, scales and scoring was obtained from the Drug Court Screening Manual.

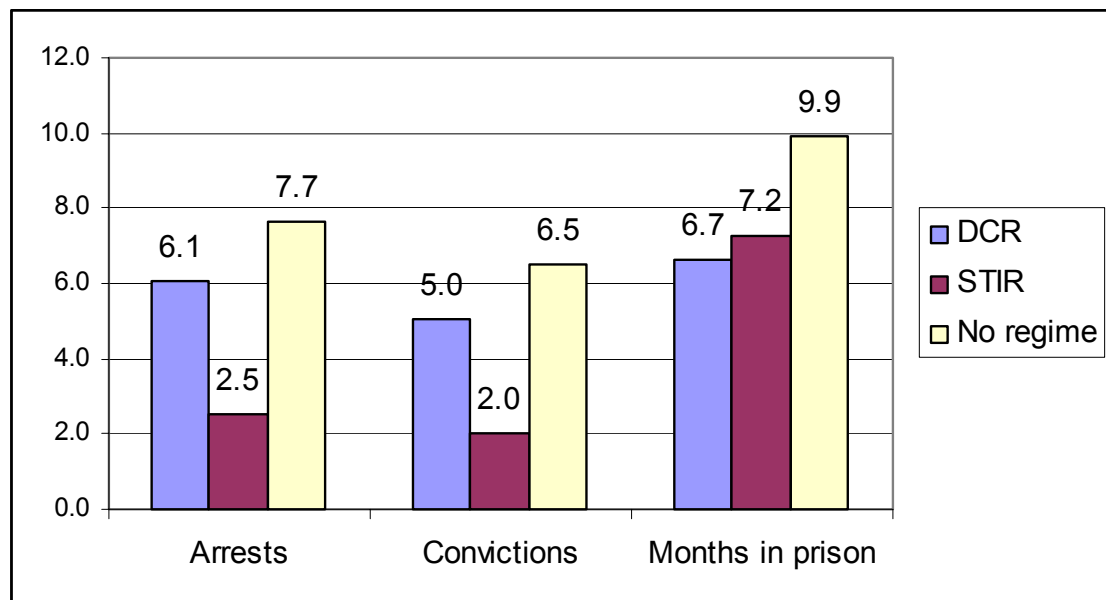
<sup>88</sup> These areas are also known as stakes or substakes.

There were no significant differences in total scores on the OPI between offenders placed on DCR (M=5.8, std dev=1.6), STIR (M=5.6, std dev=1.1) and those not accepted on a program (M=5.9, std dev=1.9). There was a significant difference between the three groups of offenders on education. Offenders placed on STIR were significantly more likely to have a high degree of education than other offenders<sup>89</sup>. No significant differences were found across programs on the family, home, criminal justice, psychological or treatment areas.

### **5.3.5 Self reported offending history**

As part of the OPI, offenders were asked the number of arrests, convictions and months spent in prison in the last five years. The results are depicted in Figure 5.8. Persons placed on the STIR program self-reported significantly fewer arrests and convictions than person placed on DCR or not placed on a program<sup>90</sup>. There were no significant differences in the number of months spent in prison in the last 5 years across the three program types.

**Figure 5.8 Mean self-reported arrests, convictions and months in prison in last 5 years by program**



<sup>89</sup> Chi square analysis.  $\chi^2(4) = 16.1$ ,  $p < .01$ .

<sup>90</sup> Arrests:  $F(2,305) = 4.7$ ,  $p < .05$ . Convictions:  $F(2,297) = 3.9$ ,  $p < .05$ . Tamhanes post hoc multiple comparisons used due to unequal variances.

### ***5.3.6 Summary of differences between DCR and STIR offenders***

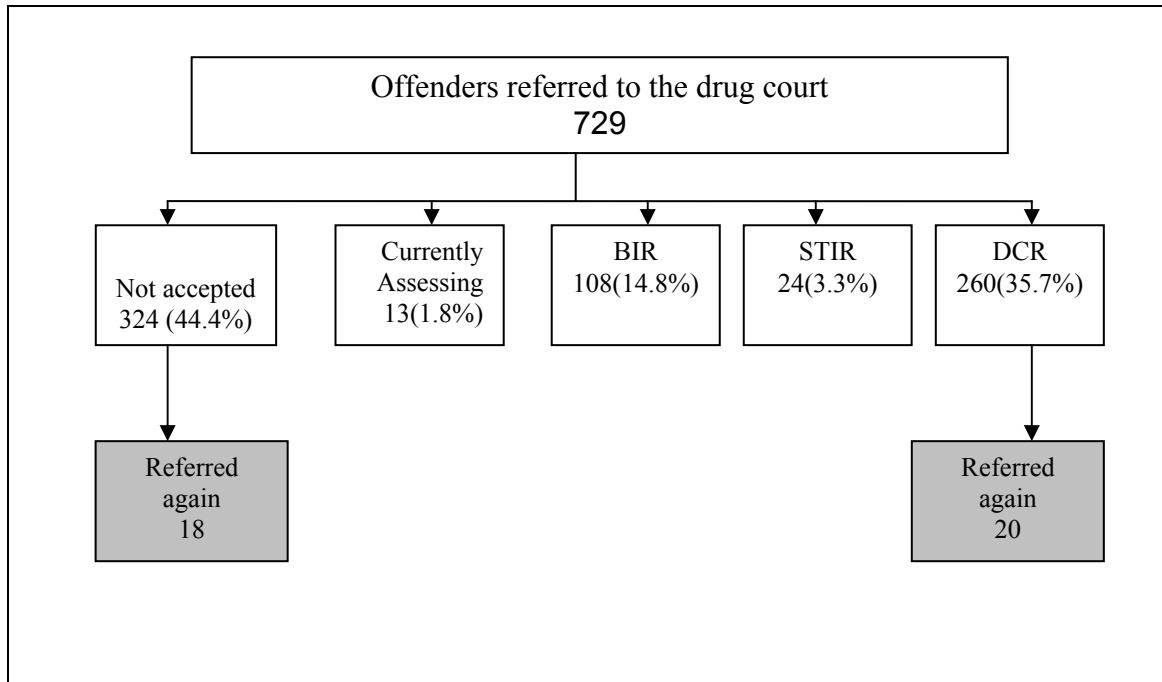
In comparison to STIR, DCR is designed as a more intensive program for offenders with greater criminal and drug involvement. Results from the referral, screening and assessment processes provide some support for this. Offenders placed on DCR were facing more than twice the number of charges than offenders placed on STIR, and self-reported significantly more arrests and convictions in the last 5 years than offenders placed on STIR. While both groups of offenders appear to have entrenched drug use problems, offenders placed on STIR were assessed as having higher motivation and as being more ready for treatment for their drug use than offenders placed on DCR.

While acknowledging these specific differences between offenders placed on STIR and DCR, what is more striking is the similarity of the two groups. Both groups are similar in terms of gender and age, have entrenched drug problems and do not significantly differ in terms of family support, work, home stability, stake in non-criminal behaviour, psychological functioning or stake in treatment outcome. The similarity of the two groups has been reflected in changes during the pilot period in the STIR program. Magistrate Wager advised that over time the STIR program has moved closer to DCR.

## **5.4 Placement on Programs**

Based on the screening and assessment CATS provide the magistrate with a recommendation regarding an offender's suitability for placement on a drug court program. Figure 5.9 depicts placement on programs for the 729 offenders referred to the drug court for the period 4 December 2000 to 27 November 2002. This is an extension of Figure 5.1. Only the first placements are recorded in this Figure, providing information on distinct persons rather than total referrals. The total number of referrals to the drug court during this period was 769 (691 offenders referred once, 36 offenders referred twice and two offenders referred three times).

**Figure 5.9 Placement on drug court programs for all offenders**



Of all persons referred to the drug court, almost one half (324 offenders, 44.4%) were not accepted on to a program. The reasons recorded in the DVD database for non-acceptance are depicted in Figure 5.10. Almost half (48.8%) of all offenders not accepted onto a drug court program were rejected because they did not meet the eligibility criteria<sup>91</sup>. This suggests there are a high number of inappropriate referrals being made to the drug court.

As indicated in Chapter 3 (Section 3.6.2) the main points at which program eligibility decisions are made are at the offender's first appearance in the drug court, and at the second appearance following an assessment by CATS. Supporting the hypothesis of a high number of inappropriate referrals, 129 offenders were not accepted on the drug court by the drug court magistrate prior to referral to CATS for assessment. Figure 5.11 depicts the points at which eligibility decisions were made.

<sup>91</sup> It is possible that this figure is higher. In 22 cases no reason was recorded, in 28 the sentencing outcome rather than the reason for non-acceptance was recorded and in 10 cases transference to another court rather than the reason for non-acceptance was recorded. We will recommend that fixed fields be created for this variable in future database modifications.

Figure 5.10 Reasons for non-acceptance onto drug court programs

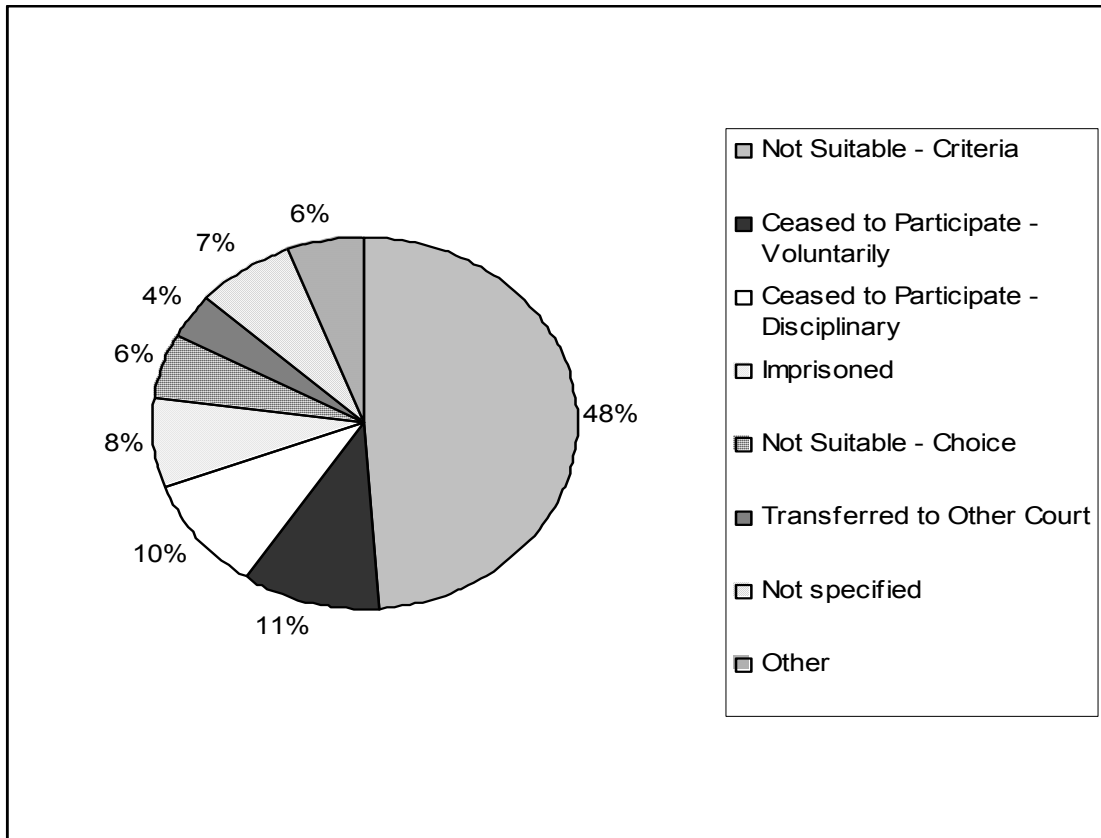
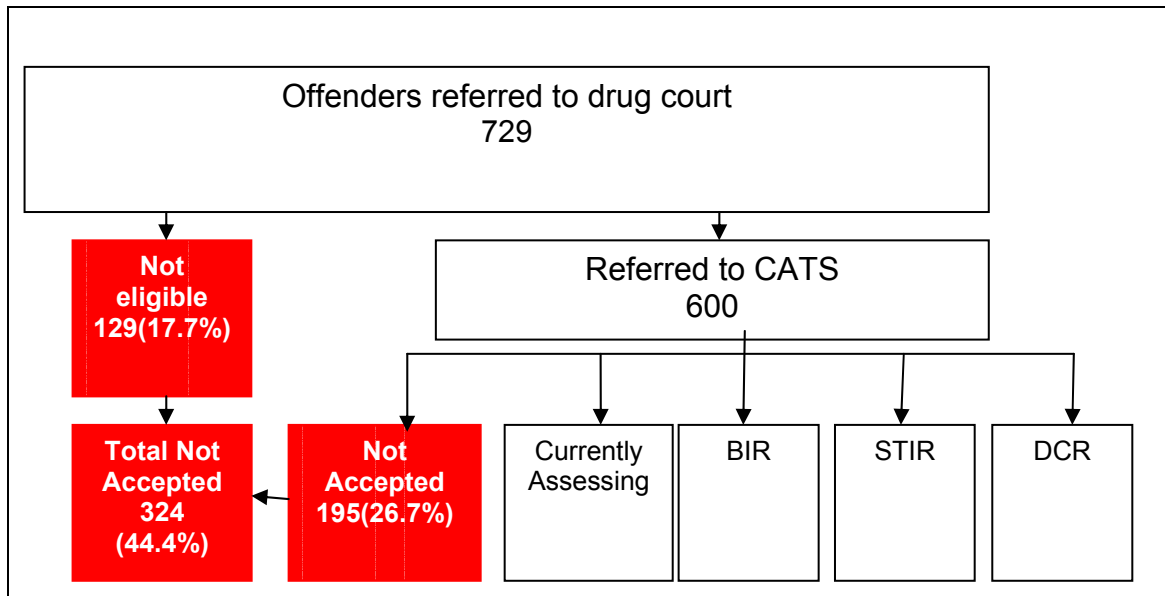
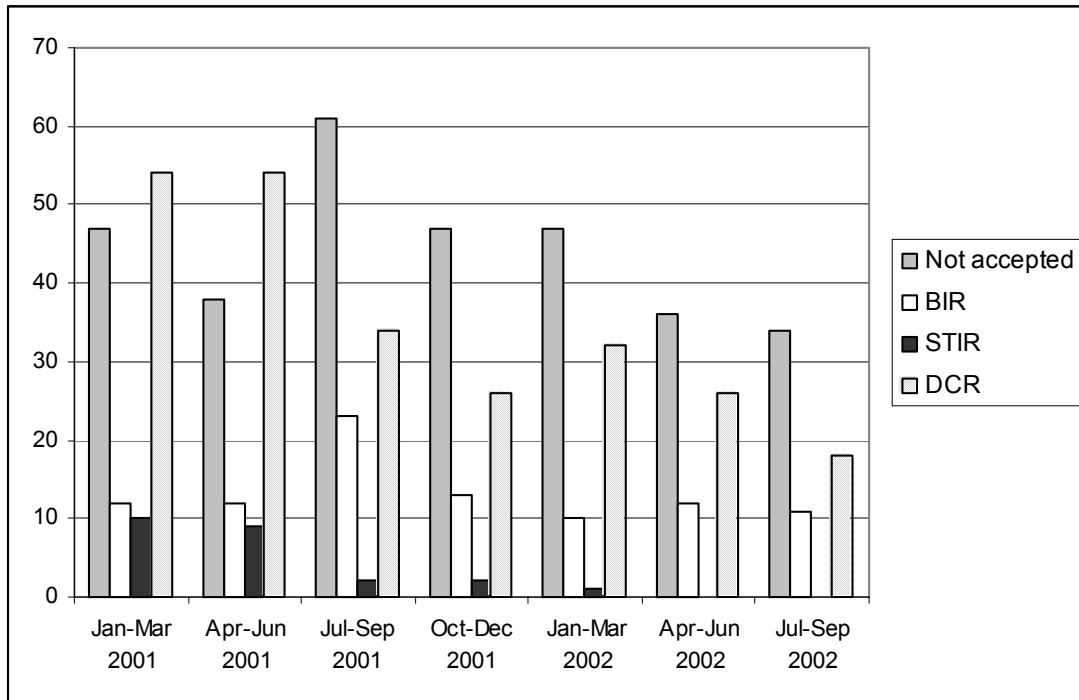


Figure 5.11 Offenders not accepted onto program by point in referral process



The reasons for non-acceptance for the 195 offenders who were referred to CATS were examined separately. Again, just over one third (39.5%) were rejected because they did not meet the eligibility criteria. This suggests there may be some inefficiency in the referral process.

**Figure 5.12<sup>92</sup> Placements on drug court programs January 2001 to September 2002**



The majority of offenders that were accepted onto programs were placed on DCR and BIR, with a much smaller number placed on STIR. The percentage of referrals resulting in program placement has changed over time. Until mid 2001 approximately one third of referrals were not accepted on any drug court program. Since this time, the percentage of offenders not accepted has increased to approximately half, and there has been a marked decrease in the number of persons placed on DCR. This is graphically depicted in Figure 5.12

<sup>92</sup> Offenders currently being assessed have been excluded from this graph. The periods Oct-Dec 2000 and Oct-Dec 2002 have also been excluded as these periods represent only one and two months data respectively.

### 5.4.1 Indicated sentences

Table 5.9 Indicated sentences by sentence type

Indicated Sentence	Frequency	%	Total	%
<b>Imprisonment</b>			58	43.7
Eligible parole	34	25.4		
Parole status unknown	24	17.9		
<b>Suspended Imprisonment Order</b>			3	2.2
<b>Community Based Orders</b>			27	20.1
Community Based Order only	1	0.7		
with Community Service Order	10	7.5		
with Probation	5	3.7		
with Community Service Order and Probation	8	6.0		
with Community Service Order & Sup	2	1.5		
with Community Service Order, Probation & Sup	1	0.7		
<b>Intensive Supervision Orders</b>			43	32.1
Intensive Supervision Order only	3	2.2		
with Community Service Order	21	15.7		
with Probation	8	6.0		
with Community Service Order and Probation	11	8.2		
<b>Fines</b>			3	2.2
<b>Total</b>			134	100.0

Theoretically, at the time of placing an offender on DCR or STIR, the magistrate provides the offender with an indication of the sentence they would be likely to receive if they fail on their drug court program<sup>93</sup>. Indicated sentence information<sup>94</sup> was available for 134 adult offenders who were referred from the Court of Petty Sessions. Indicated sentence by sentence type is presented in Table 5.9. Figure 5.13 presents the indicated sentences available for the 117 offenders placed on DCR (representing 45% of all offenders placed on DCR)<sup>95</sup>. The results suggest that even with this most serious groups of offenders dealt with by the drug court less than half of offenders are facing an

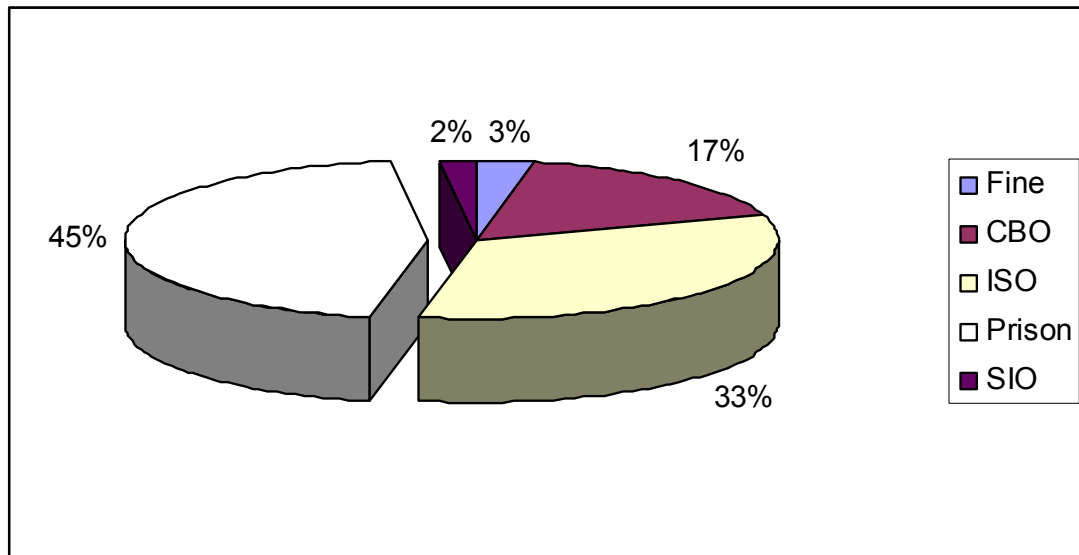
<sup>93</sup> Magistrate Wager noted the indicated sentence takes into account information provided from CATS during the assessment period. Because of this, the indicated sentence may differ from a sentence that may have been imposed had this assessment not taken place. In other words, just successfully completing the assessment period may result in the client receiving a lesser sentence.

<sup>94</sup> There is currently no designated field on the DVD database to record indicated sentences. Indicated sentence information used in this report was provided separately by DOJ. Given the high rate of missing data caution should be exercised in extrapolating from these figures.

<sup>95</sup> Indicated sentences were also available for 5 offenders placed on STIR, 1 placed on BIR and 11 not accepted onto a program.

indicated sentence of imprisonment. However, given the high rate of missing data, these results should be interpreted with caution<sup>96</sup>.

**Figure 5.13 Indicated sentences for adult offenders placed on DCR**



Indicated sentences for juveniles have also not been consistently recorded in the DVD database. A manual review by CATS produced indicated sentences for five juvenile offenders. Two offenders were given indicated sentences of 15 months detention, two were given indicated sentences of 12 months detention and the fifth was given an indicated sentence of 12 months imprisonment.

## **5.5 Program Supervision**

Once placed on a drug court program, an offender is subject to a range of supervisory measures. Offenders placed on STIR and DCR are required to appear before the drug court magistrate and meet with their CATS case manager on a regular basis, undertake treatment and regular urinalysis. A breach point system is used to track breaches of requirements by the offender. Information on court appearances, breach points and urinalysis are presented below.

<sup>96</sup> Indicated sentence data was provided for a further 28 cases in March 2003 and have not been included in the analyses presented. For 12 (43%) of these offenders, the indicated sentence was imprisonment. This closely matches the 45% in the original data. It might be assumed that where the indicated sentence was imprisonment it may be more likely to be recorded. If this assumption is correct then the level of potential imprisonment is even lower than the 45% suggested.



### **5.5.1 Court appearances**

Court appearance details were available for 690 of the 729 persons referred to the drug court. There were a total of 5218 court appearances for these 690 offenders between the 14 December 2000 and 2 January 2003, an average of 7.6 appearances per offender. The number of times offenders appeared in court ranged between one and 42. Table 5.10 displays the mean number of appearances by program type and completion status. There were significant differences between each of the groups in the mean number of court appearances<sup>97</sup>. As would be expected by the nature of the program, offenders placed on BIR have the least number of court appearances, typically appearing only once. Offenders placed on DCR have the most court appearances (as expected). Again, rather obviously, offenders who complete DCR and STIR have more court appearances than those who are terminated. Offenders who are terminated from BIR have more court appearances than those who complete BIR, who only attend court for sentencing.

**Table 5.10 Number of court appearances and days between first and last court appearance by program type and status**

Status	DCR		STIR		BIR		Not accepted	
	apps M(sd)	Days M(sd)	apps M(sd)	Days M(sd)	apps M(sd)	Days M(sd)	apps M(sd)	Days M(sd)
All	14.9(7.7)	143.4(89.7)	7.4(2.9)	131.8(36.9)	1.7(1.1)	24.6(64.1)	3.5(3.6)	43.6(78.0)
Completed	19.4(5.9)	183.7(83.5)	7.5(2.4)	146.6(24.0)	1.4(0.7)	19.4(62.7)	na	na
Terminated	11.0(6.4)	106.9 (65.7)	7.2(4.5)	87.5(34.0)	3.0(2.0)	54.5 (678)	na	na

### **5.5.2 Breach points**

One hundred and seventy four offenders received breach points on the PDCPP. The number of breach points given to these offenders ranged from one to 29<sup>98</sup>. In total, 1878 breach points were awarded between 19 January 2001 and 27 November 2002.

<sup>97</sup>  $F(3,637) = 260.1, p=.000$ . Tamhane's post-hoc multiple comparisons used due to unequal variances.

<sup>98</sup> An offender is terminated from their drug court regime when they reach 20 breach points. However, breach points can be removed by the magistrate for good progress. Thus, it is possible to have been awarded 29 breach points yet remain under 20 breach points.

Offenders on the STIR program were significantly less likely to receive breach points (4.2%) than offenders on DCR (64.2%)<sup>99</sup>. The one STIR participant to receive breach points received only one breach point. The mean number of breach points for DCR participants was 10.9 (std dev 7.1).

The most common reasons for assigning breach points were related to urine testing and failure to attend appointments. On 615 occasions offenders were breached for providing positive urines, and on 100 occasions for failing to provide urine samples. Offenders were also breached for failing to attend treatment (44 occasions), counseling (24 occasions), CATS (8 occasions) and unspecified appointments (146 occasions). On 67 occasions, two or more reasons were given for breach points<sup>100</sup>.

One hundred and twenty four offenders had breach points restored by the drug court magistrate. The number of breach points restored per offender ranged from one to 20. The mean number of breach points restored was 5.5 (std dev 4.3). The three most common reasons given for restoring breach points was the offender made good progress/had a good week (268 occurrences), clean urine results (68 occurrences) or complied with directions (31 occurrences).

Only three offenders were terminated from the drug court for reaching 20 breach points. This represents a termination rate of 1% of all persons placed on DCR and STIR.

### **5.5.3 Urinalysis**

In total, 382 persons participated in urinalysis. This included 105 offenders not accepted onto a program who were tested during the assessment period, 7 offenders currently in assessment, 3 offenders placed on BIR, 24 offenders placed on STIR, and 243 offenders placed on DCR. The number of urine samples provided by offenders ranged from one to 107, with an average of 22 samples.

The percentage of urine samples that were clean or contained each of a number of tested substances were calculated for each offender. Clean urine samples were provided

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<sup>99</sup> Chi Square analysis.  $\chi^2(1) = 32.8$ ,  $p = .000$ .

<sup>100</sup> This figure does not include multiple instances of the same breach (e.g. multiple positive urines).

on all tests by 7.1% of offenders, and dirty urine samples provided on all tests by 24.9% of offenders. The mean percentage of clean and drug detected samples were calculated by program and outcome status and are presented in Table 5.11. Offenders who completed a program had significantly higher percentages of clean urines (57.5%) than offenders who were terminated from a program (35.7%) or were not assigned to a program (28.9%)<sup>101</sup>. The three most commonly detected drugs for persons placed on DCR and STIR were amphetamines, methamphetamines and benzodiazepines<sup>102</sup>. The three most commonly detected drugs for persons placed on STIR were methadone, benzodiazepines and opioids<sup>103</sup>.

**Table 5.11 Urinalysis results by program and outcome**

Outcome	DCR		STIR		Not accepted <sup>104</sup>
	Completed	Terminated	Completed	Terminated	
<b>Mean % of clean urines</b>	55.9%	34.7%	67.3%	52.3%	28.9%
<b>Mean % containing tested substances</b>					
cannaboids	8.8%	13.0%	4.6%	5.6%	9.2%
opioids	7.5%	19.9%	3.1%	10.9%	25.1%
naltrexone	1.8%	1.1%	2.9%	0.0%	1.1%
methadone	11.0%	6.6%	13.2%	32.1%	4.7%
amphetamines	9.9%	28.2%	2.0%	8.2%	33.0%
methamphetamines	11.4%	27.9%	3.6%	7.8%	35.6%
mdma	0.0%	0.6%	0.2%	0.0%	1.2%
benzodiazepines	12.8%	22.0%	1.5%	23.0%	26.4%
hallucinogens	0.1%	0.0%	0.0%	0.0%	0.0%
other drugs	2.2%	4.3%	2.9%	6.7%	9.6%
<b>Mean % unreliable</b>	2.7%	2.6%	5.8%	2.6%	3.8%

Figure 5.14 displays the percentage of clean urines over time across groups and for those who completed DCR. The percentage of clean urine tests increased over time.

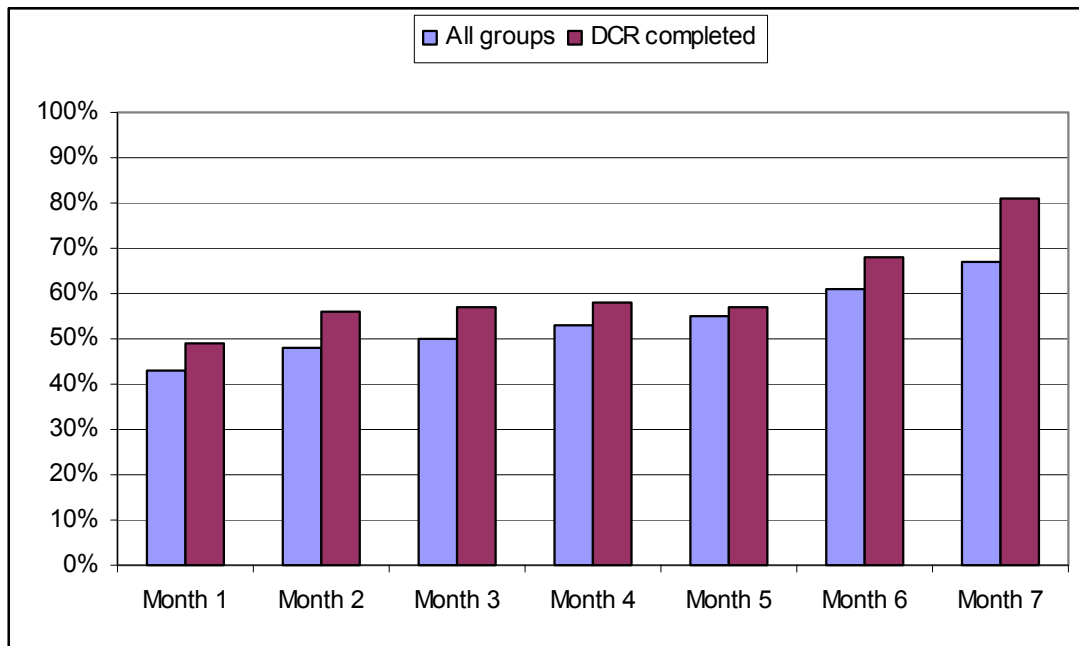
<sup>101</sup> F(2.340)=24.2, p=.000. Scheffe post-hoc multiple comparisons.

<sup>102</sup> Benzodiazepines may be legally prescribed.

<sup>103</sup> Methadone and benzodiazepines may both be legally prescribed.

<sup>104</sup> Persons not accepted onto a drug court program may undergo urine testing during the screening and assessment stage.

**Figure 5.14 Percentage of clean urinalysis tests over time**



## 5.6 Treatment

In total, 446 offenders<sup>105</sup> were referred to treatment agencies up to and including 27 November 2002. This represents 87.7% of offenders placed on DCR, 95.8% of offenders placed on STIR, 92.8% of offenders placed on BIR, and includes 93 offenders who were not placed on a program.

Of all offenders referred to treatment, 316 (70.9%) were referred to treatment once, 89 (20.0%) were referred twice, 33 (7.4%) were referred three times and 8 (1.8%) were referred on four occasions. A total of 625 referrals were made. Offenders placed on DCR (mean = 1.6, std dev = .8) were referred significantly more times than offenders placed on STIR (mean = 1.1, std dev = .3)<sup>106</sup>.

<sup>105</sup> There are 39 offenders (DCR 32, STIR 1, BIR 8) for whom there is no treatment referral information. It is not known if these offenders were not referred to treatment, or did not have their referrals recorded in the database.

<sup>106</sup>  $t(66)=6.7$ ,  $p=.000$ , equal variances not assumed.

Referrals to treatment can be made to preferred treatment providers<sup>107</sup> or other organisations<sup>108</sup>, and for residential or non-residential treatment<sup>109</sup>. Referrals to treatment providers by preferred status and program are presented in Table 5.12. The majority of referrals (83.5%) were made to preferred treatment agencies.

The median time spent in treatment as recorded in the DVD was 73 days. There were no significant differences between DCR and STIR in time spent in treatment. The outcome of referrals to treatment is not recorded on the DVD database<sup>110</sup>, nor is the intensity of the treatment.

The DVD contains information from treatment agency staff on the progress of drug court participants. Treatment staff rate the attendance, motivation, attitude and participation of each offender on a scale ranging from 0 to 10, and have the option to make comments. Ratings were available for 261 offenders for a total of 1965 occasions. In the majority of cases rating information was entered weekly.

Ratings of attendance ranged from 0 to 10. In 378 instances (19% of all reports), the offender did not attend the required session<sup>111</sup>. Of the remainder, 76% of ratings for attendance were 10.

Ratings of motivation ranged from 0 to 10. The most frequent rating for offenders who attended their sessions was 10 (70%). In more than 90% of cases motivation was rated 7 or higher.

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<sup>107</sup> Preferred treatment providers are those designated as preferred treatment providers for the WA Diversion of Drug Offenders Program. Preferred treatment providers receive retainer funding plus payment per intervention.

<sup>108</sup> Other organisations receive payment per intervention only.

<sup>109</sup> A breakdown of treatment by residential and non-residential is not provided as this was poorly completed in the database. We recommend type of treatment be changed to a mandatory field in future database revisions.

<sup>110</sup> We will recommend that information on treatment outcome (e.g. not suitable, completed, terminated, voluntarily withdrew) be recorded in future revisions of the DVD database.

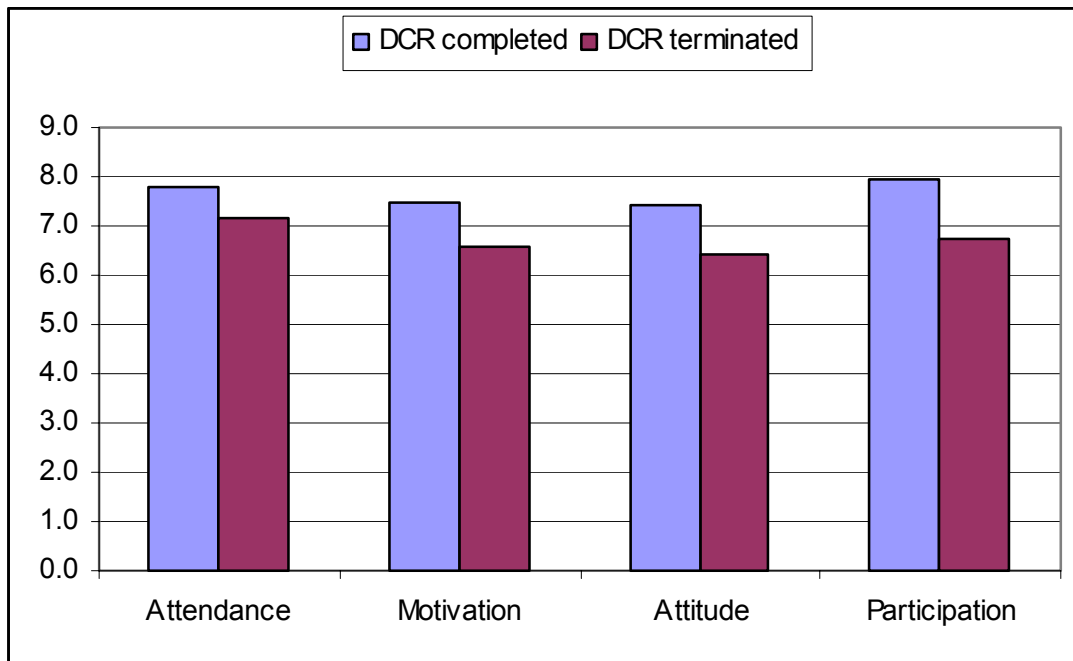
<sup>111</sup> Attendance for these cases was rated as 0, 1 or 2, suggesting inconsistencies in ratings across raters.

Ratings of attitude ranged from 0 to 10. As with ratings of motivation, the most frequent rating for offenders who attended their sessions was 10 (61%) with 91.7% receiving ratings of 7 or higher.

Ratings of participation ranged from 0 to 10. Consistent with the ratings for motivation and attitude the most frequent rating for offenders who attended their sessions was 10 (66%) with 92.6% receiving ratings of 7 or higher<sup>112</sup>.

Figure 5.15 displays the mean of the mean scores on each of these measures for offenders who completed or were terminated from DCR. Offenders who completed DCR had significantly higher scores on motivation<sup>113</sup>, attitude<sup>114</sup> and participation<sup>115</sup> than offenders who were terminated from DCR.

**Figure 5.15 Mean treatment ratings for offenders who completed and were terminated from DCR**



<sup>112</sup> The ratings for attendance, motivation, attitude and participation were highly correlated (between .85 and .98) suggesting that each is measuring to a large extent the same thing. The combination of high correlations and marked ceiling effects indicates the need for a new measure of treatment progress to be implemented.

<sup>113</sup>  $t(158)=2.3$ ,  $p<.05$ .

<sup>114</sup>  $t(158)=2.5$ ,  $p<.05$ .

<sup>115</sup>  $t(158)=2.3$ ,  $p<.05$ .

**Table 5.12 Referrals to treatment providers by preferred status and program**

<b>Referral Agency</b>	<b>Referrals</b>	<b>% of all referrals</b>
<b>Preferred Treatment Agency</b>		
Community Drug Service Teams	181	29.0
Cyrenian	108	17.3
Next Step (Specialist Drug & Alcohol Services)	49	7.8
Palmerston Association Inc	42	6.7
Perth Women's Centre	33	5.3
Holyoake	32	5.1
Salvation Army	26	4.2
YIRRA	17	2.7
Serenity Lodge Inc	15	2.4
Noongar Alcohol & Substance Abuse Service Inc	12	1.9
Wesley Mission Hearth Program	7	1.1
<b>Total</b>	<b>522</b>	<b>83.5</b>
<b>Other Organisations</b>		
Welfare Rights & Advocacy Service	28	4.48
Helen Fowler and Associates (psychologists)	13	2.08
Other organisations <sup>116</sup>	62	9.92
<b>Total</b>	<b>103</b>	<b>16.5</b>

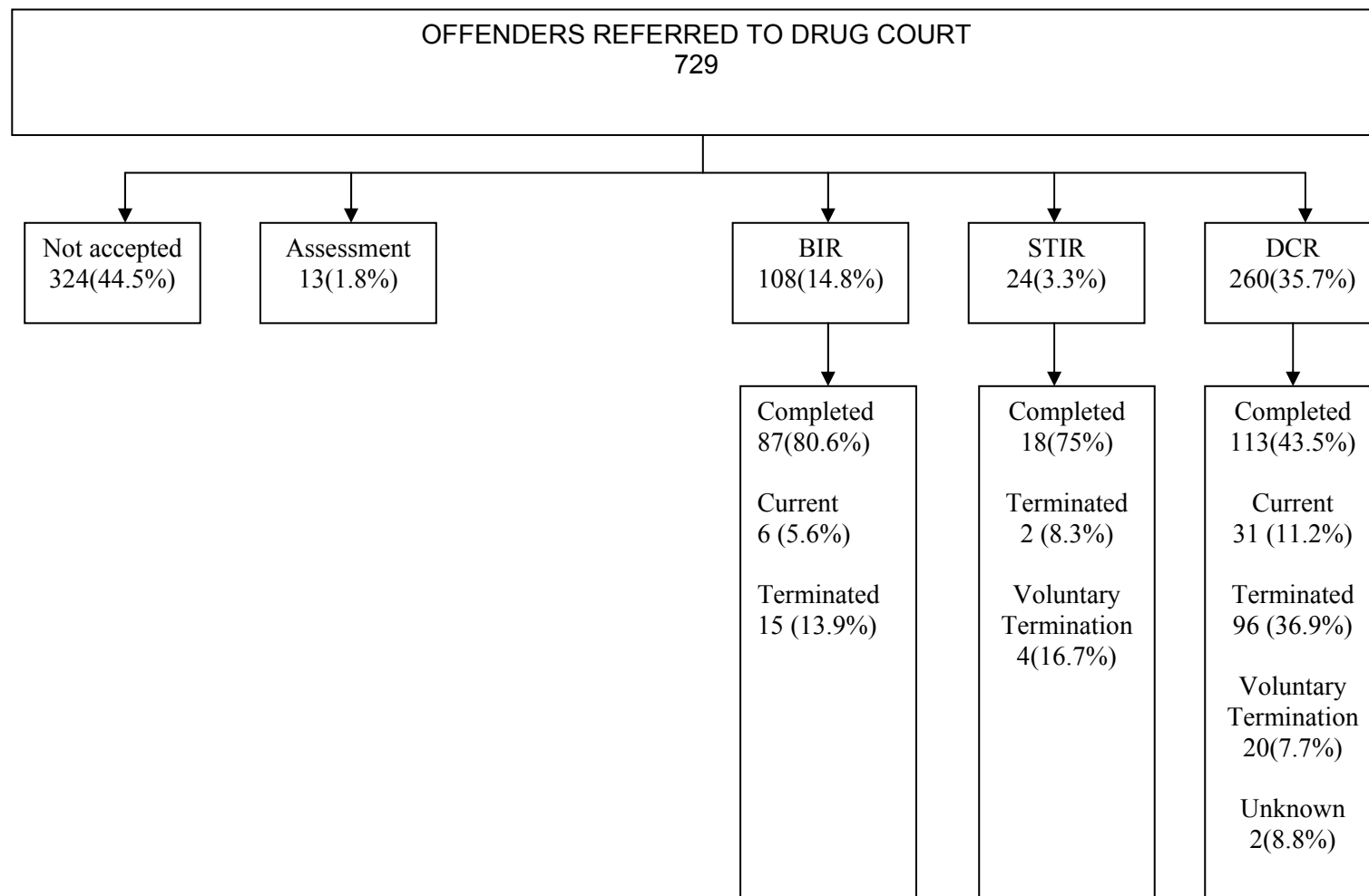
## 5.7 Program Outcomes

Figure 5.16 provides a summary of outcomes for all persons referred to the drug court up to and including 27<sup>th</sup> November 2002. Of all persons referred to the drug court, 44.4% were not placed on a drug court program. Of those placed on a program, 55.6% completed their program. This represents 29.9% of all referrals.

The reasons people were terminated from their programs are graphically depicted in Figure 5.17. Across all programs, except STIR, “disciplinary” was the most common reason recorded for program termination.

<sup>116</sup> This group had between 1 and 8 referrals each. Other organizations referred to were Warminda, Outcare Inc, Drug ARM, Relationships Australia, Teen Challenge, George O’Neil’s clinic, Men’s Meeting Place, Release, House of Bethany, private psychologists, Peel Youth Health Program, St Bartholomews, Avro Clinic, Break Even, CentreCare, Chemical Health Centre, Crossroads Community, Incest Survivors Association, Marillac Centre, Perth Bible College.

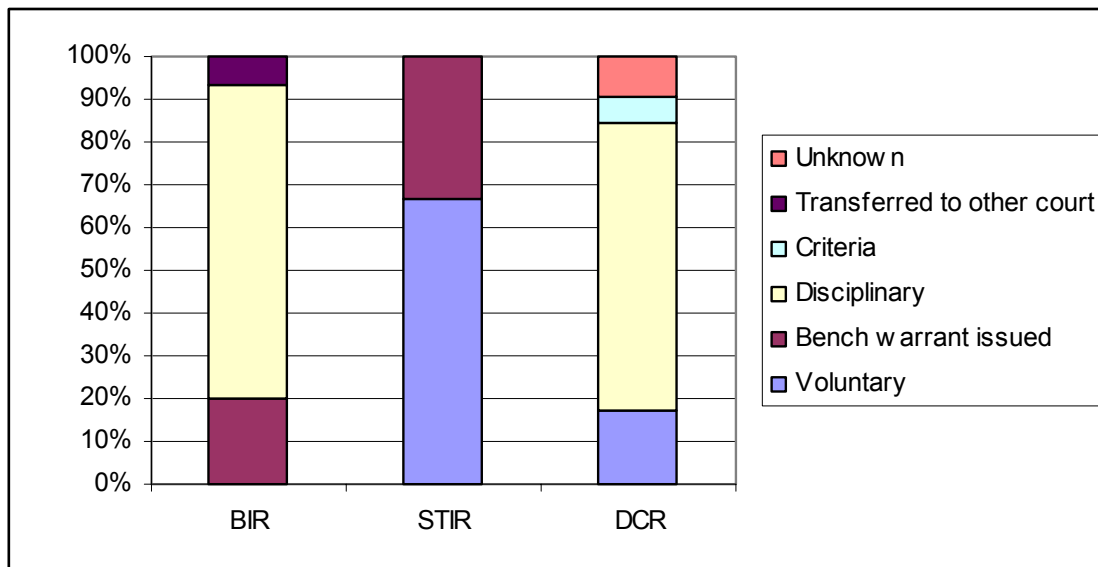
**Figure 5.16 Outcomes for first referrals for offenders referred to the drug court between 4 December 2000 and 27 November 2002**



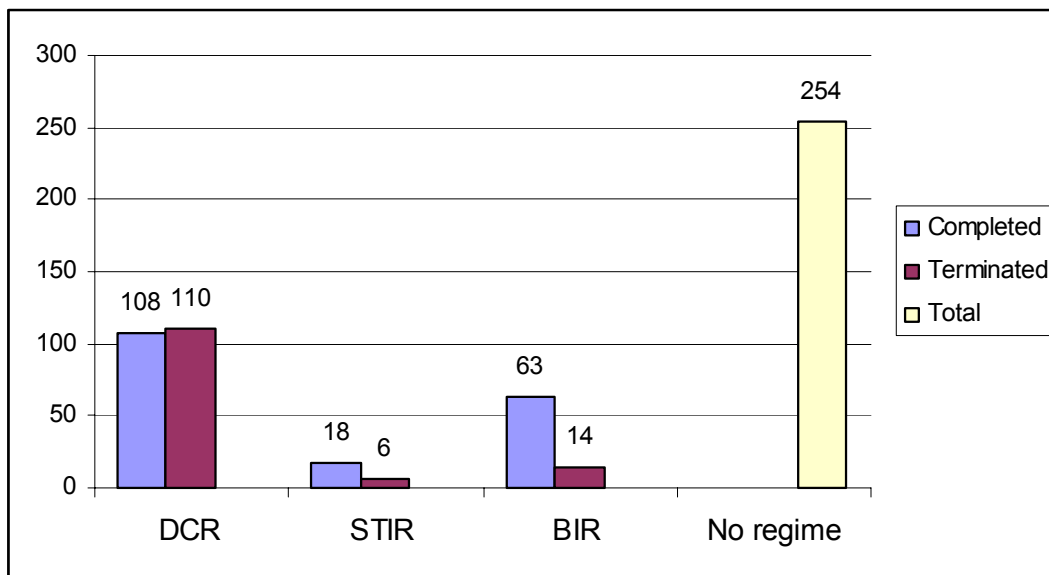


While this figure provides a snapshot of the drug court as at the 27<sup>th</sup> November 2002, it does not provide an accurate reflection of completion rates<sup>117</sup>.

**Figure 5.17 Reason for termination of program by program type**



**Figure 5.18 Programs and outcomes for referrals to 1 May 2002**

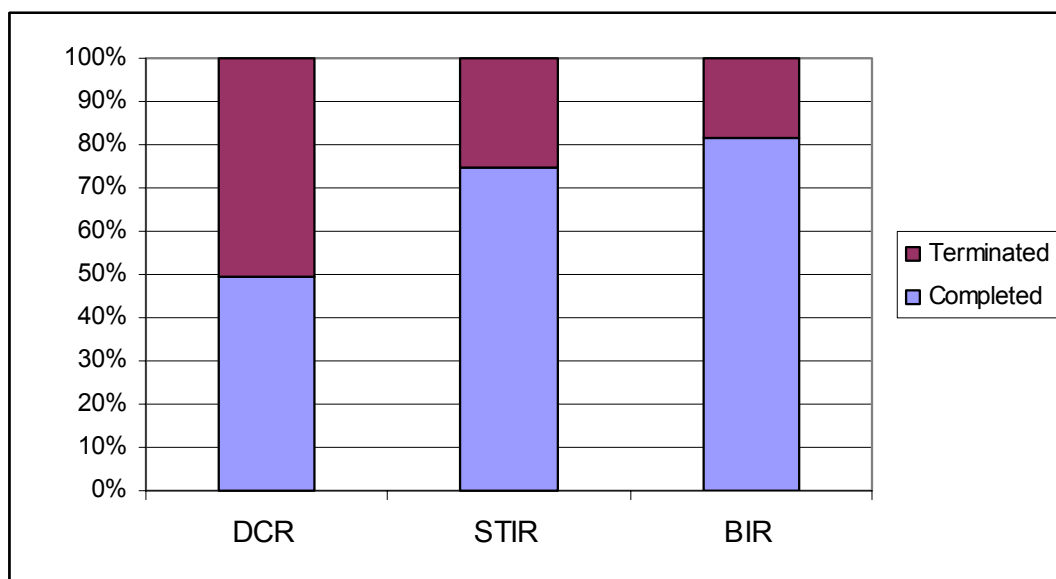


In order to obtain an accurate picture of completion rates, a cut off date of 30 April 2002 was used for referrals<sup>118</sup>. In total, 575 referrals were made to the drug court

<sup>117</sup> Offenders are found not suitable for a regime or terminated from a regime in a shorter time period than they can complete a regime.

during this period. Almost half of these offenders (44.3%) were not accepted on to a drug court program. The majority of the remainder were placed on DCR (38%) or BIR (13.4%). Only 4.1% of referrals result in a placement on STIR. The number of offenders placed on programs/not accepted and their outcome statuses are presented in Figure 5.18. Of those placed on a program, 59% completed their program. This represents 32.9% of all referrals. The more intensive the program (and theoretically the more serious the offending and drug use), the lower the completion rate (Figure 5.19).

**Figure 5.19 Completion rates by program for referrals to 1 May 2002**



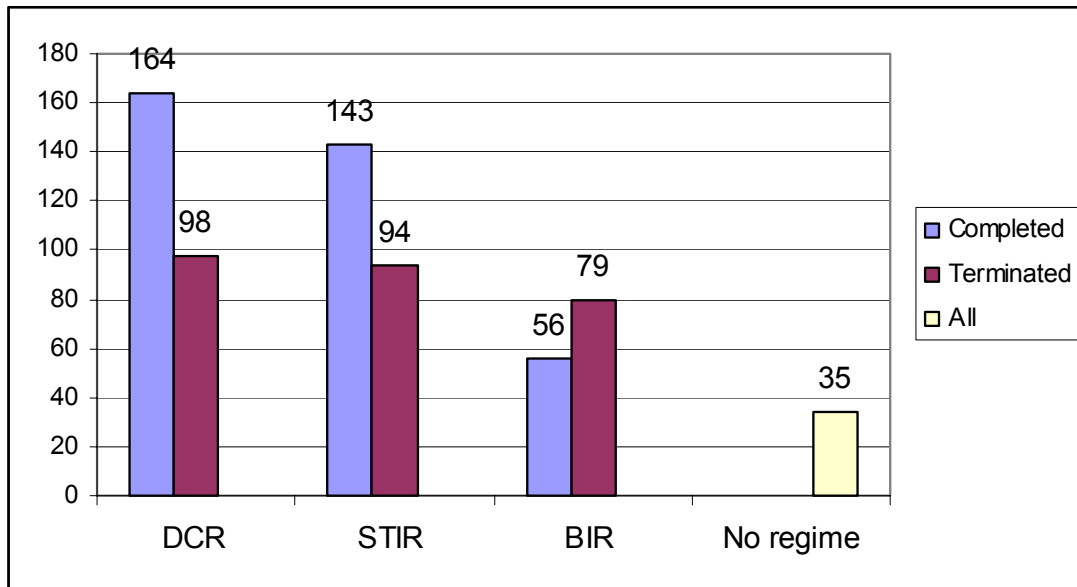
### **5.7.1 Program length**

The period of time spent on the drug court by each offender was calculated using the start and end dates recorded in the DVD database. The length of time (mean number of days) spent on the drug court is displayed by program and outcome in Figure 5.20. There was no significant difference in program length for DCR and STIR offenders who completed their program.

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<sup>118</sup> This cut off date means that outcome data should be available for all referrals as the maximum intended program length was 6 months.

**Figure 5.20 Mean number of days involved with the drug court by program and outcome**



### **5.7.2 Sentencing**

Offenders are sentenced at one of three stages: when they are found not suitable for a program, upon termination from a program, or upon completion of a program. Offenders facing charges in the District Court are referred back to the District Court for sentencing<sup>119</sup>.

The outcomes of charges imposed by the drug court magistrate were obtained from the CHIPS database<sup>120</sup>. The last finalisation of all charges that were listed to appear in the drug court were selected<sup>121</sup>, comprising a total of 5152 charges for 421 adult offenders. The results are presented in Table 5.13.

<sup>119</sup> Information on the outcome of charges for offenders sentenced in the District Court was not obtained. However, ultimate sentence were provided for 17 District Court offenders.

<sup>120</sup> Outcomes relating to granting of applications, indictable matters that were discharged and deceased defendants were removed.

<sup>121</sup> CHIPS data that was not listed for hearing in the drug court was excluded from the analysis. It was difficult to ascertain with any degree of accuracy which charges were finalised in the drug court for offenders where drug court listing was not indicated in the CHIPS database. A decision was made to exclude these offenders from this analysis.

**Table 5.13 Final charge outcomes by program and completion status**

Charge Outcome	DCR				STIR				BIR				Not accepted	
	comp		term		Comp		term		comp		term		162 offs	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Community based order	211	13	122	10	98	48	1	8					115	6
Conditional release order	14	1			4	2			25	15	4	12	8	0
Dismissed	6	0	4	0	2	1							20	1
Finalised in higher jurisdiction			1	0										
Fine	353	22	227	19	84	41	10	77	77	48	17	52	279	16
Good Behaviour Bond					1	0							5	0
Imprisonment	16	1	550	47									910	51
Intensive Supervision Order	665	42	147	12									270	15
No further orders made	194	12	57	5			2	15			2	6	74	4
Spent conviction	23	1			17	8			60	37	10	30	16	1
Struck Out	47	3		0		0							1	0
Suspended Imprisonment Order	42	3	68	6									91	5
Withdrawn	6	0	2	0		0								0
Work and Development Order	5	0											2	0
Total	1582	100	1178	100	206	100	13	100	162	100	33	100	1791	100

**Table 5.14 Sentences imposed by program and completion status<sup>122</sup>**

Sentence	DCR				STIR				BIR				Not accepted	
	comp.		term.		comp.		term.		comp.		term.		162 offs	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Imprisoned	1 <sup>123</sup>	1	24	35									53	33
Suspended Imprisonment Order	14	14	6	9									16	10
Fine	34	33	25	37	3	19	3	64	30	64	4	67	54	33
Intensive Supervision Order	46	45	12	18									31	19
Community Based Order	26	25	14	21	11	69	1	20					26	16
Good Behaviour Bond		0			1	6							2	1
Conditional Release Order	2	2			3	19			19	40	2	33	2	1
Work and Development Order	2	2											1	1

The ultimate sentence each offender received was calculated using the outcomes of all charges for an offender. The results are presented in Table 5.14. It is notable that with only one exception offenders completing their drug court programs were not

<sup>122</sup> Some offenders received more than one type of sentence.

<sup>123</sup> This offender is recorded in the DVD database as completing DCR, but is shown as a termination in the CHIPS database.

sentenced to imprisonment. In contrast, approx a third of offenders who were terminated from DCR or not placed on a program were imprisoned<sup>124</sup>.

Ultimate sentences were provided by DOJ for 17 offenders who were referred back to the District Court for sentencing. Of the 6 offenders who were terminated from DCR, half were imprisoned (18 months, 21 months and 24 months), two were placed on ISOs (12 and 24 months) and one was placed on an 18 month CBO. Of the 10 offenders who completed DCR, 7 received ISO's (ranging from 12 to 24 months) and 3 received CBO's. Thus, even with the "hardest end" of the drug court clients (district court cases) only 50% of those who failed would have received a prison sentence.

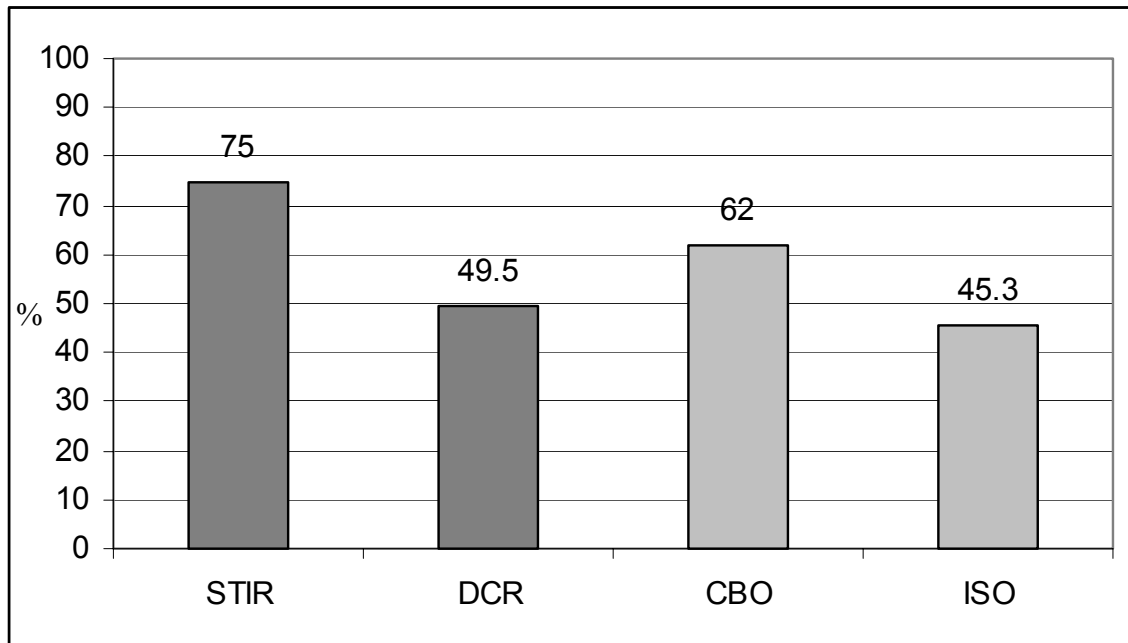
***Comparison of outcomes on the drug court with outcomes from CBO's***

One possible point of comparison for outcomes of drug court programs is with the outcomes of CBOs. In 2001, the Auditor General of Western Australia released a report, "Implementing and managing community based orders" that examined the outcomes of community based orders up to and including 1999. This report provided information on completion rates for CBOs and ISOs. The completion rate for CBOs in 1999 was 62%, while the completion rate for ISOs was 45.3%. STIR and DCR programs are closer in nature to ISOs, as these drug court programs involve intensive supervision. The completion rates for STIR (75.0%) compares favourably with completion rates for both CBOs and ISOs. DCR, the most intensive program of the drug court, has a comparable completion rate (49.5%) to ISOs. The completion rates are graphed in Figure 5.21.

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<sup>124</sup> Sentencing outcomes for a further 5 offenders were received following completion of the analysis. Of these, the one offender who completed DCR received an ISO. Three of the offenders terminated were sentenced to imprisonment (6, 8 and 12 months) and one received an SIO.

**Figure 5.21 Completion rates (percentage) for drug court programs in comparison to Community Based Orders**



## **5.8 Factors Predicting Completion of Drug Court Programs**

Placements on programs can be better targeted if it is known which factors predict completion of a program. In order to determine the factors that predict program completion a logistic regression analysis was conducted. The analysis was restricted to offenders who had completed or terminated DCR. The factors examined were restricted to information about offenders obtained by the CATS team during the assessment process.

The first step of the analysis was to compare those who completed and were terminated from DCR on each demographic and assessment factor. The following factors did not significantly differentiate between the two groups and were removed from further analysis:

- Demographics: age, gender, indigenous status, employment status
- Drug use: TCU score, amount spent on drugs, worst drug
- Offending History: self reported months in jail, district versus petty sessions court

- Offender Profile Index: overall score and family, education, work, housing, criminal justice, psychological support and treatment subscales
- Readiness to Change: pre-contemplation, contemplation and action scales and stage of change designation

The factors remaining in the analysis were juvenile status, self reported arrests and self-reported convictions. These three factors were entered into a logistic regression analysis. The only significant predictor of completion was the number of previous arrests. The higher the number of previous arrests the less likely the individual was to complete their drug court program. These findings suggest that it is offending history rather than drug use history that predicts program completion. However, this does not mean that offenders should be excluded on the basis of their offending histories or indeed any other variable. To be effective, the drug court will need to be able to demonstrate a reduction in recidivism for serious drug dependent offenders.

## **5.9 Special Groups**

Data for three special groups of offenders; Aboriginal offenders, juvenile offenders and female offenders; was included in the overall analysis. Here, data for each of the three groups are examined separately.

### ***5.9.1 Aboriginal offenders***

Fifty five offenders referred to the drug court were identified as Aboriginal. This represents 7.5% of all referrals, and is an under-representation of Aboriginal offenders in the offending population. Approximately one third (32.7%) of Aboriginal offenders were juveniles and one third were female (34.5%). CHIPS charge data was available for 34 Aboriginal offenders. In total, these Aboriginal offenders were referred to the drug court with 321 charges, an average of 9.4 charges per offender. The majority of charges were spread across the Criminal Code (29.6%), Misuse of Drugs Act (22.7%), Road Traffic Act (14.0%), Bail Act (13.7%) and Police Act (10.0%).

Almost half of Aboriginal offenders (47.3%) were not accepted onto a program, a third (36.4%) were accepted on DCR, five (9.1%) were accepted on BIR and one was accepted on STIR. A further three Aboriginal offenders were being assessed. Of Aboriginal offenders accepted onto a drug court program, nine (34.6%) completed the program, 12 (46.2%) were terminated, and five were currently on the program. These figures roughly correspond with those for non-Aboriginals. Therefore the major discrepancy remains the rate at which Aboriginal offenders are referred to the drug court.

### ***5.9.2 Juvenile offenders***

Fifty offenders (6.9% of all referrals) referred to the drug court were juveniles. Ten of these juvenile offenders (20%) were female and 18 (36%) Aboriginal. Charge details were available for only six offenders and are not reported on here.

Two thirds of juvenile offenders were accepted onto DCR, just under a third of juveniles (32%) were not accepted onto a program and one juvenile offender was being assessed. Of juvenile offenders placed onto DCR, more than two-thirds (69.7%) were terminated, with only nine juvenile offenders (27.3%) completing DCR and one currently on the program. Juvenile offenders were significantly less likely to complete DCR than adult offenders (52.8% completing)<sup>125</sup>. The small percentage of juvenile offenders who complete DCR combined with the low number of juveniles referred and the short length of the program does raise questions about the applicability and appropriateness of the drug court for juveniles, at least in its current form.

### ***5.9.3 Female offenders***

One hundred and sixty eight offenders (23% of all referrals) referred to the drug court were female. Nineteen (11.3%) were Aboriginal and ten (6%) juvenile. CHIPS charge data was available for 142 female offenders. In total, these offenders were referred

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<sup>125</sup>  $\chi^2(1) = 6.7, p < .05$ .



with 1979 charges, with an average of 14 charges per offender. The majority of charges were under the Criminal Code (59.1%) or Misuse of Drugs Act (12.3%).

Sixty-eight (40.5%) female offenders were not accepted onto a drug court program, a third (38.7%) were accepted on DCR, 20(11.9%) were accepted on BIR, and 6 (3.6%) on STIR. A further nine female offenders were being assessed. Of female offenders accepted onto a drug court program, approximately half (51.6%) had completed their program, just under a third (29.7%) had been terminated, 7.7% had voluntarily terminated the program and 11% were currently on a program. These numbers compare favourably with males.

## **5.10 Summary**

Between its inception on 4 December 2000 and 27 November 2002 729 persons had been referred to the PDCPP with the majority referred by the Court of Petty Sessions. The number of referrals has reduced substantially over time.

The typical offender referred to the drug court was a young, single, non-Aboriginal male with limited education who was currently unemployed and facing multiple criminal charges. These offenders were assessed as having relatively severe drug-related problems with amphetamines and heroin the most problematic drugs.

Of all persons referred to the drug court up to 27 November 2002, almost one half were not accepted on to a program, typically because they did not meet the eligibility criteria. Of those placed on a program, just over half completed the program, representing less than one third of all referrals. The more intensive the program (and theoretically the more serious the offending and drug use), the lower the chances of completing the program.

There are issues arising out of this chapter that need to be further addressed.

- The declining numbers of referrals to the drug court over time raises issues regarding the sustainability of the drug court unless changes are made. Given the absence of any data collected on the number of offenders who express

interest in the drug court, it is unclear if this decline is attributable solely to the cap on referrals placed by CATS.

- The high rate of inappropriate referrals recorded suggest a new mechanism for screening referrals prior to offenders appearing before the drug court magistrate is required.
- The reasons for the low numbers of juvenile offenders referred to the drug court and their poor performance on the program needs to be examined
- The reasons for the low numbers of Aboriginal offenders referred to the drug court despite their good performance on the program needs to be examined
- Identified inadequacies in the data collected include relevant treatment information (type, duration, outcome) and any form of standardised measures upon program completion (indeed, any form of exit interview at all). Pre/post measures need to be introduced to assess changes in offenders' lives that result from their participation in the drug court.
- An examination of standardised measures used in the assessment period is required to assess their suitability for on-going use. Particularly problematic are ceiling effects on the TCU Drug Screen and the failure of the Readiness to Change Questionnaire to predict program completion.
- The problems in tracking offenders across DOJ databases need to be addressed.
- There are modifications that need to be made to the DVD database to enhance the quality of the data recorded.

These issues will all be further addressed in Chapter 10.

## **6. RECIDIVISM OF DRUG COURT CLIENTS**

### **6.1 Introduction**

Reducing the recidivism of offenders was a major aim of the PDCPP. In this chapter, the results of recidivism analyses are reported for stated drug court offenders and two comparison groups: matched offenders and matched drug offenders. In addition, comparative information is provided on recidivism rates for all drug offenders (Valuri et al, 2002) and risk assessments for the drug court offenders prior to their referral to the drug court. The selection of these comparison groups and other sources of information were described in the methodology chapter (chapter 4). The recidivism of drug court offenders is compared with the recidivism of comparison group offenders and other sources of information. Information on the ultimate probability of rearrest for each group is presented. Based on this comparison, some tentative conclusions can be drawn about the effectiveness of the drug court in reducing recidivism.

### **6.2 Recidivism Analysis for Drug Court Clients**

The following steps were followed to create the sample for the recidivism analysis:

1. All offenders referred to the drug court prior to 1 May 2002<sup>126</sup> were selected (575 offenders).
2. Chips IDs for these offenders were matched to INOIS using the CRC's longitudinal database (matches were achieved for 525 offenders).
3. Two persons who died during this period were removed (leaving 523 offenders)
4. Information on imprisonment for each offender from date of first appearance in the drug court was obtained by DOJ from the TOMS database. Offenders who had been imprisoned continuously since their start date on the drug court were removed (513 offenders remaining).

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<sup>126</sup> This cut-off is consistent with the date selected as a cut-off in previously reported analyses in Chapter 5.

The recidivism period was for a maximum of 2 years, dependent upon the date of referral to the drug court for each offender and the periods spent imprisoned (remand or sentence). For each offender, the start date for the recidivism analysis was their start date on the drug court as recorded in the DVD database<sup>127</sup>. The census date for the recidivism analysis for all offenders was 31st December 2002. Days spent imprisoned, whether on remand or under sentence, were excluded from the analysis in order to restrict the analysis to days on which an offender was “free” to reoffend.

Due to the small numbers placed on STIR, offenders who completed STIR and DCR have been reported together, as have offenders who were terminated from STIR and DCR.

In total, 62.4% of the 513 offenders had been re-arrested during the recidivism period. Table 6.1 provides a breakdown of the numbers re-arrested by drug court program and outcome during the recidivism period.

**Table 6.1 Breakdown of re-arrests by program type and completion status**

	<b>Rearrests</b>	<b>Total N</b>	<b>%</b>
<b>Not accepted</b>	156	219	71.2%
<b>BIR</b>			
completed	14	62	22.6%
terminated	5	13	38.5%
<b>STIR/DCR</b>			
completed	62	117	53.0%
terminated	83	102	81.4%
<b>Total</b>	<b>320</b>	<b>513</b>	<b>62.4%</b>

Using survival analysis methodology<sup>128</sup> the probability of rearrest for each of the groups of interest was estimated. These estimates, along with their confidence intervals, are presented in Table 6.2 below. These estimates provide a measure of the likelihood of group members *ever* being rearrested. There were no significant

<sup>127</sup> Given the short period of time the drug court has been in operation, the start date, rather than end date, on the Drug Court was selected as the starting point for the recidivism analysis to increase the period of time available for the recidivism analysis.

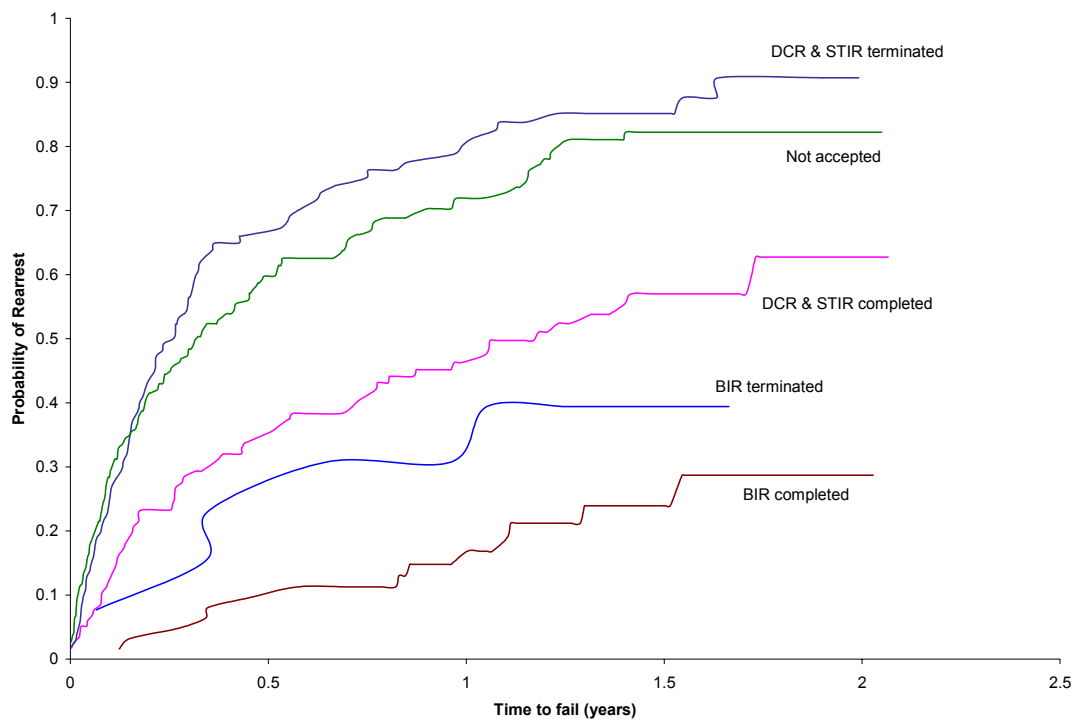
<sup>128</sup> The Weibull mixture model was used for this analysis. For further information on this statistical technique please see Broadhurst and Loh (1995) and Valuri et al., (2002).

statistical differences in the ultimate probability of rearrest across groups. The large confidence intervals are partially an artifact of the small sample size and short periods available for the recidivism analysis. Figure 6.1 depicts the rearrest curves for each of the groups of interest.

**Table 6.2 Ultimate probability of rearrest and median time to fail for drug court offenders**

Group <sup>129</sup>	Lower confidence interval	Ultimate probability rearrest	Higher confidence interval	Median time to fail (years)
Not accepted	0.73	<b>0.87</b>	0.94	0.2
DCR/STIR completed	0.33	<b>0.75</b>	0.96	0.6
DCR/STIR terminated	0.79	<b>0.90</b>	0.96	0.2
BIR completed	0.00	<b>0.38</b>	0.99	1.1

**Figure 6.1 Estimated rearrest curves for offenders referred to the Drug Court by program and outcome.**



From the figure it can be seen that those who were terminated from DCR/STIR followed a similar trajectory of reoffending to those who were not accepted onto a drug court program. In contrast, the rate of reoffending appears lower for those who

<sup>129</sup> BIR terminated have been excluded because the numbers were too small for this and all further analyses.

completed DCR/STIR. As would be expected from the less serious nature of offences, reoffending rates for persons placed on BIR were lower than for those on other programs.

There are five main questions to be answered from these results:

- Are there significant differences in rearrest or time to rearrest between those who complete or are terminated from DCR/STIR?
- Are there significant differences in rearrest or time to rearrest between those who were not accepted onto a program and those placed on DCR/STIR?
- Are there significant differences in rearrest or time to rearrest between those who complete or are terminated from BIR?
- Are offenders who complete DCR/STIR rearrested for less serious crimes when they are rearrested?
- Can we predict who will reoffend/not reoffend from information gained during the assessment process?

### ***6.2.1 Differences in rearrests between those not accepted onto a program and those placed on DCR/STIR***

There were no statistically significant differences in the ultimate probability of rearrest between those placed onto a program and those placed on DCR/STIR. However, Figure 6.1 indicates that there are higher rates of recidivism (although not statistically significant) for offenders not accepted onto a program than for offenders completing DCR/STIR. Supporting this, the median time to fail for those not accepted onto a program was one third of that of offenders who completed DCR/STIR.

### ***6.2.2 Differences in rearrests between those who complete and are terminated from DCR/STIR***

There were no statistically significant differences in the ultimate probability of rearrest between those who completed and were terminated from DCR/STIR. However, once again Figures 6.1 indicates that there are higher rates of recidivism (although not statistically significant) for offenders who were terminated than for offenders completing DCR/STIR. Supporting this, the median time to fail for those terminated was one third of that of offenders who completed DCR/STIR.

### ***6.2.3 Differences in rearrests between those who complete and are terminated from BIR***

The sample sizes were too small to enable this comparison.

### ***6.2.4 Changes in seriousness of offences***

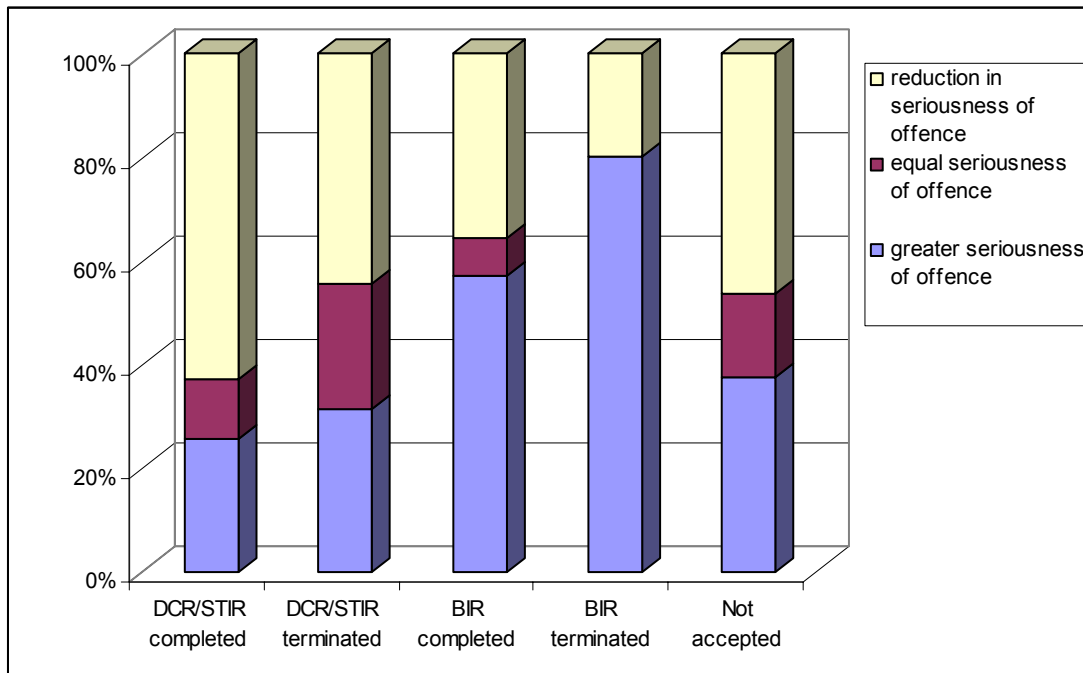
The most serious offence of the arrest immediately prior to referral to the drug court was compared with the most serious offence of the first arrest following commencement of the drug court. Offence details were obtained from Police arrest data in the CRC's longitudinal database. Seriousness of offence was calculated using the CRC's Draft Seriousness Index<sup>130</sup>. The results are presented by program and outcome in Figure 6.2.

A larger proportion of rearrests for offenders completing DCR/STIR were of reduced seriousness than for offenders who were terminated from DCR/STIR or not accepted. However, this did not reach statistical significance. There were too few BIR cases to permit statistical analysis.

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<sup>130</sup> Fernandez, & Loh. (2002). Appendix B: Draft Seriousness Index.

**Figure 6.2 Comparison of seriousness of offence pre- and post-referral to Drug Court**



### **6.2.5 Predicting rearrest**

In order to determine the factors that predict reoffending a logistic regression analysis was conducted. The analysis was restricted to offenders who had completed or were terminated from STIR or DCR<sup>131</sup>, were included in the recidivism analysis and who had failed (been rearrested) in the first 12 months or for whom 12 months of “free time” had elapsed (n=192)<sup>132</sup>. The factors examined were restricted to information about offenders obtained by the CATS team during the assessment process.

The first step of the analysis was to compare those who reoffended and who did not on each demographic and assessment factor. The following factors did not significantly differentiate between the two groups and were removed from further analysis:

- Demographics: gender, employment status, indigenous status, juvenile status

<sup>131</sup> Prior to conducting the analysis the data was examined to determine if there was a significant difference in rearrest rates between STIR and DCR. There was no significant difference in percentage rearrested so both groups were included in the analysis.

<sup>132</sup> A 12 month period was selected as there were markedly decreasing cases available for analysis with longer periods.



- Drug use: TCU score, amount spent on drugs, worst drug
- Offending History: self reported months in jail, district court,
- Offender Profile Index: overall score and family, housing, criminal justice, psychological support and treatment subscales
- Readiness to Change: pre-contemplation, contemplation and action scales and stage of change designation

The factors remaining in the analysis were number of self reported arrests and convictions, age, and education support index. These four factors were entered into a logistic regression analysis. Only one significant predictor of rearrest emerged: the self reported number of arrests in the previous 5 years. This was also the only significant predictor of program completion (see Chapter 5, Section 5.8).

#### ***6.2.6 Summary of recidivism analysis for Drug Court Offenders***

In summary, the results of the recidivism analysis for drug court offenders failed to find any significant differences in recidivism between groups. However, there are indications that offenders who completed DCR/STIR had lower recidivism rates and a longer time to re-arrest than offenders who were not placed on a program or who were terminated from DCR/STIR. The failure to obtain significant differences may be an artifact of small sample sizes and a short recidivism period. A clearer picture should emerge if a further recidivism analysis is conducted in 12 -24 months time.

### **6.3 Recidivism Analysis for Comparison Groups**

As described in the methodology, two groups of matched offenders were selected from the CRC arrest database<sup>133</sup> using an iterative algorithm to find the records of offenders who best matched each of the 290 offenders<sup>134</sup> placed on a drug court program. The arrest date used for matching was the arrest date immediately prior to

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<sup>133</sup> The CRC database contained arrests up until the end of 2000 only at the date of the matching process. This means that all matched arrests occurred before the drug court commenced, or in the first month of operation.

<sup>134</sup> From the 519 drug court offenders who were included in the recidivism analysis, matches were sought only for offenders who were placed on a program, excluding the 219 offenders who were not placed on a program. Four cases (3 BIR and 1 STIR) were dropped from the matching exercise due to incomplete data.

the offender's start date on the drug court. The offence type was based on the most serious offence for the offender at this arrest.

The first group, **matched offenders**, were matched on sex, indigenous status, number of prior arrests, age, offence type (ANCO code) and location (metropolitan area). The second group, **matched drug offenders**, used the additional essential criterion that the offender had been apprehended for a drug offence.

The recidivism period was longer for the comparison groups than for the drug court groups, as the arrest dates of interest for the comparison groups occurred prior to the commencement of the drug court. For the comparison groups the period of recidivism covered the time from the day after the arrest date of interest until 31st December 2002.

Information on imprisonment dates for two years from the date of arrest of interest for each of the offenders in the two comparison groups was obtained from the CRC database where possible<sup>135</sup>. Days spent imprisoned, whether on remand or under sentence, were excluded from the analysis in order to restrict the analysis to days on which an offender was "free" to re-offend. However, it must be noted that because full imprisonment data was not made available, it is possible that some periods of imprisonment have not been identified, and therefore have not been excluded from the "free days". The likely effect of this on the analysis is that the reported average length of time to first rearrest may in some cases be an overestimation (i.e. the "real" number of free days to rearrest is shorter than that recorded), although given the longer recidivism period any rearrests are still likely to be picked up. In other words, the results reported for the comparison groups are best regarded as reasonably accurate in terms of rates of rearrest, but potentially overestimating the number of days to reoffending.

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<sup>135</sup> The CRC database contains imprisonment data up to the end of 2001 only. A request was made to the DOJ to obtain imprisonment data beyond this date for the comparison groups. There were 187 cases in the comparison groups for whom matches to TOMS IDS could not be made, indicating they had not been imprisoned prior to the end of 2001. There were a further 23 cases with TOMS IDs where imprisonment data was sought for 2002 only. The DOJ were unable to provide the data required due to difficulties in matching from INOIS identifiers to TOMS IDs.

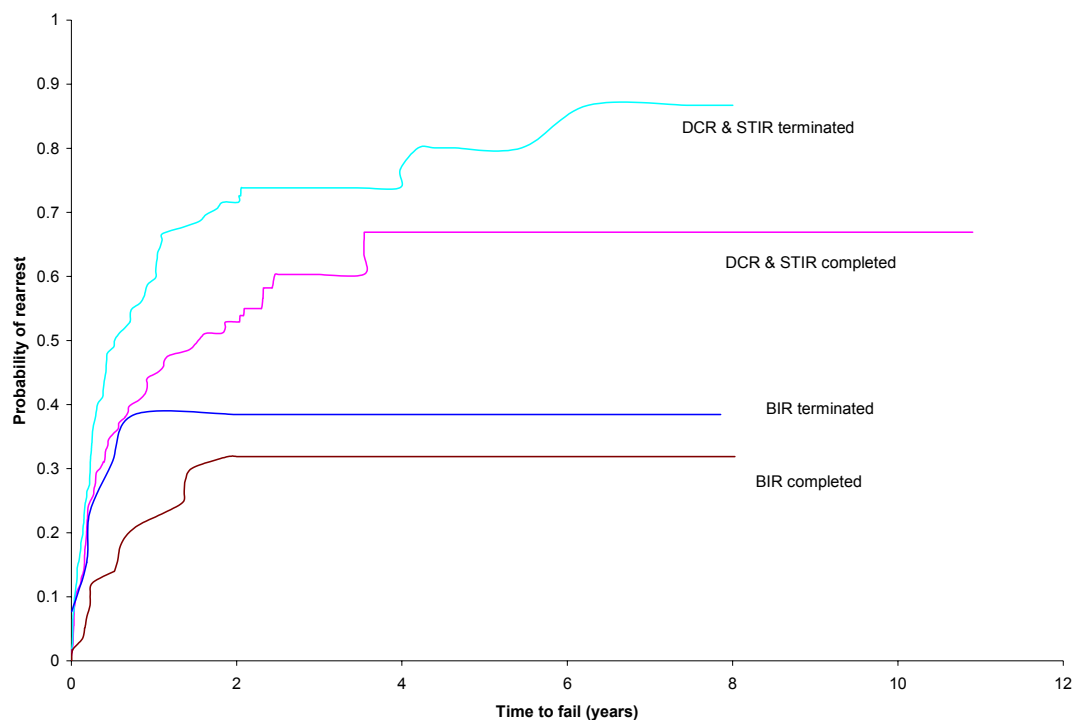
Using survival analysis methodology the probability of rearrest for each of the comparison groups was estimated.

### 6.3.1 Matched offenders

**Table 6.3 Likelihood of ever arrest for matched offenders by program and outcome of offenders matched to**

Group <sup>136</sup>	Lower confidence interval	Ultimate probability rearrest	Higher confidence interval	Median time to fail (years)
DCR/STIR completed Matched offenders	0.53	<b>0.66</b>	0.78	4.8
DCR/STIR terminated Matched offenders	0.70	<b>0.82</b>	0.91	0.4
BIR completed Matched offenders	0.22	<b>0.34</b>	0.48	0.6

**Figure 6.3 Estimated rearrest curves for matched offenders by program and outcome of offenders matched to**



Based on the survival analysis, estimates of the probability of matched offenders *ever* being rearrested, along with their confidence intervals, and median time to fail

<sup>136</sup> BIR terminated have been excluded because the numbers were too small for this analysis.

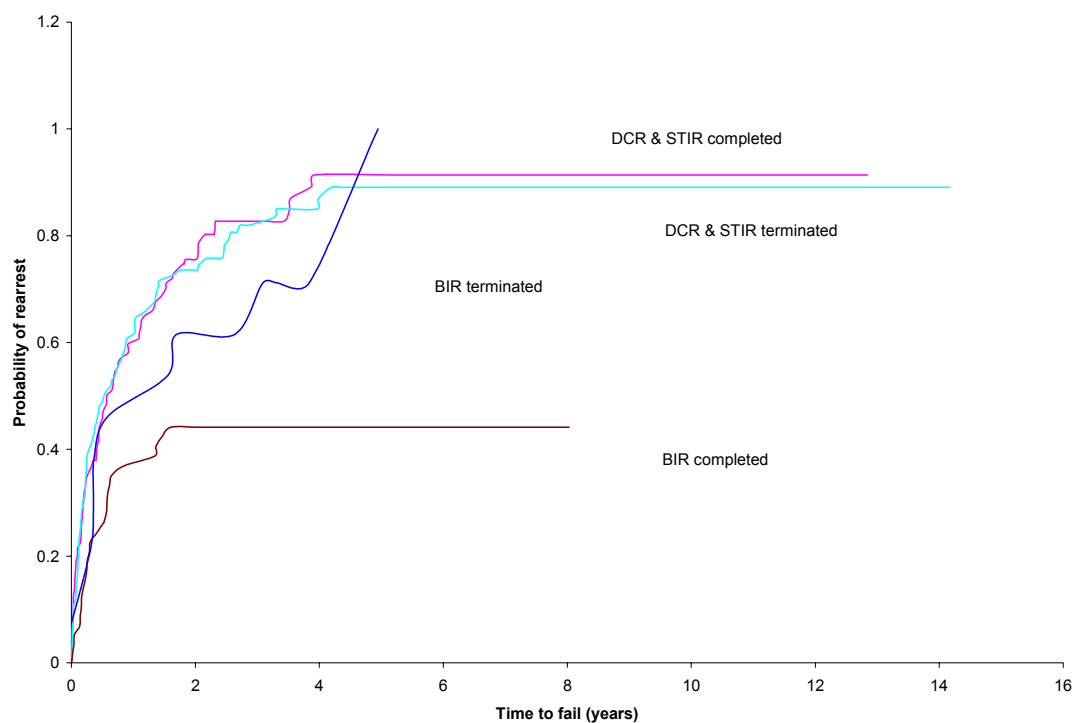
(rearrest) are presented in Table 6.3 Figure 6.3 presents the rearrest curves for the matched offenders.

### 6.3.2 Matched drug offenders

**Table 6.4 Likelihood of ever arrest for matched drug offenders referred to the drug court**

Group	Lower confidence interval	Ultimate probability rearrest	Higher confidence interval	Sig	Median time to fail (years)
DCR/STIR completed <i>Matched Drug offenders</i>	0.80	<b>0.92</b>	0.97	ns	0.5
DCR/STIR terminated <i>Matched Drug offenders</i>	0.78	<b>0.90</b>	0.95	ns	0.5
BIR completed <i>Matched Drug offenders</i>	0.32	<b>0.45</b>	0.58	ns	0.4

**Figure 6.4 Rearrest curves for matched drug offenders by program and outcome of offenders matched to**



Based on the survival analysis, estimates of the probability of matched drug offenders *ever* being rearrested, along with their confidence intervals, and median time to fail (rearrest) are presented in Table 6.4. The estimated rearrest curves are presented in Figure 6.4.

It is notable that the ultimate probabilities of rearrest for each of the three groups within the comparison groups were higher for matched drug offenders than for matched offenders. The consistently higher recidivism rates for drug offenders highlights the need to consider substance use when matching offenders, something that was only able to be done crudely in this analysis through identifying offenders who had previously been arrested for a drug offence.

## **6.4 Recidivism Rates for All Drug Offenders**

The ultimate probability of rearrest for all drug offenders in Western Australia with no prior offences, drug only prior offences and mixed prior offences (Valuri et al, 2002) is presented in Table 6.5, along with median time to fail.

**Table 6.5 Probability of rearrest at 1 year, 2 years and ever and median time to fail by prior history of offending**

<b>Group</b>	<b>1 year</b>	<b>2 years</b>	<b>Ever</b>	<b>Median time to fail (years)</b>
No prior arrests	0.21	0.30	0.50	1.4
Prior arrests drug offences only	0.21	0.31	0.63	2.1
Prior arrests mixed offences	0.45	0.57	0.77	0.7

## **6.5 Recidivism Estimates for Drug Court Offenders**

The ultimate probability of re-arrest was calculated for each drug court offender from the date of last arrest prior to commencing the drug court<sup>137</sup>. For the whole group, the ultimate probability of re-arrest ranged from .16 to 1. The mean probabilities and standard deviations are displayed in Table 6.6. There were no significant differences in ultimate probability of re-arrest between offenders who were not accepted onto the drug court program and offenders who were placed on DCR and STIR combined. However, offenders who completed their DCR/STIR program had significantly lower

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<sup>137</sup> This risk assessment is based on age, sex, indigenous status, number of previous arrests and seriousness of arrest.

risk estimates than offenders who were terminated from the program<sup>138</sup> and from offenders who were not accepted onto a drug court program<sup>139</sup>. This means that any comparison of the recidivism rates of the three groups (DCR/STIR completers, terminators and those not accepted onto a program) needs to take into account their differences in risk prior to referral to the Drug Court.

**Table 6.6 Ultimate probability of re-arrest for Drug Court offenders based on risk analysis**

Group	N	Ultimate Probability	
		Mean	std dev
not accepted	223	0.76	0.16
DCR/STIR			
completed	116	0.71	0.19
terminated	102	0.78	0.19
BIR			
completed	59	0.53	0.17
terminated	13	0.61	0.23

## 6.6 Recidivism of Drug Court Clients in Comparison with Other Groups

In this section the recidivism rates of drug court clients is compared with the comparison groups, all drug offenders and risk estimates.

### *6.6.1 Comparison of recidivism rates for drug court and comparison groups*

For each program and outcome group (DCR/STIR completed, DCR/STIR terminated and BIR completed) the recidivism rates were compared based upon the ultimate probability of reoffending and confidence intervals of drug court offenders, matched offenders and matched drug offenders. The results are presented in Table 6.7 along with the median time to fail for each group.

<sup>138</sup>  $t(196) = 2.1, p < .05$ .

<sup>139</sup>  $t(206) = 2.5, p < .05$ , equal variances not assumed.

**Table 6.7 Ultimate probability of rearrest and median time to fail for Drug Court offenders, matched offenders and matched drug offenders**

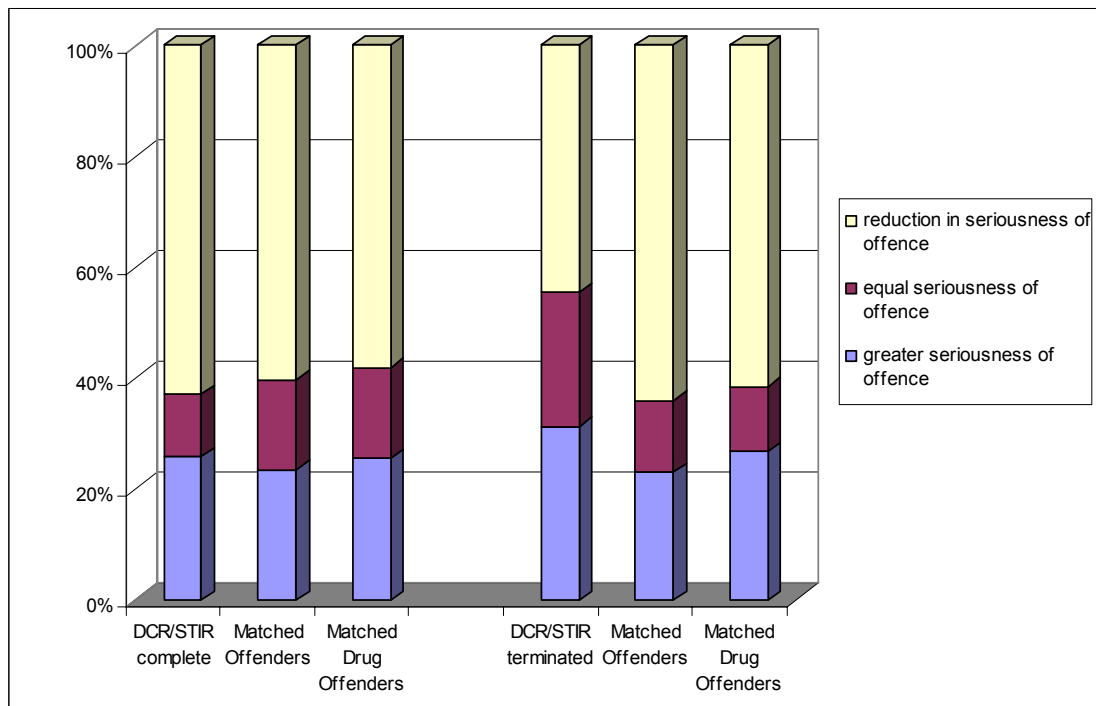
Group	Lower confidence interval	Ultimate probability rearrest	Higher confidence interval	Sig	Median time to fail (years)
DCR/STIR completed	0.33	<b>0.75</b>	0.96		0.6
<i>Matched offenders</i>	0.53	<b>0.66</b>	0.78	ns	4.8
<i>Matched Drug offenders</i>	0.80	<b>0.92</b>	0.97	ns	0.5
DCR/STIR terminated	0.79	<b>0.90</b>	0.96		0.2
<i>Matched offenders</i>	0.70	<b>0.82</b>	0.91	ns	0.4
<i>Matched Drug offenders</i>	0.78	<b>0.90</b>	0.95	ns	0.5
BIR completed	0.00	<b>0.38</b>	0.99		1.1
<i>Matched offenders</i>	0.22	<b>0.34</b>	0.48	ns	0.6
<i>Matched Drug offenders</i>	0.32	<b>0.45</b>	0.58	ns	0.4

There were no significant differences in recidivism between drug court and matched offenders or matched drug offenders for any of the three groups. This may be, in part, an artifact of the small group sizes and the short time period for the drug court offenders. However, it is noteworthy that offenders who completed DCR/STIR had a lower (but not significantly lower) ultimate probability of rearrest than the comparison group of matched drug offenders, with a marginally longer median time to fail. Similarly offenders who completed BIR had a lower (but not significantly lower) ultimate probability of rearrest than the comparison group of matched drug offenders, with a median time to fail almost three times as long. This is particularly impressive given the comparison groups potentially overestimated time to fail (see Section 6.3).

Figure 6.5 provides a comparison of changes in the seriousness of offences pre and post referral to the drug court (pre and post the arrest of interest for matched groups). There was no significant difference in changes in seriousness of offending between persons who completed DCR and the matched offender and matched drug offender groups. Offenders who were terminated from DCR/STIR were significantly less likely than their matched groups to reduce their seriousness of offending<sup>140</sup>.

<sup>140</sup> Comparison with matched offenders,  $\chi^2(2) = 6.6$ ,  $p < .05$ . Comparison with matched drug offenders,  $\chi^2(2) = 6.3$ ,  $p < .05$ .

**Figure 6.5 Comparison of changes in the seriousness of offences for Drug Court offenders, matched offenders and matched drug offenders**



### **6.6.2 Comparison of recidivism rates for drug court and all drug offenders**

The recidivism rates for drug court offenders were compared with the recidivism rates for all drug offenders. As described in Section 6.5, the ultimate probability of rearrest for a drug offender with a history of mixed offences in prior arrests is .77, with a median time to fail of .7 years; and for a drug offender with a history of drug offences only is .63, with a median time to fail of 2.1 years. Table 6.8 depicts the results for drug court offenders against these standards.

**Table 6.8 Comparison of ultimate probability of rearrest for Drug Court offender groups and all drug offenders**

Group	Ultimate probability of rearrest	Median Time to Fail (years)
<b>Standard: Prior arrests mixed offences</b>	<b>0.77</b>	<b>0.7</b>
DCR/STIR completed	0.75	0.6
DCR/STIR terminated	0.90	0.2
Not accepted	0.87	0.
<b>Standard: Prior arrests drug offences only</b>	<b>0.63</b>	<b>2.1</b>
BIR completed	.38	1.1



Offenders who completed DCR/STIR had similar ultimate probabilities of rearrest and median times to fail to the standard for drug offenders with prior arrests for drug and other offences. Offenders not accepted onto the drug court and terminated from DCR/STIR had higher probabilities of rearrest than the standard for drug offenders with prior arrests for drug and other offences. The median time to fail was also less than one third of the time than that of the standard drug user with prior arrests for mixed offences.

A smaller proportion of offenders who completed BIR were rearrested than the standard for offenders with prior arrests for drug offences only. However, for those who did re-offend, the time to fail was almost half that of the standard.

### ***6.6.3 Comparison of actual and estimated recidivism rates for drug court offenders***

The ultimate probability of rearrest for groups of drug court offenders are compared to the previously estimated ultimate probability of their rearrest calculated using the Adult Actuarial Risk Instrument. The results are presented in Table 6.9. There were no significant differences between estimated and actual recidivism rates.

**Table 6.9 Comparison of estimated and actual ultimate probability of rearrest**

Group	Risk Assessment Ultimate Probability			Recidivism Analysis Ultimate Probability			Sig
	LCI	Mean	HCI	LCI	Mean	HCI	
Not Accepted	0.74	0.76	0.78	0.73	0.87	0.94	ns
DCR/STIR							
completed	0.67	0.71	0.74	0.33	0.75	0.96	ns
terminated	0.74	0.78	0.82	0.79	0.90	0.96	ns
BIR							
completed	0.49	0.53	0.58	0	0.38	0.99	ns
terminated	0.48	0.61	0.73	na	na	na	

## **6.7 Conclusion**

The results of the recidivism analysis were inconclusive. There were no statistically significant differences observed in recidivism rates between drug court offenders and their comparison groups. This may partly be an artifact of the small sample sizes and short periods of time available for the recidivism analysis. In addition, it must be

remembered that the comparison groups used in the recidivism analysis only partially meet the requirements for a fair test of the effectiveness of a drug court in producing a crime reduction effect (see Section 4.4.2.1 in Chapter 4). The drug court and comparison groups may have differed on some variables that affect reoffending that were not able to be measured in this analysis.

While differences were not significant, offenders who completed DCR/STIR had lower recidivism rates than those who were terminated from DCR/STIR or who were not accepted onto a drug court program. Similarly, the median time to fail (rearrest) for drug court offenders was three times longer than that of those who were terminated from the program or were not accepted onto a drug court program. These are encouraging findings, but must be interpreted in the context of the lower risk estimates these offenders had prior to referral to the drug court. Clearly, a further recidivism analysis is required when there are larger numbers of offenders who have been through the drug court and longer periods of time are available for the recidivism analysis.

## **7. COST-BENEFIT ANALYSIS**

### **7.1 Introduction**

One of the stated aims of the drug court Pilot Program was to achieve cost savings to the community and government. In this chapter we report on an ex-post cost benefit analysis (an analysis undertaken after the program is operational) of the drug court Pilot Project. The major advantage of this type of analysis is that it enables an assessment of the effectiveness of the program and the benefits accruing from it. This is particularly useful where the feasibility of replicating the program is under consideration.

The cost benefit analysis reported here uses the standard procedures for conducting a cost benefit analysis, as outlined in Chisholm (2000). The six steps in this analysis are:

1. Defining the scope of the analysis;
2. Estimating the program effects;
3. Estimating the value of all costs and benefits;
4. Calculating the present value and assessing profitability;
5. Describe and incorporate the distribution of costs and benefits; and
6. Conducting a sensitivity analysis.

### **7.2 Defining the Scope of the Analysis**

The scope of this analysis was limited to establishing:

- the overall cost of the PDCPP from inception until 30 September 2002;
- as a subset of this, identification of the “extra costs” incurred by DOJ in relation to the drug court;
- the overall cost for the 513 offenders who commenced the drug court prior to 1 May 2002 and who were included in the recidivism analysis (hereafter referred to as the recidivism group);
- an estimation of the costs for this group of 513 offenders had they not participated in the drug court; and

- an estimation of the cost of any changes in recidivism attributable to participation in the drug court.

## **7.3 Estimating the Program Effects**

The program effects of interest are reductions in the recidivism rates of offenders. The methodology used to calculate program effects and recidivism rates were reported in chapter 6. Given the overall finding of no significant reductions in recidivism rates associated with drug court programs, the program effect has been estimated as nil.

## **7.4 Estimating the Value of all Costs and Benefits**

Costs associated with the drug court can be separated into four main areas: court costs, CATS costs, treatment costs and sentence costs. In this section the sources of data and decision rules used in calculating costs for each of these areas are identified. The costs associated with the four areas are integrated to provide:

- an overall cost of the drug court from its inception until the 30 September 2002; and
- the cost of the drug court for the 513 offenders who comprise the recidivism group.

### ***7.4.1 Total costs of the drug court to 30 September 2002***

The first step in estimating the value of all costs and benefits was to ascertain the total costs of the drug court.

#### ***Drug court costs***

Seven sources of DOJ data were used in assessing the costs of the operation of the drug court:

- DVD Database (no of offenders and number of court appearances);
- TOMS database (time remand in custody);
- Budget Codes and Disbursements 2000-01, drug courts;

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- Statement of Financial Performance: Court Services, drug court 2001/2002; 2002/2003;
- Drug Court Budget Position as at 31<sup>st</sup> November 2002 (Fund 01 and Fund 02);
- Drug Court Costings - Perth Children's Court December 2000-September 2002; and
- DOJ Annual Report 2001 (average cost per case finalized in district, magistrates and children's court; cost per day of managing an offender in prison).

Where necessary, the Centre consulted with DOJ staff to clarify costs and appropriate data sources (e.g. in determining remand and judicial costs).

In calculating the cost of the court services associated with the drug court (adults), the costs were limited to those incurred by the DOJ. The court costs component includes the cost of the magistrate<sup>141</sup> and justice support officers. Costs incurred by other government departments that were excluded from the analysis were costs to the WA Police Department (Police Prosecuting Sergeant and Prosecuting Assistant); costs to the Legal Aid Commission in excess of the \$47,000 p.a. paid by DOJ; and costs to the Office of Director of Public Prosecutions in excess of the \$46,000 p.a. paid by DOJ. Also excluded from the court costs are the court costs up until the point of referral to the drug court.

In calculating the cost of court services for juveniles offenders, the cost per hearing identified by the Children's Court (\$183.16) was multiplied by the number of appearances (272) recorded in the DVD database to obtain an overall cost<sup>142</sup>.

Remand costs have been itemized separately. 175 offenders were remanded in custody upon referral to the drug court prior to 30 September 2002. The periods spent remanded in custody were calculated using the following decision rules:

1. Only persons remanded prior to or on the start date of the drug court were included

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<sup>141</sup> Includes salary components but excludes costs associated with the Magistrate's Chamber.

<sup>142</sup> Data provided by the Children's Court identified only 112 hearings for juveniles. The higher number recorded in the DVD database appeared a more realistic figure.

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2. The start date was calculated as the later of a) the date custodial remand commenced, or b) one week prior to the drug court start date<sup>143</sup>
3. The end date was calculated as the earliest of a) date of release from custody, b) end date of drug court participation, or c) 30 September 2002.

In total, 3914 days were spent in custodial remand for these 175 offenders (an average of 22 days per offender). The cost per day of keeping a prisoner remanded in custody was estimated at \$241.39<sup>144</sup>, providing an overall cost of remand associated with the drug court of \$944,800.46 from commencement until 30 September 2002. Magistrate Wager confirmed that no offender spent time in custodial remand because of their referral to the drug court that they would not otherwise have spent on remand or sentenced to imprisonment<sup>145</sup>.

The combined court and remand costs for the drug court to the end of September 2002 are presented in Table 7.1. Combined, the court and remand costs for this period approached two million dollars, of which approximately half of the cost was for remand.

**Table 7.1 Total court costs to September 30th 2002**

<b>COURT COSTS</b>	<b>2000/2001</b>	<b>2001/2002</b>	<b>Sept qtr 2002</b>	<b>Total</b>
<b>Petty Sessions</b>				
Salaries, wages and allowance	\$213,000	\$294,708	\$74,289	\$581,997
Administrative Overheads	\$134,000	\$15,370	\$835	\$150,205
Evaluation	\$30,000			\$30,000
Legal Aid Commission	\$47,000	\$47,000	\$11,750	\$105,750
Office of Director of Public Prosecution	\$46,000	\$46,000	\$11,500	\$103,500
<b>Subtotal</b>	<b>\$470,000</b>	<b>\$403,079</b>	<b>\$98,374</b>	<b>\$971,453</b>
<b>Children's Court</b>				
Salaries	\$12,638	\$3,2419	\$4,762	\$49,819
<b>Remand</b>				
Remand in custody	\$246,942	\$597,199	\$100,660	\$944,800
<b>Total</b>	<b>\$729,580</b>	<b>\$1,032,697</b>	<b>\$203,796</b>	<b>\$1,966,072</b>

<sup>143</sup> Based on an estimated average period of seven days between entering a plea of guilty and the first appearance in the drug court.

<sup>144</sup> 2001/2002 DOJ Annual Report.

<sup>145</sup> Indeed, the opposite is likely to be the case. For example, the Parole Board in considering lifting the suspension of an order treats the fact that a person is involved with the drug court as a positive factor.

***CATS costs***

Three sources of data were used in assessing the costs of the operation of CATS:

- DVD Database (no of persons referred to CATS, no of urinalysis tests);
- Statements of Financial Performance: CJS Court Diversion Service 2000/2001 and 2001/2002; and
- Budget Outlook Scenario 2002/2003.

Clarification of costs and data sources was obtained through consultation with CATS management.

The CATS team provides court diversionary services in addition to services for offenders referred to the drug court. The following decision rules were used for apportioning costs from the budget:

- 90% of psychological reports costs assigned to the drug court
- 90% of treatment costs assigned to the drug court
- 90% of urinalysis costs assigned to the drug court
- 80% of costs assigned to the drug court for all other items
- for 2000/2001 only, 7/12s of the costs assigned to CJS Court Diversion Service were used as the basis for calculations, reflecting the seven months of operation of the drug court.

CATS costs were broken down into four components: psychological reports, treatment costs, urinalysis and general costs. Component and total costs for CATS and the percentages allocated to the drug court using these decision rules are presented in Table 7.2. From the inception of the drug court to the 30<sup>th</sup> September 2002, CATS expenditure related to the drug court exceeded one million dollars.

***Treatment costs***

The Council of Australian Governments (COAG) Illicit Drug Diversion Initiative provides funding through the WA Court Diversion Program for treatment for drug offenders. The funding consists of a retainer plus payments per intervention. In assessing the treatment costs for drug court offenders under this initiative the following 5 sources of data were used:

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- DVD Database (no. of offenders; program type and outcome status; no. of referrals to treatment);
- *COAG Illicit Drug Diversion Initiative and Supporting Measures: WA Police and Court Diversion Program. Annual Report 2001/2002*<sup>146</sup>;
- *Summary of Funding for Court Diversion* provided by Drug and Alcohol Office; and
- *Schedule of Per-Client/Intervention Payments* provided by Drug and Alcohol Office

An attempt was made to reconcile the three sources of information. However, the figures provided by the three different sources did not match up. The difficulties encountered in determining costs for the retainer, BIR and STIR/DCR and the resultant decision rules adopted for use in the cost analysis are outlined below. Because there is so much disparity between sources of data the general approach to developing rules was to be conservative, thus underestimation of the true costs was more likely in each of the separate analyses that were undertaken.

### *Retainers*

The Commonwealth pays retainer funding to DAO approved agencies for court diversion. The retainers are substantial, amounting to \$1.5 million in 2000/2001, \$1.8 million 2001/2002 and \$0.6 million for the September quarter of 2002. DAO advised that a breakdown of these retainers into drug court and other court diversionary services is not currently available, nor is a breakdown available by program type (BIR/STIR/DCR)<sup>147</sup>. Given these limitations, the following decision rule was made:

- *75% of retainers to be included in the cost analysis as treatment costs.*

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<sup>146</sup> Drug and Alcohol Office (2002).

<sup>147</sup> It was initially envisaged that retainer funding would comprise 60-80% of funds, with client service funding comprising the remaining 20-40% of funds (WA Drug Abuse Strategy Office, September 2000: p. 7).



**Table 7.2 Breakdown of drug court costs for CATS**

<b>Line item</b>	<b>2000/2001</b>	<b>2001/2002</b>	<b>2002/2003</b>	<b>Total</b>	<b>% drug court</b>	<b>Item total</b>	<b>Total</b>
<b>Psychological reports</b>	\$2,580	\$7,830	\$2,880	\$13,290	90%	\$11,961	\$11,961
<b>Treatment costs</b>							
Detainee travel and accommodation	\$1,898	\$7,562	\$3,000	\$12,460	90%	\$11,214	
Domestic violence OM	\$50	\$308	\$0	\$358	90%	\$322	
Substance abuse programs	\$175	\$488	\$0	\$663	90%	\$596	
Mentors OM	\$0	\$741	\$0	\$741	90%	\$667	
Psychology counselling	\$0	\$8,230	\$3,840	\$12,070	90%	\$10,863	\$23,663
<b>Urinalysis</b>							
Toxicology	\$0	\$141,162	\$45,000	\$186,162	90%	\$167,546	
Health services	\$32,003	\$0	\$0	\$32,003	90%	\$28,802	
Miscellaneous	\$226	\$0	\$0	\$226	90%	\$203	\$196,551
<b>General costs</b>							
Salary, wages and allowances and other expenditure	\$210,597	\$820,072	\$164,389	\$1,195,057	80%	\$956,046	\$956,046
<b>Total</b>	<b>\$247,528</b>	<b>\$986,393</b>	<b>\$219,109</b>	<b>\$1,453,030</b>		<b>\$1,188,221</b>	<b>\$1,188,221</b>

We acknowledge that retainer funding may not be spent in its entirety on actual services to drug court clients. It may be used by agencies for other purposes towards this goal such as capacity building. If we use the original estimates from the WA Reference Group Working Paper that 20-40% of funds would be for specific client services, then the amount of the retainers paid that was spent on client servicing would be between \$241,234.50 and \$643,292.00 (between 6% and 16% of the retainer actually paid). However, for the purposes of this cost analysis it is necessary to include the full amount of the retainer that may be apportioned to the drug court as this is money that has been paid for this purpose, however it has been used. To not include retainer funding would seriously underestimate the cost of the drug court<sup>148</sup>.

### ***Brief Intervention Regime***

The treatment for BIR consists of 3 education sessions run by DAO preferred providers (Community Service Drug Teams). The cost of each session is \$20.00 per offender in addition to retainer funding.

The drug court is the only source of referrals to BIR. An attempt was made to reconcile the number of offenders placed on BIR, referrals to treatment (DVD database), the DAO annual report and DAO summary of funding for the 2001/2002 financial year. During this period 58 offenders were placed on BIR with 54 referrals made to treatment. However, the DAO annual report recorded 61 BIR offenders undergoing treatment during this period. Furthermore, the DAO summary of funding for 2001/2002 recorded payment for 96 occasions of service for BIR during this period (the equivalent to 32 offenders attending 3 sessions).

Given the discrepancies in the figures, the following payment rule was developed for assessing the total cost for BIR offenders:

- For total cost of BIR treatment use DAO summary of funding figures

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<sup>148</sup> The business of trying to accurately estimate the costs associated with the drug court is fraught with decisions and difficulties such as this and it may be impossible to estimate the true costs of the drug court as it currently operates. This may be an area for further scrutiny by those planning for any further expansion of the drug court.

***STIR and DCR***

There are a range of treatment alternatives for persons placed on STIR and DCR. These treatment alternatives, along with the costs charged, are presented in Table 7.3<sup>149</sup> below. Costs for day treatment/outpatient, pharmacotherapy counselling support and family support are per session, while costs for residential services and detoxification are per episode.

The total amount spent on these seven types of services was \$15,820 in 2000/2001, \$105,193 in 2001/2002 and \$37,070 for the September quarter 2002. However, in addition to drug court referrals, these figures include payments for other court diversion referrals. It was estimated that 90% of costs would be attributable to drug court clients<sup>150</sup>.

**Table 7.3 Treatment alternatives and costs for STIR and DCR offenders**

Type of Service	Payment for agencies with retainer funding	Payment for other agencies
Day treatment/outpatient	\$20	\$50
Pharmacotherapy counselling support	\$20	\$50
Family Support	\$20	\$50
Detox – medical	\$200	\$1,200
Detox - low medical	\$150	\$850
Detox - community based		\$800
Residential	\$1,200	\$5,500

An attempt was made to reconcile the number of offenders placed on STIR and DCR, referrals to treatment (DVD database), the DAO annual report and DAO summary of funding for the 2001/2002 financial year. The DVD recorded 5 persons placed on STIR and referred to treatment, and 118 persons placed on DCR with 178 referrals to treatment during this period. The DAO annual report for 2001/2002 shows 61 STIR offenders (332 contacts) and 163 DCR offenders (1047 non-residential contacts)

<sup>149</sup> Source: Summary of funding for Court Diversion Services provided by Drug and Alcohol Office

<sup>150</sup> This is consistent with estimates from CATS management that 80% to 90% of CATS treatment costs are for drug court rather than CDS clients.

receiving treatment during this period. Data provided by DAO summary of funding for 2001/2002 suggests payment for between 847 (if all treatment was provided by non-preferred agencies) and 2,174 (if all treatment was provided by preferred agencies) occasions of service<sup>151</sup>. This is summarized in Table 7.4. Figures in the DAO summary of funding are likely to include offenders who were referred by the drug court but not accepted onto DCR/STIR and offenders referred through CDS in addition to DCR/STIR offenders.

**Table 7.4 Reconciliation of sources of information on treatment**

Information Source	Offenders	Referrals	Occasions of service
DVD	123	178	
DAO annual report	224		1379
DAO summary of funding			847-2174

In total, 509 referrals to treatment were recorded in the DVD database for offenders (excluding BIR but including those not accepted onto a program) up until the end of September 2002. Unfortunately, the results of referrals were not recorded, and the type of treatment (residential versus non-residential) referred to was poorly completed. This hinders any attempt to calculate the cost of treatment for each individual.

In light of the problems in calculating treatment costs for STIR and DCR offenders, the following payment rules were developed:

- For total cost of DCR/STIR treatment use 90% of DAO summary of funding figures.

The results are presented in Table 7.5.

**Table 7.5 Treatment costs to 30 September 2002**

Treatment Cost	2000/2001	2001/2002	Sept qtr 2002	Total
Retainer	\$1,003,499	\$1,243,968	\$426,401	\$2,673,868
BIR	\$560	\$1,920	\$260	\$2,740
STIR/DCR/Not accepted	\$14,238	\$94,674	\$33,363	\$142,275
<b>Total</b>	<b>\$1,018,297</b>	<b>\$1,340,562</b>	<b>\$460,024</b>	<b>\$2,818,883</b>

<sup>151</sup> As described earlier, one individual may have several occasions of service if undertaking, for example, outpatient treatment.

### *Sentences*

In calculating the total cost of sentences for the drug court to 30 September 2002, actual sentences were calculated for all offenders with an end date prior to 1 October 2002. Sentencing information was available for 327 of the 621 offenders with completion dates prior to 1 October 2002. Given the high rate of missing data, the following decision rules were developed for calculating actual sentences upon non-acceptance/completion/termination from the drug court:

- Actual sentence information to be used where available
- For offenders with missing actual sentence information, the average cost of sentence for their program type and outcome to be used.

Three sources of data were used in assessing the costs of sentencing:

- CHIPS database (outcomes of charges);
- DOJ Annual Report (cost per day of managing an adult and juvenile offender in prison/detention and through community supervision); and
- DOJ manual review (indicated sentences).

Table 7.6 presents the unit costs and sources used in calculating the sentence costs.

Prison sentences were calculated based on the earliest date of release for sentences less than 12 months<sup>152</sup> and on earliest eligibility data for parole for sentences 12 months or greater<sup>153</sup>. The estimated total cost of sentences for adults and juveniles are presented in Table 7.7.

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<sup>152</sup> Earliest date of release (EDR) was calculated using the formula: EDR=sentence-1/3 sentence (remission). While it is acknowledged that in some circumstances prisoners may apply for, and be granted, Home Detention after completing one third of their sentence, this has not been figured into the calculations as few short term prisoners use this option.

<sup>153</sup> Earliest eligibility date for parole (EED) was calculated using the formulas: EED for sentences up to and including 72 months = sentence – 2/3 sentence (remission and parole).

**Table 7.6 Unit costs and sources of information used in calculating sentencing costs**

Sentence type	Unit	Unit cost	Source
Imprisonment	Days	\$241.39	DOJ Annual report 2001/2002
Community supervision (CBO, ISO)	Days	\$13.90	DOJ Annual report 2001/2002
Detention	Days	\$567.19	DOJ Annual report 2001/2002
Juvenile Community Supervision	Days	\$79.81	DOJ Annual report 2001/2002
Suspended Imprisonment Order	Order	Nil	DOJ advice
Conditional Release Order	Order	Nil	DOJ advice
Juvenile Conditional Release Order	Order	\$79.81	DOJ Annual report 2001/2002
Good Behaviour Bond	Bond	Nil	DOJ advice
WDO	Order	Nil	DOJ advice
Fines	Order	\$14.00	DOJ Annual report 2001/2002

**Table 7.7 Estimated cost of sentences for offenders finishing before 30 September 2002 by regime, outcome and age status**

Regime	Outcome	Sentencing data available	Average cost per offender	Offenders	Total cost
Not accepted (adult)		122	\$15,140.31	283	\$4,284,707.73
(juvenile)		5	\$55,771.30	15	\$836,569.50
BIR	completed	39	\$8.62	77	\$663.74
	terminated	5	\$14.00	14	\$196.00
STIR	completed	16	\$2,713.13	18	\$48,789.00
	terminated	5	\$508.80	6	\$3,052.80
DCR (adult)	completed	86	\$3,953.93	92	\$363,761.56
	terminated	56	\$17,068.43	84	\$1,433,748.12
DCR (juvenile)	completed	8	\$22,745.85	9	\$204,712.65
	terminated	15	\$76,180.98	23	\$1,752,162.54
<b>Total</b>		<b>358</b>		<b>621</b>	<b>\$8,928,363.64</b>

***Total cost***

Table 7.8 presents a summary of the drug court Costs to 30 September 2002. The total cost of the drug court for this 22 month period was approximately fifteen million dollars. As depicted in Figure 7.1 this cost is largely made up of sentence costs. These costs would exist if the drug court did not exist and indeed would be greater as more offenders would be in prison or detention – the most expensive sentencing options.

**Table 7.8 Summary of drug court Costs to 30 September 2002**

<b>Component</b>	<b>Cost</b>
Court costs	\$1,996,072
CATS costs	\$1,188,221
Other Treatment costs	\$2,818,883
Sentencing costs	\$8,928,364
<b>Total Costs</b>	<b>\$14,931,540</b>

**Figure 7.1 Breakdown of total cost of drug court by major components**

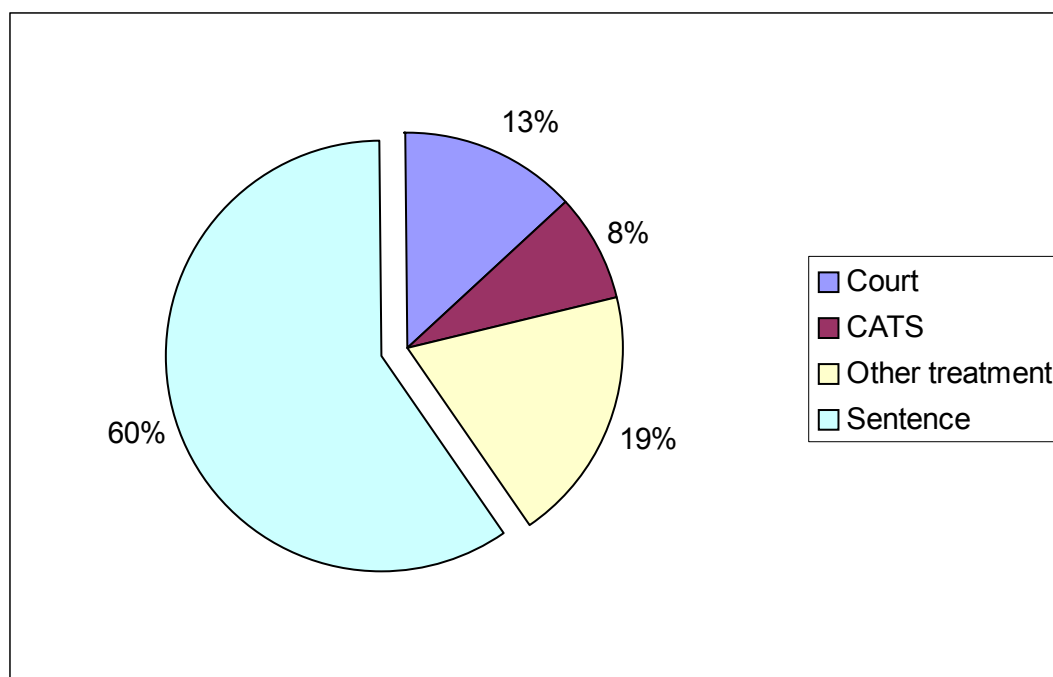


Table 7.9 presents the “extra costs” associated with the drug court, over and above the costs that would have been incurred if the drug court did not exist. These extra costs comprise the court costs (excluding remand) and CATS costs. It is worth noting that the CATS costs also encompass that proportion of supervision costs that would normally have been with a CBO or ISO.

**Table 7.9 Drug court costs to September 30 2002 that represent additional expenditure to DOJ**

<b>Component</b>	<b>Subcomponent</b>	<b>Cost</b>
Court costs	Adult	\$971,453
	Juvenile	\$49,819
		<b>\$1,996,072</b>
CATS costs	Psychological reports	\$11,961
	Treatment Costs	\$23,663
	Urinalysis	\$196,551
	General	\$956,046
		<b>\$1,188,221</b>
<b>Total Costs</b>		<b>\$3,184,293</b>

#### ***7.4.2 Costs of the drug court for the recidivism group***

As a subset of estimating the value of all costs of the drug court, the costs of the drug court for the group of 513 offenders used in the recidivism analysis were calculated. This group was selected for two reasons. First, this group were all referred to the drug court prior to 1 May 2002 and had sufficient time to complete their involvement with the drug court. This meant that the outcomes of their involvement were known and a complete picture (subject to data limitations already noted) of their activities while on the drug court could be obtained (e.g. number of referrals to treatment, number of court attendances, number of urinalysis tests). Second, this group were the only offenders referred to the drug court for whom a recidivism analysis was conducted. This is important because the cost benefit analysis needs to take into account any costs or benefits associated with changes in recidivism.

As described in chapter 6 (section 6.2) this group of offenders were all referred to the drug court prior to 1 May 2002. Of these 513 offenders, 219 were not accepted on to a program, 101 completed and 97 were terminated from DCR, 16 completed and five were terminated from STIR, and 62 completed and 13 were terminated from BIR.

#### ***Court costs***

The court costs for offenders in the recidivism analysis were calculated in three parts, separating adult and juvenile costs and remand in custody costs. The total adult court component was calculated by dividing the Petty Sessions court costs (\$971,452.74) by



the total number of court appearances from the inception of the drug court to the end of the September quarter 2002 (4575 appearances). This provided an average cost of \$202.34 per court appearance. The court costs for the recidivism group are presented in Table 7.10. The total court cost for these offenders was approximately \$1.4 million.

**Table 7.10 Court costs for the recidivism group**

Component	Unit	No of units	Cost per unit	Total cost
Adult Court appearances	appearance	3617	\$202.34	\$731,864
Juvenile Court appearances	appearance	238	\$183.16	\$43,592
Days in custodial remand	days	2697	\$241.39	\$651,029
<b>Total</b>				<b>\$1,426,485</b>

***CATS costs***

In order to calculate the CATS cost for the recidivism group, the costs of each component per offender were calculated.

It was not possible to ascertain from the DVD which offenders had received a psychological assessment. In the absence of this information, the cost of psychological assessment per offender was calculated using current referral guidelines (BIR are not referred for psychological assessment, while all referrals to CATS for STIR/DCR are). The total costs of psychological reports was divided by the number of offenders referred to CATS (excluding BIR) to produce a figure of \$24.56 per offender ( $\$11961/487 = \$24.56$ )<sup>154</sup>.

Similarly, it was not possible to ascertain from the DVD which offenders had incurred CATS treatment costs. Therefore the total treatment cost was divided by the number of offenders referred to CATS (excluding BIR) to produce a figure of \$48.59 per offender ( $\$23,663/487 = \$48.59$ ).

In total, 7,916 urinalysis tests were conducted for drug court offenders from the inception of the drug court to 30 September 2002. The cost per urinalysis test was calculated as the total cost for urinalysis divided by the number of tests

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<sup>154</sup> The budgeted cost per psychological report in 2002/2003 was \$380.00 per report, suggesting that less than one in ten offenders referred for DCR/STIR to date have received a psychological report.

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(\$196,551/7916 = \$28.83 per test). For each offender the cost of urinalysis was calculated by multiplying the number of urinalysis tests by \$28.83.

CATS provide screening and assessment for referrals to the drug court, in addition to ongoing case management. The number of days involved with the drug court to 30 September 2002 were calculated for each offender referred to CATS for STIR/DCR, and for all BIR offenders<sup>155</sup>. In total, the 558 offenders who met these criteria spent 62,119 days involved in the drug court. The general (administrative/case management) cost per offender was calculated by dividing the total general cost by the total number of days calculated (\$956,046/62119 = \$15.39 per day).

The total CATS costs for persons referred to the drug court prior to 1 May 2002 are presented in Table 7.11. The total CATS cost for these offenders was approximately \$870,000.

**Table 7.11 CATS costs for the recidivism group**

<b>Component</b>	<b>Unit</b>	<b>No of Units</b>	<b>Cost per unit</b>	<b>Total Cost</b>
Psychological Reports	STIR/DCR/not accepted offenders	438	\$24.56	\$10757
Treatment costs	STIR/DCR/not accepted offenders	438	\$48.59	\$21282.
Urinalysis	Urinalysis tests	6363	\$28.83	\$183,446
General Costs	days	42442	\$15.39	\$653182
<b>Total</b>				<b>\$868,668</b>

#### *Treatment costs*

As previously noted, it was difficult to reconcile sources of information on the cost of treatment. The difficulties encountered in determining the costs per offender for BIR and STIR/DCR and the resultant decision rules adopted are outlined below.

The retainer cost has been spread evenly across all referrals to the drug court. This is based on the principle that the retainer was “holding” treatment places for all referrals

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<sup>155</sup> Number of days was calculated by subtracting the start date from the earlier of the end date or September 30 2002 for each offender. An arbitrary amount of 60 days was assigned for persons who were referred to the drug court on more than one occasion and for whom an end date for the first referral was not available.

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to the drug court. There were 692 referrals to the drug court prior to the end of September 2002, resulting in a retainer cost of \$3863.97 per referral ( $\$2,673,868/692=\$3863.97$ ).

Seventy seven BIR offenders commenced the drug court prior to 1 May 2002. Of these, 63 completed their program and 14 were terminated. For this group, 97 referrals to treatment were recorded. It was estimated that the number of sessions would fall between 189 (3 sessions for each program completed and no sessions for offenders terminated) and 217 (3 sessions for each program completed and two sessions for offenders terminated) However, the DAO summary of funding shows payment for only 137 sessions in total until the end of September 2002.

As outlined earlier, similar difficulties in reconciling referrals and treatment costs were encountered in trying to determine the cost of treatment for STIR and DCR

In light of these problems, the following payment rules were developed:

- For calculating cost of BIR “completers” use treatment cost of 3 sessions @ \$20 per session = \$60
- For calculating cost of BIR “terminators” do not include treatment costs
- For calculating cost of DCR/STIR “completers” use number of referrals for offender X (total cost/total number of referrals)\*
- For calculating cost of DCR/STIR “terminators” use number of referrals for offender X (total cost/total number of referrals)\*
- For calculating cost of DCR/STIR “terminators” use number of referrals for offender X (total cost/total number of referrals)\*

\*The total cost is calculated as 90% of payments made for the seven types of services ( $.9 * (\$15820 + \$105,193 + \$37,070) = \$142,274.70$ ). The total number of referrals is 509. Total cost divided by total number of referrals = \$279.52.

It is acknowledged that these figures will present underestimates of treatment costs for some offenders and overestimates of treatment costs for other offenders, but should balance out overall. The treatment costs by regime and outcome for the recidivism group are presented in Table 7.12. The total cost was approximately \$2 million.

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**Table 7.12 Treatment costs for the recidivism group**

Component	N	Units	Cost per unit	Total Cost
Retainer	513	offenders	\$3863.97	\$1,982,217
BIR Completers	62	offenders	\$60.00	\$3,720
BIR Terminators	13	offenders	\$0.00	\$0
STIR Completers	17	referrals	\$279.52	\$4,752
STIR Terminators	5	referrals	\$279.52	\$1,398
DCR Completers	158	referrals	\$279.52	\$44,164
DCR Terminators	132	referrals	\$279.52	\$36,897
Not accepted	80	referrals	\$279.52	\$22,362
<b>Total</b>				<b>\$2,095,508</b>

***Sentencing costs***

The total sentencing costs for the recidivism group were calculated using actual sentencing data where available, and the average sentencing costs (presented in Table 7.7 above) when not. The total estimated sentencing costs for these offenders was approximately \$7 million. The breakdown is presented in Table 7.13.

**Table 7.13 Sentencing costs for the recidivism group**

Regime	Outcome	Sentencing data available		No sentencing data available			All offenders	
		N	Actual Cost	N	Average cost	Cost	N	Total Cost
Not accepted	(adult)	96	\$1,427,870	111	\$15,140	\$1,680,540	207	\$3,108,410
	(juvenile)	5	\$278,857	7	\$55,771	\$390,397	12	\$669,254
BIR	completed	26	\$266	36	\$9	\$324	62	\$590
	terminated	5	\$42	8	\$14	\$112	13	\$154
STIR	completed	15	\$40,908	1	\$2,713	\$2,713	16	\$43,621
	terminated	5	\$2,544	0	\$509	\$0	5	\$2,544
DCR (adult)	completed	80	\$313,309	12	\$3,954	\$47,448	92	\$360,757
	terminated	55	\$842,160	22	\$17,068	\$375,496	77	\$1,217,656
DCR (juvenile)	completed	8	\$181,967	1	\$22,746	\$22,746	9	\$204,713
	terminated	14	\$960,842	6	\$76,181	\$457,086	20	\$1,417,928
<b>Total</b>		<b>309</b>	<b>\$4,048,765</b>	<b>204</b>		<b>\$2,976,862</b>	<b>513</b>	<b>\$7,025,627</b>

***Total cost***

Table 7.14 presents a summary of the drug court costs for the recidivism group. The estimated total cost for this group was approximately \$11.5 million

**Table 7.14 Summary of drug court costs for the recidivism group**

<b>Component</b>	<b>Subcomponent</b>	<b>Cost</b>
Court costs	Adults	\$731,864
	Juveniles	\$43,592
	Remand	\$651,029
		<b>\$1,426,485</b>
CATS costs	Psychological reports	\$10,757
	Treatment Costs	\$21,282
	Urinalysis	\$183,446
	General	\$653,182
		<b>\$868,668</b>
Other Treatment costs	Retainers	\$1,982,216
	Treatment Costs	\$113,292
		<b>\$2,095,508</b>
Sentencing costs		<b>\$7,025,627</b>
<b>Total Costs</b>		<b>\$11,416,288</b>

### **7.4.3 Benefits**

There are potential benefits arising from the drug court for government, the community<sup>156</sup> and offenders<sup>157</sup>. In this analysis, the benefits associated with the drug court have been restricted to:

- a) cost savings;
- b) benefits to government in terms of reduced recidivism of offenders resulting in lower criminal costs; and
- c) reducing the number of drug dependent offenders being imprisoned.

#### ***Cost savings***

The first step in the process was to compare the cost of the drug court program with the costs that would have otherwise been incurred in the judicial process and sentencing for the same group of offenders. For the purposes of this exercise, the analysis was restricted to the 513 offenders who comprise the “recidivism group”.

<sup>156</sup> Primarily through lower re-offending rates and thus crime rates. This is the primary motivation of the drug court (see literature review).

<sup>157</sup> Apart from reduced crime, direct benefits to the offender and their families include reduction in drug use and spending on drugs (see chapter 8).

Court costs were calculated using the average cost per case finalized in each of the Court of Petty Sessions, Children's Court and District Court (Source: DOJ Annual report + judicial costs advised by DOJ). The results are presented in Table 7.15.

**Table 7.15 Estimated court costs if not referred to the drug court**

<b>Court</b>	<b>Cost per case finalised</b>	<b>N</b>	<b>Total</b>
District	\$3,809	30	\$114,270
Magistrates	\$457.00	442	\$201,994
Children	\$633.00	41	\$25,953
<b>Total</b>		<b>513</b>	<b>\$342,217</b>

The cost of treatment of prisoners/ persons placed under community supervision orders has not been calculated separately, based on the assumption that these costs are included in the cost of sentences.

A comparison of indicated versus actual sentence costs was planned as an integral part of the cost benefit analysis. However, as noted in chapter 5, indicated sentence information was not available for all offenders. No sentencing information was available for juveniles. Given these limitations, the following decisions rules were developed for assessing sentences offenders were likely to receive if they had not been referred to the drug court:

- Assumption made that sentences for offenders not accepted onto a drug court program were equivalent to the sentences they would have received if they had not been referred to the drug court;
- Assumption made that 70% of adult persons placed on STIR/DCR were facing a period of imprisonment<sup>158</sup>, and that the average term of imprisonment they were facing was 12 months<sup>159</sup>;
- Assumption made that the remaining 30% of adult offenders placed on STIR/DCR were facing some type of Community Based Order, and that the average term of the order they were facing was 15 months<sup>160</sup>;

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<sup>158</sup> Magistrate Wager estimated that 70% of these offenders would have received a term of imprisonment if they had not been referred to the drug court.

<sup>159</sup> For offenders who were given an indicated sentence of imprisonment, the average length of this sentence was 12 months (mean, median and mode = 12), with 40% of offenders given an indicated sentence of 12 months imprisonment.

<sup>160</sup> For offenders who were given an indicated sentence of ISO or CBO, the mean length of time was 15 months.

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- Assumption made that all juvenile offenders placed on DCR were facing an indicated sentence of detention<sup>161</sup>, and that the average length of the sentence they were facing was 12 months<sup>162</sup>; and
- Assumption made that no offender referred for BIR was facing a sentence of imprisonment, but all were facing a fine and/on Conditional Release Order or spent conviction<sup>163</sup>.

The estimated sentence costs are presented in Table 7.16.

**Table 7.16 Estimated sentence costs if not referred to the drug court**

Group	Status	N	Sentence	Unit	Unit cost	Total
Not accepted	Adult	207	actual sentence		varied	\$3,108,410
	Juvenile	12	actual sentence		varied	\$669,254
BIR	Adult	75	Fine/ACRO/spent conviction		\$14.00	\$1,050
STIR/DCR	Adult	133	12 months imprisonment	day	\$241.39	\$3,906,093
	Adult	57	15 months CBO	day	\$13.90	\$360,497
DCR	Juvenile	29	12 months detention	day	\$567.19	\$6,003,706
<b>Total</b>		<b>513</b>				<b>\$14,049,010</b>

The estimated total cost for the recidivism group had they not been referred to the drug court are presented in Table 7.17.

**Table 7.17 Total estimated cost for offenders if not referred to the drug court**

Component	Cost
Court costs	\$342,217
Sentencing costs	\$14,049,010
<b>Total</b>	<b>\$14,391,227</b>

### *Reduced Recidivism*

The recidivism analysis failed to find a significant reduction in recidivism resulting from the drug court. Given this result, no monetary amount was recorded as a benefit

<sup>161</sup> DCR is only considered for juveniles when all community based options have been exhausted.

<sup>162</sup> Indicated sentence information was available for only 5 juveniles. For juveniles who were referred to the drug court and sentenced to imprisonment, the mean sentence of detention was 11.3 months (modes 9 and 12 months).

<sup>163</sup> All offenders who were terminated from BIR received a fine, conditional release order or spent conviction order.

deriving from reduced recidivism. However, it is worth reiterating that there were promising indicators of a reduction in recidivism for those offenders who completed their drug court program.

*Reducing the number of drug dependent offenders imprisoned*

One of the stated aims of the drug court was to reduce the number of offenders with substance use problems and addictions being imprisoned. Such a reduction could be immediate (i.e. offenders who were facing imprisonment were given a different type of sentence upon completion of a drug court program) or long term (following completion of a drug court program the offender reduces or stops offending and their likelihood of future imprisonment reduces).

In order to assess immediate reductions information was sought on the percentage of offenders referred to the drug court that were facing a period of imprisonment. This was assessed on the basis of indicated sentences and actual sentences.

Information on the percentage of offenders referred to the drug court who were facing a period of imprisonment has not been recorded consistently. In the absence of this information, Magistrate Wager estimated that 70% of offenders **referred** to the drug court for STIR/DCR to date would have been sentenced to imprisonment had they not been referred to the drug court.

Indicated sentencing information was available for 134 offenders who were **placed** on the drug court. Of these, 45% were facing an indicated sentence of imprisonment<sup>164</sup>. Given the large amount of missing data, Magistrate Wager was consulted as to the representativeness of this figure. Magistrate Wager advised that this figure would be reasonably accurate.

Actual sentencing information was available for 421 offenders.

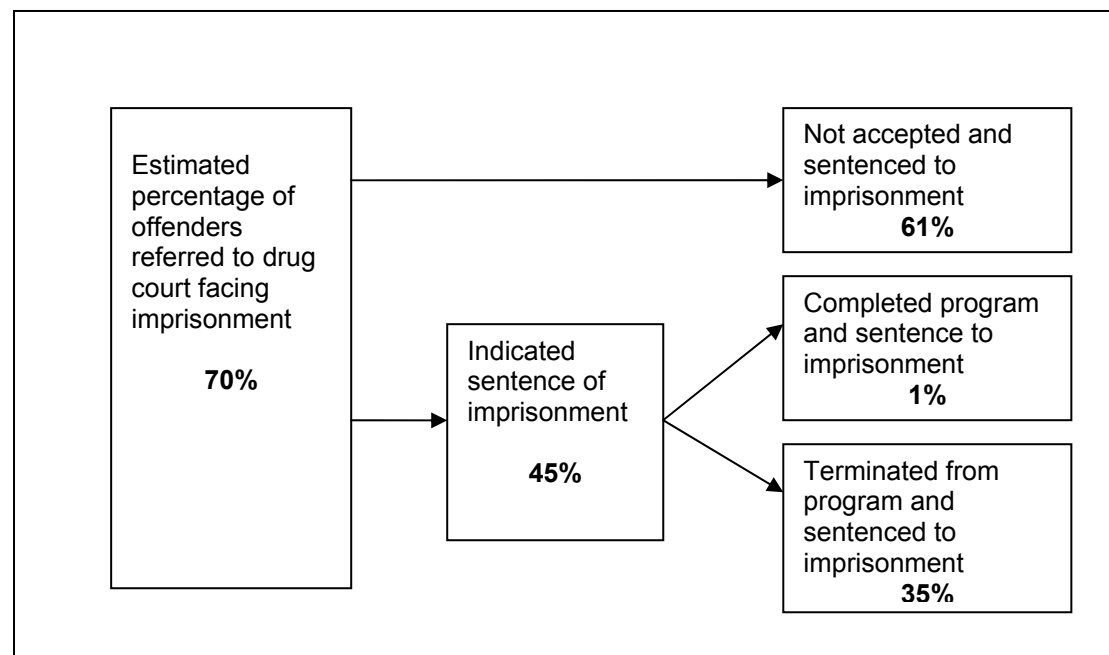
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<sup>164</sup> Indicated sentence is provided upon completion of the assessment period and takes into account progress made during the assessment period.



Figure 7.2 graphically depicts the estimated percentage of offenders facing imprisonment upon referral to the drug court, after assessment and upon sentencing. Offenders who are not placed on the drug court program are significantly more likely to be imprisoned than offenders placed on the drug court program, whether or not they complete the program<sup>165</sup>. Offenders who successfully complete the drug court program are extremely unlikely to be imprisoned.

**Figure 7.2 Estimated percentages of offenders facing imprisonment at 3 stages: upon referral to the drug court, at indicated sentencing and actual sentencing**



Based on this analysis, it can be concluded that the drug court reduces the number of offenders with substance use problems and addictions being imprisoned in the short-term. However, the size of this reduction over the pilot period is extremely small and would be limited to a maximum of 134 offenders (18% of all referrals to the drug court). This consists of 92 offenders (70%) who completed DCR/STIR and 42 offenders (35%) who were terminated from a program.

<sup>165</sup> Chi Square analysis.

In order to assess the validity of these findings, the relationship between indicated and actual sentences was examined. Indicated sentence and actual sentence details were available for 117 offenders referred to the drug court. The type of sentence indicated and actual sentence imposed is grouped by program and outcome and presented in Table 7.18<sup>166</sup>.

**Table 7.18 Type of actual sentence by type of indicated sentence for programs by outcomes**

Regime	Indicated sentence	N	Actual sentence	N
Not accepted	imprisonment	2	imprisoned	2
	ISO	3	imprisoned	1
			ISO	1
			CBO	1
	CBO	3	CBO	3
STIR completed	ISO	1	CBO	1
	CBO	4	CBO	4
DCR completed	imprisonment	28	imprisonment	1
			SIO	2
			ISO	17
			SIO & ISO	7
			CBO	1
	SIO	1	SIO	1
	ISO	21	ISO	10
			SIO	1
			CBO	9
DCR terminated	imprisonment	15	no further order	1
			CBO	9
			ISO	1
	CBO	11	fine	1
			fine	1
	fine	1	fine	1
	imprisonment	15	fine	1
			imprisonment	13
			SIO	1
			fine	1
	SIO	1	SIO	1
	ISO	12	SIO	1
			imprisonment	1
			SIO	1
			ISO	9
	CBO	8	CBO	1
			ISO	1
			CBO	7

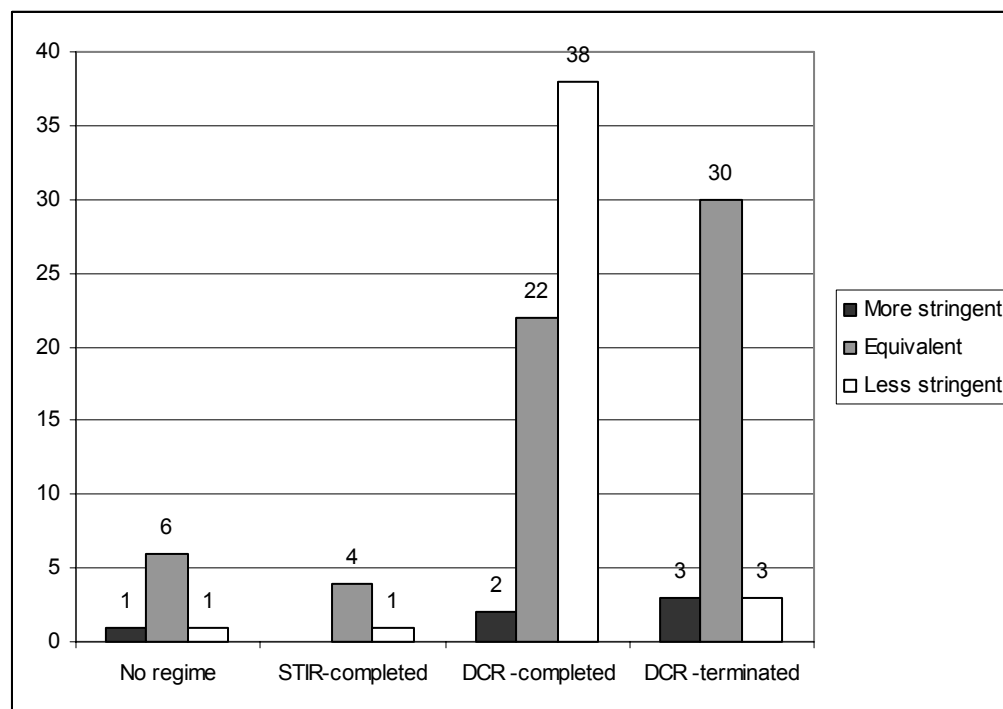
<sup>166</sup> This figure excludes data for one BIR offender, and five DCR offenders for whom no outcome data are recorded on the DVD database.

Indicated sentence and actual sentence details were available for 8 offenders who were not accepted onto a regime<sup>167</sup>. Offenders with indicated sentences of imprisonment or Community Based Orders received the type of sentence indicated. Offenders with an indicated sentence of ISO received a range of sentences.

Indicated sentence and actual sentence details were available for 5 offenders who completed STIR. All received CBOs as an actual sentence, but for only two offenders was the length of CBO of shorter duration than the indicated sentence had they not successfully completed the drug court.

Indicated sentence and actual sentence details were available for 62 offenders who completed DCR and for 36 persons who were terminated from DCR. The majority of offenders completing DCR with an indicated sentence of imprisonment did not receive a custodial sentence, while the majority of those terminated from DCR did.

**Figure 7.3 Comparison of actual sentence to indicated sentence by program and outcome**



<sup>167</sup> Indicated sentences would be provided to only a small percentage of persons not accepted onto a drug court program. This group is likely to comprise people who had completed the first assessment but where a decision had not been made as to their suitability for a drug court program.

The hierarchy of sentences outlined in section 39 of the *Sentencing Act* 1995 was used to determine if the type of sentence imposed was equivalent, more stringent or less stringent than the indicated sentence. The results are graphed in Figure 7.3

Theoretically, it would be expected that indicated and actual sentences would be of the same type for offenders not accepted onto a program or terminated from a program, and for actual sentences to be of the same or less stringent type for offenders who have successfully completed the program. Consistent with this, for offenders not accepted onto a program or terminated from a program, the type of sentence imposed matched the type of indicated sentence in the large majority (81.8%) of cases. For offenders who completed their drug court program the type of sentence imposed was of a less stringent type than the indicated sentence for 58% of cases and the same type for 39% of cases.

These findings provide qualified support for the finding that the drug court reduces the number of offenders with substance use problems and addictions being imprisoned in the short term. The reduction occurs mainly for those offenders who complete a drug court program, and operates to a lesser degree for those who are terminated from a drug court program.

## **7.5 Calculating the Present Value and Assessing Profitability**

The total cost of the drug court from its inception to 30 September 2002 was estimated at \$14,931,540. The proportion of this cost that was DOJ expenditure additional to “everyday business” was estimated at \$3,184,293.

For the “recidivism group” of 519 offenders, the total cost of the drug court was estimated at \$11,416,288. The estimated total cost for this group had they undergone traditional sentencing was \$14,391,227. Based on these estimates, the drug court appears a cheaper option than traditional sentencing. However, it must be noted that some of the estimates used in calculating the costs were based on “rubbery figures”. Most notable of these are the estimates of the proportion of offenders who would have been imprisoned had they not been referred to the drug court and the proportion of

treatment retainers that should be costed to the drug court. Both of these are addressed in the sensitivity analysis (section 7.7) below.

## **7.6 Describe and Incorporate the Distribution of Costs and Benefits**

The costs of the drug court and traditional sentencing methods are largely dominated by sentence costs. As depicted in Figure 7.1, 60% of the costs of the drug court were attributable to sentence costs. The comparative figure for traditional sentencing is 98%. These figures demonstrate the cost shifting from sentence to treatment in diversionary programs such as drug courts. The markedly higher percentage of cost attributable to the courts for the drug court is also evident (13% for drug court versus 2% for traditional sentencing). This can be seen as the cost of judicial case management.

In section 2.2.1 in chapter 2 the growing awareness that courts are not providing an effective response to crime in sending offenders to prison was documented. A benefit of the drug court is in providing alternatives to prison. The drug court resulted in a small reduction in the number of offenders with substance use problems being imprisoned in the short term. It is too early to tell if a further reduction will occur over time.

## **7.7 Conducting a Sensitivity Analysis**

Two major cost components in the cost analysis were subject to sensitivity analysis: the cost of sentencing had offenders not been referred to the drug court and the cost of treatment for drug court participants.

### ***7.7.1 Cost of sentencing***

The calculation of the costs of sentencing that would have resulted had offenders not been referred to the drug court was based on the assumption that 70% of offenders placed on DCR/STIR were facing a sentence of imprisonment. However, the

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indicated sentences suggest that only 45% of these offenders were facing a period of imprisonment. Other evidence suggesting that 45% is closer to the mark is the finding (see Table 5.14) that 35% of offenders terminated from DCR received terms of imprisonment. In addition, it is possible that not all juveniles referred to the program were facing detention<sup>168</sup>. The sentencing costs were recalculated based on the assumptions that:

- 45% of offenders placed on STIR/DCR were facing a 12 month period of imprisonment and 55% were facing a 15 month community supervision order, and
- 75% of juveniles were facing a period of 12 months detention and 25% were facing a 12 month community based order.

The results are presented in Table 7.19. The recalculated estimated total cost of sentencing using these assumptions is \$11,697,613, a reduction of \$2,351,397, providing a total cost of \$12,039,830.

**Table 7.19 Sentencing costs with revised imprisonment and detention rates**

Group	Status	N	Sentence	Unit	Unit cost	Total
Not accepted	Adult	207	actual sentence		varied	\$3,108,410
	Juvenile	12	actual sentence		varied	\$669,254
BIR	Adult	75	Fine/ACRO/spent conviction		\$14.00	\$1,050
STIR/DCR	Adult	85	12 months imprisonment	day	\$241.39	\$2,496,375
			15 months community supervision order	day	\$13.90	\$664,073
-	Juvenile	22	12 months detention	day	\$567.19	\$4,554,536
			12 months community supervision order	day	\$79.81	\$203,915
<b>Total</b>		<b>513</b>				<b>\$11,697,613</b>

The sentencing outcomes for the matched offender and matched drug offender comparison groups were sought. Due to differences in the process between normal sentencing procedures (where charges may be heard in different courts at different times) and drug court sentencing procedures (where all outstanding charges are cleared upon sentencing) it was not sufficient to look only at sentences resulting from the arrest of interest. Instead, a decision was made to look at all sentences imposed for the comparison groups in the twelve month period following the arrest of interest.

<sup>168</sup> Correspondence with JJO.

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Using these criteria, sentencing details were sought for each member of each comparison group in the CHIPS database held by the CRC. The percentages of offenders for whom sentencing outcomes were available are presented in Table 7.20.

**Table 7.20 Availability of sentencing data by program type**

Group	Sentencing data available	
	N	%
BIR	matched offenders	60
	matched drug offenders	60
STIR/DCR	matched offenders	144
	matched drug offenders	135

Of the BIR comparison groups, no offenders were sentenced to imprisonment and the majority (73.6% matched offenders, 75% matched drug offenders) were fined. The sentencing outcomes for the STIR and DCR comparison groups are presented in Table 7.21. It is notable that only 11.1% (matched offenders) and 13.3% (matched drug offenders) were sentenced to imprisonment. The length of imprisonment ranged from 3 to 60 months (matched offenders: Mean = 15.6 months, Mode = 6 months, Median = 8.5 months; matched drug offenders: Mean = 15 months, Mode = 6 months, Median = 10.5 months).

**Table 7.21 Sentencing outcomes for comparison groups**

Sentence	Matched offenders		Matched drug offenders	
	N	%	N	%
Imprisonment	16	11%	18	13%
SIO	15	10%	14	10%
ISO	10	7%	12	9%
CBO	24	17%	21	16%
CSO	1	1%	0	0%
ACRO	10	7%	11	8%
Fine	100	69%	99	73%
all charges dismissed	9	6%	6	4%
struck out	2	1%	1	1%
Other			2	2%

It is recognized that using this methodology the sentencing details obtained are at best a rough equivalent to that of drug court offenders. Details of sentencing in the District

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Court were not obtained. However, they do provide an indication of the proportion of offenders that were imprisoned.

Based on this analysis, sentencing costs were recalculated based on the assumptions that:

- 12% of DCR/STIR offenders where sentenced to imprisonment of 15 months duration
- 25% received a community based order of 15 months duration
- 71% where fined

The results are presented in Table 7.22. The recalculated estimated total cost of sentencing using these assumptions is \$10,433,463, a reduction of \$3,615,548 from the original cost, providing a total cost of \$10,775,680.

**Table 7.22 Estimated sentencing costs based on comparison group outcomes**

Group	Status	N	Sentence	Unit	Unit cost	Total
Not accepted	Adult	207	actual sentence		varied	3,108,410
	Juvenile	12	actual sentence		varied	669,254
BIR	Adult	75	Fine/ACRO/spent conviction		\$14.00	1,050
STIR/DCR	Adult	26	15 months imprisonment	day	\$241.39	1,882,842
	Adult	55	15 months community supervision order	day	\$13.90	11,468
	Adult	142	Fine		\$14.00	1,988
	Juvenile	22	12 months detention	day	\$567.19	4,554,536
	Juvenile	7	12 months community supervision order	day	\$79.81	203,915
<b>Total</b>						<b>10,433,463</b>

Table 7.23 presents a summary of the three differing assessments of the costs of sentencing.

**Table 7.23 Costs of sentencing by percentage of offenders facing imprisonment**

% imprisoned	Cost
12% imprisonment	\$10,775,680
45% imprisonment	\$12,039,830
75% imprisonment	\$14,391,227



### **7.7.2 Cost of treatment**

When calculating the cost of treatment for the recidivism group, the cost of retainers paid to DAO approved agencies by the Commonwealth was calculated as 75% of the total retainers. This second part of the sensitivity analysis examines the changes in costs if this percentage is varied.

The retainers paid by the Commonwealth for court diversion services in Western Australia totaled \$1.5 million in 2000/2001, \$1.8million 2001/2002 and \$.6 million for the September quarter of 2002. DAO were not able to provide a breakdown on the proportion of these figures allocated for the drug court. In the absence of this, calculations for two alternative percentages, 100% and 50%, have been conducted. The results are presented in Table 7.24. Based on these figures, the total cost of retainers may be one million either side of the figures used in the cost analysis.

**Table 7.24 Retainer funding paid by the Commonwealth for court diversion services in Western Australia**

<b>Retainers</b>	<b>2000-2001</b>	<b>2001-2002</b>	<b>Sept qtr 2002</b>	<b>Total</b>
100%	\$1,486,666	\$1,842,916	\$631,704	\$3,961,286
75%	\$1,115,000	\$1,382,187	\$473,778	\$2,970,965
50%	\$743,333	\$921,458	\$315,852	\$1,980,643

## **7.8 Summary**

In this chapter we have presented estimates of the cost of the drug court and its alternatives. The total cost of the drug court from its inception to 30 September 2002 was estimated at approximately \$15 million. In terms of the “real” cost of the drug court innovation the figure was approximately \$3 million, as most of the total cost is “business as usual”. However, much or all of this cost is offset by the reduction in prison and detention costs for offenders.

For the group of 513 offenders included in the recidivism analysis, the approximate cost of the drug court was estimated as falling between \$10.4 and \$12.4 million, dependent upon the percentage of the treatment retainer funding apportioned to the drug court. It was estimated that had these offenders not been referred to the drug court, the costs would fall between \$10.8 and \$14.4 million, dependent on the

percentage that would have been imprisoned. These costs are summarized in Table 7.25.

**Table 7.25 Summary table of estimated costs of drug court and traditional sentencing for recidivism group**

<b>Option</b>	<b>Estimated cost</b>
<b>Drug court</b>	
50% retainer	\$10,425,967
75% retainer	\$11,416,288
100% retainer	\$12,406,609
<b>Traditional sentencing</b>	
12% imprisonment	\$10,775,680
45% imprisonment	\$12,039,830
75% imprisonment	\$14,391,227

Based on this cost analysis the costs of the drug court and traditional sentencing are roughly equivalent. However, caution needs to be exercised as some estimates were based on conflicting data, rather than reflecting “true” costs. This was particularly the case in terms of estimating the percentage of offenders who had been imprisoned and the proportion of retainer funding to be used in the cost analysis.

Given the overlap in the estimated costs of the drug court and traditional sentencing, the question of which method is most cost-effective is dependent upon the benefits that are achieved from each method. There is growing disillusionment with prison as an effective response to crime, particularly for drug dependent offenders. The drug court offers an alternative to prison that may provide benefits to offenders and society more generally. As outlined in this chapter, a measurable benefit of the drug court was the reduced imprisonment rate for offenders who completed DCR and STIR. In addition, there are potential benefits to offenders in terms of reduced drug use and improved health and wellbeing.

## **8. A QUALITATIVE REVIEW**

### **8.1 Introduction**

This chapter aims to elucidate the perceptions, opinions and concerns about the Drug Court that are commonly talked about at the grass roots level (“what everybody knows”) but are not revealed through the formal documentation associated with the drug court. The research team consulted widely with all relevant individuals and groups that have been involved in the drug court. The results of interviews and discussions with individuals that have had dealings with the drug court are summarized. These individuals come from four groups: workers (those who run the drug court); stakeholders (those who have a more or less direct interest in the performance of the drug court); participants (drug court offenders); and Community Corrections Officers and Juvenile Justice Officers. The chapter will be organized to firstly outline the salient findings from the various groups and then draw out the important themes that emerged from these consultations.

This chapter is designed to illustrate some of the common issues and concerns perceived by individuals in these groups. Some stakeholders were more forthcoming than others and some were much more familiar with the operation of the court than others. The particular views and perspectives of the individual are (naturally) shaped by their needs, interests and level of exposure to the drug court.

### **8.2 The Groups and the Approach**

The methodology governing the approach to all individuals was a matter that needed to be established early in the evaluation project in order to fulfill the requirements of the University of Western Australia and to obtain approval from the University of Western Australia’s Human Research Ethics Committee. The full description of the approach methodology detailing the procedures adopted and the particular mechanisms undertaken to ensure that the human rights of all individuals were protected are contained in our submission to the Ethics Committee (Appendix 8.1).

The interviewing of individuals associated with the drug court proceeded according to plan and, although not every individual could be reached, the amount and direction of the information obtained was such that a consistent picture emerged of the main views, concerns and issues<sup>169</sup>.

As the evaluation unfolded four qualitatively distinct groups emerged that share certain perspectives. These groups correspond closely with the original categorization. Stakeholders are broken into three types: the treatment community, the justice community and the legal community. Workers are broken into legal and justice. There were only a limited number of responses from Community Corrections Officers and Juvenile Justice Officers who had dealings with drug court clients and, as these fit with the views of workers, the feedback from this group was combined with the workers group.

The device used to stimulate the process of obtaining perspectives from most respondents was a semi structured interview. The form of the semi structured interview was the same for both workers and stakeholders (as shown in Appendix 8.1). A variation of the same form was used for the survey of Community Corrections Officers/Juvenile Justice Officers (also in Appendix 8.1). The semi structured interview was used in most cases. However there were two groups where it was judged to be inappropriate. First the knowledge and interest of legal workers (DPP, Legal Aid etc) was very specific and the full interview was not appropriate. Second there were a small number of cases where the stakeholder approached had little detailed knowledge of the operation of the drug court. In these cases a more focused approach drawing out the perspective and interest of the particular stakeholder was pursued to extract as much information about the drug court as that particular stakeholder had to offer. More detail on the nature of these groups and the particular approaches taken to reach them are detailed in the following sections.

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<sup>169</sup> See Morse (2000) who discusses the issues related to “saturation”. This refers to the point beyond which further interviews do not result in any significant increase in the level of information or analysis. Given the very specific focus of the current study and the large number of questions included on the semi-structured interview schedule we are confident that we were able to extract all the relevant views that are commonly held within the groups.

### **8.2.1 Justice workers**

This group involves those individuals who work more or less directly in and around the drug court. There are two main categories of workers: those involved as legal practitioners or in the prosecution of charges – these are referred to as legal workers, and those involved in the administration of the treatment, assessment and welfare of the offenders. This latter group is comprised almost entirely of CATS workers, however also includes private practitioners who are contracted by the court such as the clinical psychologist.

We attempted to reach those Community Corrections and Juvenile Justice Officers that had any contact with drug court clients. For this purpose we first requested that the Manager CJS put out a general e-mail to all Community Corrections Officers and Juvenile Justice Officers requesting that if they had any dealings with drug court clients to notify him. Eventually 13 responses were received and this comprised the contact group of Community Corrections Officers and Juvenile Justice Officers. This group was then approached with the anonymous survey form. Only a small number of responses were received (4) and these are considered together with the other non legal workers to comprise a group of 16 justice workers<sup>170</sup>.

Legal workers were interviewed either individually or in groups by Dr Morgan as part of his legal analysis of the drug court and the results of this inquiry are reported separately in chapter nine<sup>171</sup>.

### **8.2.2 Participants**

The category “participant” (offenders) is easier to define, although not without its complications. Offenders appearing before the drug court are referred to by court

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<sup>170</sup> There were 16 separate interviews undertaken involving 17 workers, and confirmatory signatures have been received from 16 workers. The process of checking the transcripts with the interviewees is explained in the submission to the Human Rights Committee (Appendix 8.1).

<sup>171</sup> There was one exception to this principle. Two senior legal stakeholders were interviewed by Dr Indermaur and Dr Roberts because of some constraints regarding availability.

personnel as “current participants”, those who have completed their term with the drug court (successfully or unsuccessfully) are referred to as “past participants”. Another category is those offenders who have finished their formal time with the drug court but are kept on in an adaptation that could be described as a form of extended care. These offenders are referred to as “continuing participants”<sup>172</sup>. A further category is “juvenile participants” – either current, past or continuing. Further distinctions could be made<sup>173</sup> but given the other restrictions on the representativeness of the data and the resultant small cell sizes there is little value in pursuing this.

In terms of recruitment these different participant groups require a different approach. In our submission to the Human Rights committee we proposed a methodology that would maximize our response rates whilst still allowing for the human rights of participants to be protected. This involved a variation on an intercept interview approach at the courts. This procedure is described fully in the submission (Appendix 8.1). Essentially we approached participants at a time when they may be willing to talk to us as they were waiting to attend court or were attending the CATS treatment facility. This resulted in a good response rate, giving us more confidence that the range of responses is more likely to be representative of offenders. Juvenile offenders presented particular challenges as signed informed consent forms are required of the parent/guardian as well as the juvenile. Access to juveniles is also a sensitive issue, however this was facilitated by the Juvenile Justice Officers attached to the drug court. In terms of continuing participants a notice was posted at Community Corrections Centres to try to attract such offenders<sup>174</sup>.

Ultimately we were able to interview 34 participants: 32 current adult participants, one past participant and one current juvenile participant. From the approaches made at

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<sup>172</sup> The existence of this category itself raises questions about the boundaries of the drug court as this group is ostensibly not budgeted for, or provided for in the planning of the drug court. As at February 2003 more than 10% of the caseload of CATS officers was classified in terms of “continuing” participants.

<sup>173</sup> For example between those offenders referred to the drug court, but not formally on the programme as they are undergoing assessment, or those referred and assessed but placed on BIR or STIR rather than DCR.

<sup>174</sup> We wish to express our gratitude to the managers and workers that assisted us in trying to get access to workers, stakeholders and participants.

CATS and outside the drug court 32 interviews were achieved and there were nine refusals, so that the response rate was 78 per cent. The salient demographic description of the whole group of 34 participants is shown in Table 8.1.

**Table 8.1 Basic demographics of the participant sample**

<u>Age</u>	<u>n</u>	<u>%</u>	<u>Length of time on drug court</u>	<u>n</u>	<u>%</u>
under 18	1	3	less than 1 month	7	21
18-20	4	12	1-2 months	6	18
21-24	8	23	3-4 months	9	26
25-28	4	12	5 or more months	12	35
29-32	10	29			
over 33	7	21	<u>Major type of drug problem</u>		
			Heroin	16	47
<u>Gender</u>			Amphetamines	17	50
Male	25	74	Cannabis	1	3
Female	9	26			
<u>Minorities</u>			<u>Previous prison experience?</u>		
ATSI	2	6	Yes	20	59
NESB	2	6	No	14	41

### **8.2.3 Treatment stakeholders**

As foreshadowed earlier, two distinct groups of stakeholders emerged once investigations began into those who had either a stake or a role in the development, implementation or operations of the drug court. The first, most easily identifiable, group was the treatment community. This group primarily involves treatment agencies or their representatives that provide services to the drug court. These individuals or agencies are not directly involved in the administration of the court but feed into it and are subject to its results and products and have a keen interest in the operations of the drug court. There were eight stakeholders or stakeholder groups in this category<sup>175</sup>. Two sets of stakeholders were interviewed as a group as they comprised a united team in terms of their stakeholder role.

<sup>175</sup> Eight separate interviews were undertaken involving 12 individuals. These encompassed both government and non government agencies, peak bodies and others. The selection was guided by the list of treatment agencies to which offenders are referred (as described in chapter 5) with those agencies handling the bulk of the treatment placements being contacted first. Although not all treatment agencies approached responded, the leading agencies (in terms of the number of referrals) were covered. Furthermore some of the key contacts who are most involved and familiar with the drug court were involved. The level of knowledge about the drug court was

#### **8.2.4 Senior justice and research stakeholders**

The second group of stakeholders comprises senior figures in Justice and others who were involved in the research and planning or in the development and implementation of the drug court<sup>176</sup>. On the whole, this group had quite a distinct and detailed knowledge of the operation of the drug court. However the actual degree of familiarity with the operation of the drug court varied markedly from intense to quite distant. This makes summary of this group very difficult and particular problems present as many of these stakeholders would be concerned if readers of this report could identify them from any quote. Therefore in the interests of protecting these sensitivities no verbatim quotes will be drawn from this group.

### **8.3 The Results**

The results from the four groups are presented below. Verbatim quotes are presented in italics. These quotes are presented merely to illustrate the direction of perspectives on a particular topic as described in text. In selecting these quotes an attempt was made to only select quotes where there is little likelihood that any particular individual could be identified. A summary of the major similarities and differences between the four key groups of stakeholders on seven major issues or questions is presented in Table 8.2.

#### **8.3.1 Workers**

The responses from workers are summarized under the categories listed below which correspond to items or groups of items on the semi structured questionnaire. Although there was a relatively high degree of satisfaction and good will amongst the workers

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much more tentative for those not regularly involved with the operation of the drug court. The issues, perceptions and concerns that emerged from stakeholders in the treatment community were quite consistent. For all these reasons we believe that the view from the treatment community fairly captures the main concerns.

<sup>176</sup> Nine interviews or discussions were undertaken, but in five cases the standard semi structured interview was not used and in some cases interviewees did not return the signed approval of transcript form, for these reasons the results of this section rely on an even smaller number of detailed replies.



**Table 8.2. A summary of some of the major similarities and differences between the stakeholder groups on the key issues**

	<b>Workers</b>	<b>Treatment Community</b>	<b>Justice/Planners</b>	<b>Participants</b>
<b>Case Flow</b>	too many participants	not enough referrals	not enough participants	NA
<b>Major Problems</b>	throughcare	throughcare limited time		time constraints urinalysis
<b>Major Strength</b>	alternative to imprisonment	recruiting a difficult to reach group	alternative to imprisonment	alternative to imprisonment support
<b>Management</b>	lacking		lacking	NA
<b>Efficiencies</b>	role clarification	more service provider involvement	referral management	NA
<b>Communication with Service Providers</b>	need/want more information	need/want more information	quality control	NA
<b>Major Reform Needed</b>	legislation  time frame for intervention	time frame	legislation time frame for intervention	time frame

some distinct issues emerged. These largely had to do with respect for professional boundaries. Other concerns related to the monitoring and enforcement of criteria and consequences (e.g. in regard to the points system). Together these issues relate to the much larger issue mentioned by workers - that there is not an effective management structure for the drug court which can set goals, establish strategies, settle disputes and monitor progress.

***Satisfaction with role***

Workers generally indicated satisfaction with their role, or more accurately their work. Most workers discussed areas of dissatisfaction or where improvement could be achieved. These mainly concerned a desire for more clarity around their role boundaries or where external factors such as a lack of clients or a lack of co-operation from another agency made their work difficult to progress.

***Appropriateness of eligibility criteria and referral process***

A number of responses suggest that the eligibility criteria have not been operating consistently. For example, some clients referred for assessment were later found to be ineligible. Many workers noted that things have improved over the two years of the operation of the drug court but a number also point to the need for continuing tightening and enforcement of the eligibility criteria. This is illustrated by the following comments from two separate workers:

*we need to establish a “target group” of people who will most benefit from the drug court and put resources and energy into those people.*

*Given the restrictions which apply to referrals from the courts and the ad hoc nature of these referrals , defendants with a more serious substance abuse problems either have their entry to the drug court delayed or may miss out all together*

***Selection of treatment programs***

Most workers indicated that they developed their own lists of contacts and treatment agencies that provided good and reliable service and/or provided them with the necessary feedback on client progress. The lack of specialist or appropriate treatment

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agencies for certain groups such as juveniles or indigenous clients was mentioned by some workers. One worker believed that residential rehabilitation offered the best services to drug court clients and that *“You can see a huge change in people who have been through a residential program. . . .”*. This worker believed that the drug court did not *“push people into residential programs enough”*.

For those workers who provided comments in relation to detoxification the main issues again seemed to be the lack of suitable or appropriate facilities for certain client groups such as juveniles or indigenous people. Other problems identified included the speed with which offenders can be placed in detoxification facilities:

*The first week is a big problem – when they are most needy and not a lot happens. Critical that action is taken in the first week if possible and necessary.*

Problems in getting offenders into the residential detoxification facility run by the Drug and Alcohol Office were mentioned by some workers, but it also appears that this has improved over time.

### ***Throughcare***

This was one of the major issues identified. The sudden shift from intensive supervision to being abruptly transferred to a busy Community Corrections Officer who had a heavy case load was seen as a distinct shortfall of the system, although some workers also noted that there had been some improvements. Most workers appreciated that the problem was a function of the disparity in resources available to the Community Corrections Officers who worked with offenders once they left the drug court program.

### ***Offender Assessments***

While most workers saw the assessment process as good and comprehensive, there were some who saw it as excessive and involving levels of assessment that were unnecessary:

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*Questions around how well the CATS assessment and the psych assessment blends – want to be reassured that we are not over-assessing people psychologically.*

Some were concerned about the degree to which aspects of the assessment process were “culturally appropriate”:

*The “readiness to change” part of the assessment for Aboriginal people is very difficult to understand. May need a culturally appropriate method.*

### ***Intensive case management***

Intensive case management was generally seen as a positive and a necessary way of operating with a client group who typically have multiple problems and a “chaotic life”, so that anything less than intensive case management would be unlikely to break the “surface tension”. However the problem is that such intensive case management requires considerable resources. Even with case loads capped at 15 and an average case load something less than this most workers still feel exhausted<sup>177</sup>. This may well be due to the nature of this particular client group which is often considered to be highly demanding.

### ***Judicial case management***

Judicial case management was a contentious issue amongst some of the workers:

*I think this is a new introduction to our work that needs some debate. Sometimes CATS staff feel their independence is compromised. I think our ambivalent management structure does not help this.*

There were also concerns expressed that review meetings would be dominated by certain professionals. However many workers appreciated the potential therapeutic benefits in using the authority of the court to manage treatment: “*Clients really like being spoken to by the magistrate*”. One worker discussed the problems when clients

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<sup>177</sup> The average caseload in February 2003 was 10.5 clients per CATS officer (see Section 3.6.2 in Chapter 3 for more detail).

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“bullied” the magistrate. Further, it was noted that sometimes when the “rules” changed, changes were discussed with part of the team and not the rest.

### ***Management and collaboration***

Although a number of positive comments were made about the degree to which the drug court had improved, most workers discussed problems with collaboration either between sectors of DOJ or with outside agencies.

One concern was the lack of a defined management structure:

*I think the drug court has done well considering the varying backgrounds of people and their reporting structures. My query would be whether a more cohesive drug court structure would better facilitate collaboration.*

This related to a number of concerns about methods of resourcing, both within DOJ and related agencies:

*communication between team members was at first really bad. This had a lot to do with role definitions and changing referral guidelines.*

There were some particular tensions within DOJ that were mentioned and these related to the relative isolation of CATS from other sections of the CJS division

*Within DOJ I feel quite alienated. . . communicate with individual Community Corrections Officers. . . dislocation from mainstream CJS. . . .being a world away from CJS . . . under pressure all the time.*

A further source of strain affecting collaboration was the lack of clear role definitions:

*Since last year we have held a one week workshop and got all stakeholders in to identify roles and what role each Department should be playing in the Drug Court. One year was spent on role definitions.*

***Efficiency***

There were some distinct suggestions for increasing the efficiency of the drug court. For CATS officers this largely concerned addressing issues of too many meetings, duplication and over-servicing. In particular, the review meeting was seen by some as interfering with case management. The need for more structure and role definition was suggested. There were also disputes over who should take on certain tasks (e.g. data entry).

At a more general level the whole operation of the drug court and its efficacy is affected by the question of generating appropriate referrals. The concern is mainly to target a specific group of offenders where the drug court intervention can make a difference. This depends on ensuring the generation of interest amongst offenders in this group and/or their representatives in the first instance and then the careful selection before they are sent to the drug court.

*The drug court is not able to deal with the sheer volume of persons presenting in the courts with drug dependency issues. The court is sometimes impeded by defendants who do not have significant problems seeing it as a “soft option” or possibly a way of avoiding the consequences of their behaviour.*

***Major strengths of the drug court***

Interestingly the major strength mentioned by most workers was that it provided an alternative to imprisonment. The second most common advantage or strength was that it provided a better (or good) opportunity for the offender to address their offending behaviour. The strategic use of the fear of imprisonment (crisis motivation) was mentioned by some. Other workers mentioned that the drug court allowed for better treatment, that is treatment that was more individually tailored and more intensive. In summary almost all workers saw the drug court as an important innovation involving one or more of the following features: the advantage in capitalizing on the “crisis” experienced by the offender facing imprisonment; providing a productive alternative to imprisonment and; providing an intensive and holistic response for substance abusing offenders.

***Major weaknesses and major reforms needed***

Here workers mentioned the two major weaknesses that were interconnected. First, the very short time frame available for intervention. Second, and directly related was the lack of a legislative framework. Also mentioned was the amount of resources required to run the drug court. Some mentioned that they thought the eligibility criteria were too tight or not sufficiently managed.

*Perhaps some form of instant stand-down screening process could apply to the referring courts to determine the appropriateness of referrals proceeding at all. This measure would have obvious resource implications.*

Other weaknesses mentioned were the lack of leadership and management, poor boundary maintenance, and the leniency of the court.

Some of the reforms that were suggested were: improving management; increasing the time frame; getting proper legislation; excluding those with mental illness; strengthening the structure; defining boundaries; enforcing consequences for non compliance; selecting the right people; and legislative change. Most workers noted that the current legislation was too restrictive.

***Indigenous issues***

Workers clearly saw the lack of indigenous referrals as a major issue for the drug court. This was sometimes seen to be the result of a lack of co-operation or interest by ALS. At a deeper level some workers concurred with the view that the drug court was very much a “white middle class” way of doing business and a quite different approach would be needed to realistically engage with indigenous clients and with the indigenous community. The lack of enough specialized programs, both residential and non-residential, was also mentioned as an issue.

***Other minorities and special needs groups***

Generally there were not perceived to be barriers to women per se. However, child care and the difficulties faced by women caring for young children were mentioned

by some workers. In regard to minority groups a number of workers mentioned the problems in providing culturally appropriate services and in particular meeting the needs of the Vietnamese community. Offenders with psychiatric or mental disabilities present a concern that was raised by some workers. Again the main issue appears to be that there are insufficient treatment options for these offenders.

### ***Juveniles***

The relatively small number of juvenile offenders going through the drug court has been a concern. The drug court was seen as being so much akin to the operation of the Children's Court that some questioned whether a separate drug court was needed, suggesting rather that certain aspects of the drug court could be grafted. Some mentioned the difficulty in engaging with younger clients:

*It would be very tough to deal with drug court in the Children's Court because you also have to deal with puberty, peer pressure, and the "cool to take drugs" attitude. These children's lives are already chaotic and you can't do anything unless family is involved in the program as well. Many have home environments that are not stable. It is a tough challenge, and may be better to wait until they are adults. We need to get the community to realise that we are dealing with volatile kids.*

### **8.3.2 Participants**

From the 34 participants interviewed as part of the evaluation, the picture emerging was generally quite positive with most offenders seeing it is a useful way for them to get off drugs and cease offending. However those results need to be seen in light of the fact that almost all interviewees were current participants. No "failures" or "rejectees" were interviewed, and these offenders may have a darker assessment of their drug court experience. Further, as most participants were interviewed whilst attending court or CATS and were currently seeking to continue their participation on the drug court program, they can be expected to provide quite positive comments out of self interest, notwithstanding the assurances given of anonymity and confidentiality.



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Approximately a third (38%) of the sample found out about the drug court through friends and/or past participants, with a further third (35%) citing lawyers or court officials as the source of information. Six said they found out about the drug court in prison or a detention centre and three said they heard about the drug court through the news. In terms of treatment on the drug court, most (59%) said they were receiving counseling. Five interviewees (15%) said they were receiving residential treatment and the same number indicated a form of pharmacotherapy treatment. Three respondents mentioned two or more types of treatment and one didn't wish to comment in response to this question.

When asked what was the best thing about the drug court program, half said that it helped them get off drugs and stay out of jail. Almost the same number (47%) mentioned the support provided through the drug court as the best thing. One respondent mentioned the points system.

When asked what was the worst aspect of the drug court program the most common aspects to be mentioned were time constraints (38%) and "urines" (21%)<sup>178</sup>. Eleven said there was no worst aspect. Individual responses included:

*Interfered with getting employment*

*No help over Christmas break*

*Lots of waiting around*

*Being pressured into saying you're a drug user [to get on the program]*

When asked what were the best aspects of the drug court program in terms of reducing drug use the biggest single category of responses related to support and counselling (35%) followed by being out of jail and trouble (23%). Typical responses were:

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<sup>178</sup> This refers to having to attend to provide urine samples for urinalysis.

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*If someone rewards you for doing the right thing eventually you get to want to do the right thing*

*You're treated like a person, not a number*

*Support, which is lacking with my parents*

*The option of not going to jail and a chance to fix yourself*

When asked what were the best aspects of the drug court program in terms of reducing chances of re-offending, nine respondents (26%) mentioned the support they received through the program, seven (21%) mentioned simply that they were off drugs. Responses included:

*I want to be pushed; I don't want to get away with it*

*If you're not on drugs you won't commit crimes*

*Getting back to school and keeping me busy*

*Court makes you realise you've done something wrong and you don't want to come back to court*

When asked about how much they spend on drugs now and how much before they entered drug court (two questions) the amounts varied greatly although all were in the expected direction (reduced spending). Most (22) said they spent nothing on drugs now with 5 more saying they spent less than \$100 a week. However, when asked how much they were spending on drugs before being placed on the drug court only one offender indicated that they spent anything less than \$100 a week on drugs.

Almost all offenders indicated that they thought the drug court was fair in the way it operated (one said "not always"). Again, almost all (31) agreed that if they were to have their time over they would have preferred to go through the drug court. Those who did not agree offered the following comments:

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*A regular sentence if I didn't have a child*

*Don't know because I'm not familiar with the rest of the court system.*

*I'm not sure what would have happened.*

*Hard to say but at least [if I had a regular sentence] I would have my time over and done with*

Almost all (31) thought that they were better off now for having gone through the drug court. However only 11 answered in the affirmative that the drug court is the best way to get other drug dependent offenders to stop offending. More than double that number (23) said “*it depends on the individual*”. Typical responses included:

*Yes, only if you want it to work*

*Definitely heroin and speed users (more likely to offend due to costs) but not marijuana users*

Tellingly, when asked “*Do you think many other offenders on the drug court program “rort” the system?*” most participants (20) thought they did, eight said they didn't know. Only six responded in the negative. This kind of question is useful as it provides a kind of corrective for positive self report. Most offenders would naturally deny “rorting” the system – but the fact that most believe others do can provide an indication that might be closer to the truth.

Almost all (31) believed that the treatment that they received for their drug problems through the drug courts was better or more effective than they would have received in prison. Three offenders responded that they didn't know.

*They don't do anything for you in prison*

*Prison doesn't prepare you for living with drugs in the community*

*I came out of prison with a heroin habit*

*I done three sentences in prison. I've done substance use programs – that process is more of a bluff . . . got to go to get your parole . . . does not address the problem*

Most (30) participants found that all the various professionals and justice workers involved in their case in the drug court worked well together. Four said it was disjointed or conflicting.

*They communicated with each other when I was going through a couple of hurdles. They got together and dealt with it at their meeting.*

*CATs were incompetent, frustrating [and] caused family problems*

### **8.3.3 Treatment stakeholders**

The treatment community stakeholders had a slightly different perspective on the drug court than all other groups. Generally this was very positive and it may be fair to say that this was at least partly because the drug court was seen as attracting new money and new clients into the treatment agencies, thus expanding the roles and the activities of the treatment agencies. For stakeholders in the treatment community the drug court represented not only a way of getting a “difficult to reach” group into treatment, it also represented something positive, innovative and “treatment-friendly” that the justice system was doing in the area of drug dependence. Treatment providers are not generally in a position to know much about court processes or the details and constraints of the drug court and their perspective is focused on treatment needs. There was a concern with the volume of referrals. For example there was some comment that the treatment agencies could deal with more referrals. The vexed issue of payments and retainers received by agencies in relation to drug court clients appears to create tensions for both treatment agencies and CATS workers<sup>179</sup>. Treatment agencies sometimes feel aggrieved that clients may be engaged in treatment but payments dry up once the four months of the drug court has passed. Other concerns related to information sharing and a desire to work collaboratively in a closer and more effective way with the decision making of the drug court.

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<sup>179</sup> This issue is discussed in section 2.3.3 of chapter 2 and section 7.4.3 of chapter 7.

*Appropriateness of eligibility criteria*

Most treatment providers had no comment on (and indeed had no knowledge of) the eligibility criteria. However, in terms of general case numbers many were aware of the “bottleneck” restricting the number of offenders flowing through the court to treatment agencies and most agencies would prefer to see more referrals. For treatment providers the flow of more minor offenders is quite relevant and to this end the Pre-sentence Opportunity Program Supervised Treatment and Intervention Regime (POPSTIR)<sup>180</sup> development is welcomed.

Another issue raised was to do with the exclusion of alcohol as a drug problem<sup>181</sup>.

One stakeholder questioned the fundamental assumption of the drug court that drug dependency leads to crime and suggests that such outmoded thinking may be reinforced by the drug court in some way.

*Selection of treatment programs*

As many stakeholders in this group were treatment service providers many respondents were quite sensitive to the issue of referral and how the CATS officers regarded their service. Thus it is not surprising that the selection of treatment programmes by CATS officers was a common point of comment and some contention. Treatment agencies are sensitive to reasons behind CATS’ decisions to refer or not to refer to their agencies. A selection of comments:

*Matching is necessary . . . the referral process needs to be more transparent – there is a sense the (CATS) officers are getting information*

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<sup>180</sup> POPSTIR is a new development introduced on 4<sup>th</sup> March 2003 in association with DAO to provide a form of early intervention for offenders on relatively minor charges. POPSTIR is intended to replace STIR. It is designed to get young defendants with no criminal record or minor criminal records into drug treatment.

<sup>181</sup> This issue was discussed in the literature review. For many treatment providers the exclusion of alcohol is a problem in that a very needy group of clients/offenders is rejected. Furthermore, there is no apparent logic to why abusers of one type of substance should be privileged over another even through the same process of dependence is involved.

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*about what is working and what is not – constructive feedback would be welcome – raising standards would be good. Also a sense that there is a lack of awareness of what some services provide.*

*. . . one of the benefits of CDS – was that the client got more say in the choice of treatment. I would like to know that the CATS team were giving a good range of options they may need more knowledge. May need a little more case conferencing with the treatment provider – to make the treatment regime more realistic. Treatment provider should be at the review meeting.*

In relation to the question on detoxification some stakeholders made the point that detoxification needs to be seen as part of the treatment plan and not as isolated from it. Problems and difficulties in accessing the Moore Street detoxification facility was also commonly noted along with the belief that things may be better now, especially as doctors from the clinic are more actively involved in the drug court.

### ***Throughcare and case management***

The lack of throughcare was noted by almost all treatment stakeholders. Most were aware of the sudden drop in the level of service and attention to the drug court client following completion of the drug court and were concerned about it<sup>182</sup>.

Treatment providers generally appreciated and supported the concept of intensive case management. There was a very high regard for the notion of the drug court, and in particular the way it was run by Magistrate Julie Wager. There were no negative comments and a range of positive comments such as

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<sup>182</sup> One of the sensitive issues here was discussed by one stakeholder who had many dealings with drug court clients. This was that the drug court process engaged offenders and introduced them to treatment, however once their time on the drug court finished after four or five months their treatment needs do not suddenly stop. If they have established a relationship with a certain treatment agency there will be a desire (on the part of both the client and the agency) to continue the treatment. However the funding that provided the basis for such treatment is no longer available. This leads to resentment/dissatisfaction on the part of the treatment agency in relation to the drug court.

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*It is wonderful – it breaks down the “them and “us” mentality – it says “we are here to help” the holistic approach is good.*

*I like the system Julie Wager uses – it is a good balance of support and knowledge.*

### ***Intra-departmental and inter-agency collaboration and referrals from the drug court to treatment services***

Treatment providers (naturally) had little or nothing to say on intra-department collaboration. On inter-agency collaboration, comments were generally positive but with some distinct issues raised. However, generally it was agreed that some mechanisms for consultation had been instigated (e.g. team meetings). There was a desire expressed to discover why referrals do (or do not) work. In general there was a sense that there was room for more information sharing at both a formal and informal level. There is some tension that emerged from the comments of some stakeholders that CATS may expect a much quicker response from treatment agencies than they are able to provide.

One problem of the treatment agency not noted elsewhere was “no shows” (a person who is referred but doesn’t turn up for an appointment). The lack of feedback from the drug court to the treatment agency prevented a sense of closure. Another problem was seen as the very slow rate of referrals – a product of the drug court capping.

### ***Major advantages, strengths or contributions of the drug court***

The general view was very positive and supportive of what is generally seen as a new and better approach. The drug court was seen as providing important opportunities to some people who otherwise would not come into treatment. A selection of comments:

*... it offers a sense of hope – something they can grab on to. Gives them a sense that they are being treated with respect and this builds self respect and trust. A more realistic engagement with the problem. Deals with every aspect of the person. Point system is very clear – gives a framework.*

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*Provides an opportunity for the individual to address their drug use and takes a holistic approach.*

*Actually gives people a treatment option... . . . for individuals who would not otherwise be exposed. Court has this opportunity. It recognises that drug addiction is about sick people trying to get well.*

In regard to the principle goals of the drug court, the general comments were fairly vague and reserved. One stakeholder asked: “*How do we measure success?*” Stakeholders were generally positive but some noted they would have to wait to see what the figures revealed. As with other groups, in regard to reducing the supervision requirements of drug dependent offenders, the treatment group picked up that if successful the drug court should have just the opposite effect, increasing the supervision requirements of offenders. The next goal (improving the life circumstances of offenders who have been through the drug court) was the one most clearly endorsed by this group of stakeholders and seen as most clearly achieved. In regard to the final goal (ultimately providing a more cost effective intervention in relation to drug dependent offenders) responses were generally a mixture of positive, hopeful and reserved. Some respondents noted that compared to the cost of a prison bed the drug court alternative was certainly cost effective. Others looked more widely at the long term costs of drug abuse and the benefits of treatment.

### ***Major disadvantages, or weaknesses and the major reforms, changes needed***

The most commonly cited problem (and thus area where reform was needed) was the time issue (limit of 4 months treatment). Some mentioned that not many offenders have actually been reached. One mentioned that sometimes clients actually on the program are not sufficiently motivated.

*Small length of time. The 4 month period is just the beginning of the process need a minimum of 12 months - takes 4 months just to get away from the habit in some ways may set them up for failure. The attempts to establish “continuing participants” have been useful.*



Other areas for reform that were mentioned concerned the indigenous issue (very few indigenous clients processed), standards of treatment, quality control, inflexible legislation and access (how many and who has access to the drug court).

*Indigenous offenders*

Most stakeholders knew of no indigenous clients who had accessed the drug court.

Stakeholders were aware of this issue and considered some possibilities – including the issue of the lack of referrals to the court

*Perhaps the lawyers are not referring*

Others noted that incarceration may be more accepted within indigenous communities and therefore there may be no motivation to avoid it.

In some sense the drug court was seen as a very “white” model requiring lots of appointments, monitoring and strongly enforced boundaries. The question of its “fit” with indigenous ways of doing things was thus questioned.

It was also noted that the treatment programmes in general have had a low appeal or at least a low intake of indigenous clients and thus the issue may be broader than just the drug court.

*Barriers to females and minority groups*

It was noted that females generally seem to do quite well. However some mentioned the critical issue of the availability of child care facilities and the accessibility of services to women with children.

In regard to barriers to minority groups the general lack of specialised services to distinct communities such as the Vietnamese was noted. The problems in

communicating across the language barrier were noted. The need for and the cost of translators was mentioned. The need for multilingual counsellors was mentioned and this seemed to be a distinct need.

### ***Juveniles***

Stakeholders noted the difficulty engaging younger people. Many providers don't deal with juveniles. Some comments:

*Kids are just discovering drugs – and therefore have less motivation to get off them.*

*Process needs to be examined may be a better way – for the full array of drug and alcohol services to be available to the Children's Court.*

### ***Legislation***

Stakeholders, where they were aware of it, named legislation as being a major area for reform that was needed to give the drug court and the CATS team both time and flexibility to operate. Some commented on the need for a post sentence approach and nominated at least a 12 month period as being necessary. Increased clarity around the rules was sought. One stakeholder pointed to the value of suspended sentences – perhaps linked to a points system.

### ***General comments***

Some of the issues raised were the time restriction, the CATS officers being over worked and the geographic limitations (despite the pilot limit). It was also argued by one stakeholder that treatment agencies should get access to urinalysis results, and that this should be automatic as it is an important therapeutic tool.

Generally stakeholders made positive comments tempered by the need to iron out the problems and open up a meaningful dialogue with treatment providers and to provide more information on the operation of the court.

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*It is one of the biggest moves forward that we have seen in this field – it conveys a sense of maturity that we can treat people as human beings in the criminal justice system*

*A step forward in understanding drug use as a social and community problem that leads to crime. Important that they are still punished – held responsible for the crime but things that led them to that decision – on that there is help available. Police do a good job. Great achievement on behalf of all players in the CJS. Prosecution do a great job. Groundbreaking move.*

*It's a great idea it has got to through a process of ironing out a lot of the problems*

### ***8.3.4 Senior justice, research and planning stakeholders***

The results from this group are somewhat patchy as some of the stakeholders who were involved in the early stages of the planning and implementation of the drug court were not familiar with its current operation. Nevertheless using the same general categories as before an attempt will be made to draw out the relevant and potentially helpful comments that were made. As noted earlier to protect the identity of individuals in this group no verbatim comments are made.

#### ***Overview***

For those currently involved and with more knowledge there was considerable concern about the administrative structural arrangements of the drug court. The problems associated with re-structures and insufficient attention being given to project management and evaluation were noted. One particularly relevant point made was to question what precisely is the drug court – is it a court with a treatment element or is it a treatment programme with a court element?

***Selection and referral (case flow)***

Concerns were raised about the low numbers of indigenous people referred. Senior justice stakeholders seemed to be especially sensitive to the “access and equity” issues associated with the drug court. Another issue that was raised concerned the fundamental problem of starting with the assumption of drug dependency as a cause of offending. Rather, a better focus would be (it was suggested) on who needs treatment. A comment was also made that the eligibility criteria for the drug court has shifted over the period of the pilot.

***Treatment programs***

Those involved in the early planning and design of the PDCPP indicated that the issue of planning for detoxification was a source of debate at the very early stages. Some of the original plans for the project envisaged that the East Perth detoxification facility would be used regularly for drug court clients. There were also (apparently) different views about the need for residential rather than community detoxification.

Most stakeholders in this group had little familiarity with the detail of treatment programs and therefore no comment to make. One concern that was expressed was that the procedure of choosing treatment is not necessarily based on evidence of the effectiveness of treatment and that the process of placing offenders in treatment should be on the basis of some minimum standards or some system of treatment accreditation.

***Throughcare***

For those who were in a position to know this was acknowledged as an issue and it is a matter that has been brought to the attention of senior management. Efforts have apparently recently been made to provide for a better transition between drug court and the wider Community Corrections treatment regimes.

***Major strengths and weaknesses of the drug court***

This group of stakeholders articulated the strategic use of one aspect of the criminal justice system as the major strength of the drug court. The idea of using sentencing strategically to encourage offenders into treatment was clearly attractive. A number of stakeholders saw the drug court in terms of a wider perspective and noted that it

should be considered as one of a range of tools that can be used to address the challenges posed by this group of offenders. The idea of a full set or continuum of interventions was articulated by some stakeholders. The importance and value of early intervention was widely appreciated in this group. The value of “trying something different” and the popularity of the drug court were also mentioned.

In terms of weaknesses, two stakeholders pointed to problematic assumptions that fixing drug problems would solve crime problems, a fundamental premise of the drug court. The cost effectiveness of the drug court for these stakeholders is questionable. Legislative limitations of the WA drug court were also mentioned as was the problem of not reaching indigenous offenders. A number of stakeholders in this group pointed to fundamental problems – that the drug court may not be culturally appropriate or at least “fit” with the reality of many indigenous clients - requiring the meeting of appointments, and constant monitoring. The need to constantly assess where the most cost effective results for investment are achieved was raised by a number of stakeholders.

### ***Juveniles***

Some noted the similarity between the drug court model and the Children’s Court approach. The management of drug court clients is similar to the management of juvenile clients. However, because the requirements of the drug court are so onerous it was seen to be a challenge to attract anyone who would not otherwise be facing a term of detention into the program. Better drug treatment facilities for all juveniles facing the Children’s Court was suggested as a better approach to this problem.

### ***Legislation***

The lack of specific legislation governing the operation of the drug court was seen as a major failure by most stakeholders in this group. There is a slight difference of view as to what is needed or would work best. Dangers were seen with a pre-sentence order that was too long (say 12 months). Exactly what kind of orders are needed will partly be determined by the decision to go with a US or NSW model which is designed first and foremost as an alternative to imprisonment, or alternately a drug court that is designed for the Courts of Petty Sessions to facilitate quicker access to treatment.

## **8.4 Issues and Themes Emerging from Qualitative Review**

Summarising across the four distinct groups some major agreed priorities for reform emerged as well as some general perceptions and views on the operation of the drug court.

### ***8.4.1 Positive regard for the drug court***

The first point to make out of all the comments in regard to the drug court is that it is generally positively regarded. This is particularly the case with participants. Stakeholders and workers, notwithstanding certain concerns, thought the drug court was a good idea and that it was something that was necessary and positive. There were very few respondents who conveyed the idea that the drug court was a seriously flawed concept. These darker responses largely came from the legal areas where aspects of current practice raised concerns about probity and so forth. These concerns are raised separately in the discussion on legislation.

### ***8.4.2 Frustration with the legislative limits on the drug court***

Once having established the positive regard for the drug court the next most common feature to emerge from all interviews was the frustrations with the limited amount of time that the drug court has to deal with the drug dependent offender. This is a direct result of the legislative base the drug court operates from and the constraints associated with it (see chapter 9). In some cases this is seen as such a serious issue that it threatens the viability of the drug court. This frustration emerged consistently from all groups of stakeholders. Some comments to the effect that that it was “setting clients up to fail” or dropping support from offenders when they were at their most vulnerable were made. Most treatment providers suggested times like 12 months as being a minimum realistic period in which to establish and monitor a rehabilitation programme. For those closer to the legal obligations associated with the drug court, and also those concerned with the consistency of the operation of the drug court, the lack of a firm legislative base gives even greater cause for concern.

#### **8.4.3. Absent management**

Problems with the lack of management or effective management structures were highlighted by those that worked most closely with the Drug Court. These included primarily the workers, but also senior justice managers and research and planning stakeholders. The issue of a lack of management also can be seen as underlying a whole range of individual comments from the lack of specificity and management of referrals, the slipperiness of the eligibility criteria, the changing rules and so on. In particular the “lottery” of whom eventually gets on to the drug court perhaps reveals more plainly than anything else that the process is not being carefully managed. It appears that many issues from strategic planning, goal setting, and lines of responsibility and accountability have not been attended to so that to a large degree the steerage of the drug court pilot has been somewhat *ad hoc* and reliant on the good will of all parties who have been willing to set aside their differences “for the time being”. More importantly, perhaps the key issues of achieving the most effective client group and providing a service for those most likely to benefit has not been demonstrated.

#### **8.4.4 Problems with transfer beyond the drug court**

Conjoined with the previous issue the transition to community justice services beyond the periods of time in the drug court was seen as a common issue. The “throughcare” issue was mentioned by all stakeholder groups and was a widely recognized problem. The abrupt termination of intensive care and supervision was seen as distinctly anti-therapeutic. Some suggestions of trying to spread the intervention beyond the four month period were made. Most commonly this problem was linked to the problems with the legislation.

#### **8.4.5 Problems attracting indigenous clients**

Problems attracting indigenous clients were something noted in particular by stakeholders. The issues to do with indigenous clients were seen to be both a problem within the running and administration of the drug court and also more widely as a problem affecting the whole drug treatment community. In general, there appear to be

much wider barriers to assisting indigenous clients and the lack of appropriate treatment services and supports is a problem wider than the drug court.

#### ***8.4.6 Resourcing issues***

In general, resourcing issues are a mixed bag. There is concern that not enough offenders are accessing treatment services. On the one hand, the CATS officers are seen as over worked. On the other, the capping of CATS client loads to no more than 15 sets up a bottle neck for the whole field. Whilst there are debates at a higher level as to whether commonwealth drug diversion money is appropriately used to fund drug court treatment places on the ground, this arrangement has caused problems with CATS officers expecting and demanding drug court clients have access to “paid” places. Treatment agencies become annoyed that such demands can be made when they are catering to a list of deserving, and in some cases more suitable, candidates for treatment.

#### ***8.4.7 Communication and transparency***

Problems in communication and transparency perceived by some in the treatment community have to some extent been overcome by initiating a bimonthly meeting. However, despite the meetings that have been established, treatment providers appear to be asking for more clarity, more information and more feedback about the operation of the drug court. In particular, treatment providers would like to know how decisions for referral to certain agencies are made, to get feedback about their treatment, to be included more in the decision making of the court, to be provided with urinalysis results and to be able to finish or close a certain case effectively.

#### ***8.4.8 Roles, professional standards and protocols for team work***

Many, if not most, CATS officers have professional qualifications as social workers and considerable work experience in case work with adult and/or juvenile offenders. The magistrate is a legally qualified professional. Other members of the team may have no professional qualifications or have quite distinct qualifications in psychology, clinical psychology or medicine. The drug court experiment has involved a number of



emerging and evolving team decision making structures, but ultimately decisions are determined by the ruling of the magistrate. It is not surprising that boundaries have become blurred, responsibilities and lines of authority have become unclear and this has led to considerable distress. Further, it raises the issue as to whether those individuals who are best trained and most qualified to make decisions in regard to a particular area of expertise are being usurped by those less qualified. The essential lesson is that proper lines of accountability and appropriate delegation of responsibilities need to be enforced to accord not only with best practice but to maximize the potential contribution of each team member.

## **8.5 Conclusion**

The review of perspectives from a range of stakeholders and drug court offenders has highlighted and reinforced some well known issues in relation to the drug court. Despite the positive regard that has been generated for the drug court and the general enthusiasm for a new and innovative way of approaching a “difficult to reach” group some distinct and important issues have emerged. These issues have plagued the operation of the court, affect its credibility and need to be resolved. There are three distinct issues that are well known to a greater or lesser extent by all groups of stakeholders. These concerns have been articulated throughout this chapter but largely relate back to the lack of specific legislation, an insufficient time frame and the lack of management and a managed approach to implementing the drug court.

## **9. LEGAL ANALYSIS**

### **9.1 Introduction**

This chapter outlines a range of issues with respect to current law and practice with respect to the drug court in Western Australia. It draws on an analysis of legislation and drug court documentation, combined with the views expressed during interviews with key respondents. This chapter deals almost entirely with the adult drug court, section 9.6 gives a brief overview of the legal issues in the Children's Court. The chapter also considers how far changes to the *Sentencing Act* 1995 that are currently before State Parliament will address these concerns.

### **9.2 The Legislative Framework**

The drug court is unusual in that, although it is perceived as a 'new court' and involves a new way of 'doing business', it has no specific statutory basis and is not mentioned (either by name or by reference to its functions as a 'specialist court') in any legislation. Instead, it derives its authority from a complex – and not immediately obvious - interplay between two quite disparate pieces of legislation:

- The *Sentencing Act* 1995 section 16 empowers courts to adjourn sentencing a person for up to six months. However, there is no statutory basis for imposing conditions when deferring sentence under the *Sentencing Act*;
- The *Bail Act* 1982 is therefore invoked to justify the imposition of conditions on the offender during the period of sentence deferral. In the event that the person breaches those conditions, bail can then be revoked and/or the person can be sentenced under the *Sentencing Act*.

It is apparent that this structure was prompted by a desire to get the drug court pilot 'up and running' without the delays that would inevitably have been involved in drafting and enacting enabling legislation. In some respects, this is understandable;

there is a danger that legislative change can delay and hamper the pursuit of valuable initiatives and a well-run pilot scheme can also allow time to consider and develop the best legislative approach.

However, the current scheme is cumbersome and not easy to understand. It is certainly not a model that reflects detailed ground-up planning and development. Whatever the original justifications may have been, it is also clear that it generates significant issues of principle and some major practical difficulties.

### **9.3 Deferring Sentence and Imposing Bail Conditions: Issues of Principle and Interpretation**

Before examining some of the practical issues that have arisen, some issues of general principle should be raised with respect to the use of the *Sentencing Act* and the *Bail Act*.

#### **9.3.1 *Sentencing Act* Deferrals**

As already noted, the power to defer sentence under section 16 of the *Sentencing Act* does not include any power to impose conditions on the offender. Although section 16 provides the foundation for the drug court, it was not introduced with any kind of conditional supervised regime in mind. It was originally intended simply as a procedural provision basis for obtaining further information (such as Victim Impact Statements, mediation reports or pre-sentence reports). More specifically, it was never envisaged that it would support the panoply of substantive conditions, judicial case management of those conditions and penalties for breach.

#### **9.3.2 *Bail Act* Conditions**

Secondly, questions arise with respect to the use of the *Bail Act* in order to support a drug court regime. In general, the purpose of bail is to ensure that a person attends at future court hearings and to ensure the integrity of court processes. On occasions, the

person may also be remanded on bail, after conviction, for sentencing or (very rarely) pending an appeal against conviction or sentence.

Bail conditions therefore seek mainly to reduce the risk of a person (who is generally still innocent in the eyes of the law) absconding; or interfering with the judicial process (for example, by threatening witnesses); or committing further offences. In principle, the purpose of bail is not to impose stringent drug counselling and monitoring requirements or to embrace judicial case management of a 'points system' for offenders who have already pleaded guilty and who could simply be sentenced.

The Bail Act itself imposes restrictions on post-conviction bail. Schedule One Part C discusses the principles governing the grant or refusal of bail. In terms of defendants who are awaiting sentence, it states that, in considering bail, the judicial officer must consider two factors:

- Whether there is a 'strong likelihood that he (sic) will impose a non-custodial sentence'; and
- Whether there are 'exceptional reasons why the defendant should not be kept in custody.'

The District Court Protocol notes these limitations and states that "it is *assumed*" that the Bail Act provisions do permit a grant of bail because:

- The Protocol states that the drug court should not be used where imprisonment is inevitable;
- 'The drug court must surely qualify as "exceptional circumstances."'

Both of these assumptions are open to debate. First, as a matter of law, the phrase 'exceptional circumstances' is one that causes great difficulty and which varies to some degree according to context. However, it is often said that 'exceptional circumstances' must be matters that arise infrequently; the circumstances do not need to be unique, unprecedented or very rare, but they must not involve regular, routine or

normal events.<sup>183</sup> Under this interpretation, serious questions do arise as to whether the drug court does satisfy the ‘exceptional circumstances’ clause – especially given the prevalence of drug related offending. Sadly, many of the cases that reach the drug court seem all too familiar and routine.

Secondly, in many borderline cases, it may be that imprisonment is not ‘inevitable’ but is still a distinct possibility. In such circumstances, it would not be correct to say that there is a ‘*strong* likelihood’ of a non-custodial sentence; at best, a non custodial sentence might be characterized as ‘possible’ or ‘likely’.

Given these issues of principle and of legal interpretation, it is perhaps surprising that there has not, to date, been a ‘full frontal’ attack on the legality of the current drug court regime. As the Chief Judge of the District Court put it, the existing structure was risky: and there was potential for the drug court to have been ‘derailed before it really got going’. Interviewees frequently used language such as the drug court ‘flying by the seat of its pants’ or ‘papering over the cracks’ caused by the lack of clear legislation. Concerns have also been raised with respect to the position of third parties who act as sureties for the defendant under such a regime.

Most people attributed the lack of fundamental challenges to the drug court structure to a general desire for the Court to succeed and to respect for the professionalism and enthusiasm of the drug court Magistrate and her staff. However, it may also be that challenges would have been more likely if the points system (discussed below) had been more strictly applied and had therefore resulted in more terminations.

Many of the other concerns that are raised in this chapter can also be attributed, in part at least, to the absence of a clear legislative framework setting out the general powers, philosophy and parameters of the drug court.

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<sup>183</sup> For recent High Court decisions in the criminal justice area, see *Cabal v United States* [2001] HCA 42 (on the grant of bail to a person who is subject to extradition) and *Eastman v The Queen* [2000] HCA 29 (on the admission of new evidence). For UK cases in the context of mandatory sentences, see *Kelly* [1999] 2 Cr App R (S) 176, Lord Bingham CJ 182; *Williams* [2001] 2 Cr App R (S) 2; and *Turner* [2000] 2 Cr App R (S) 472.

## **9.4 Supreme Court Referrals**

The interviews revealed universal agreement that some armed robbery offenders who are tried in the Supreme Court are an appropriate potential target group for approaches that focus on drug treatment as a primary goal.<sup>184</sup> This is especially true with respect to the limited number of offenders who are currently placed on an Intensive Supervision Order; generally, these are relatively youthful, first time offenders (or people with limited criminal records) who have been convicted of offences that fall at the lower end of the scale of armed robberies.

The Supreme Court has not yet entered any protocols with the drug court, although the matter has been discussed on several occasions. In correspondence, the Chief Justice commented that members of the Supreme Court support the objectives of the drug court pilot, but that the legislative structure (and especially the use of the *Bail Act*) had engendered ‘real questions of jurisdiction.’

On the one hand, the Supreme Court’s caution is understandable, given the conceptual issues surrounding the current legislative framework. On the other hand, it is unfortunate that an identified target group is not being reached. It is therefore imperative that, in planning for the future of the drug court, consideration be given to the development of a system that will meet the Supreme Court’s needs. The Chief Justice’s comments to this review indicate that more firmly-based initiatives for drug addicted offenders will be strongly supported by that Court.

## **9.5 District Court Referrals**

Notwithstanding the issues surrounding the legislative framework, the Chief Judge of the District Court and the drug court Magistrate developed clear protocols at an early stage for the referral of offenders to the drug court. The full protocol is set out in Appendix 9.1.

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<sup>184</sup> This view was expressed by (amongst others) the Chief Justice, the Chief Judge, the officers from the DPP, Legal Aid and the police.

### **9.5.1 Conditions and Procedures for District Court referrals**

The basic preconditions for a referral are set out below.

1. The defendant pleads guilty and is in the ‘fast track’ system
2. The offence does not fall within Schedule One, namely:
  - homicide
  - grievous bodily harm
  - stalking
  - threats to kill
  - armed robbery
  - aggravated burglaries where the aggravating factor is being armed, causing bodily harm, threats to kill or detaining a person
  - dangerous driving causing death or grievous bodily harm
3. The offence is not a ‘serious drug offence’ or an offence that will result in the person being declared a drug Trafficker under the *Misuse of Drugs Act*
4. The offender does not face a mandatory term of imprisonment (for example, by operation of the ‘three strikes’ home burglary laws)
5. The offender does not face ‘inevitable imprisonment (so that a sentence other than a very long term of immediate imprisonment could not be considered under any circumstances).’
6. The defendant has an illicit drug dependency and is willing to participate in treatment (and has requested an assessment from the drug court as to suitability for inclusion in the drug court)
7. The defendant does not have a psychiatric disorder that would preclude the person from accessing counselling or complying with the rules of the drug court

Provided that these requirements are met, the following procedures apply:

The Magistrate will enter the case into the Fast-Track list (with a date assigned in around 6-7 weeks) and will remand the defendant to the drug court, usually to appear within a few days.

If the drug court considers the defendant to be suitable for assessment, he/she will be remanded for 21 days for a Court Assessment and Treatment Services (CATS) assessment to be made.

If the drug court then decides that the person is to be accepted onto a program, the defendant is further remanded on bail with conditions of:

- Compliance with CATS;
- Urinalysis testing as directed by CATS;
- Compliance with any other conditions such as residence or curfew requirements.

The defendant then appears in the District Court for arraignment. The plea is taken and the Judge considers whether referral to the drug court is an appropriate option. If so, the court utilizes the Sentencing Act powers and the defendant is remanded to a date no more than six months ahead hence on bail conditions that require compliance with the drug court regime. If a drug court program is not considered appropriate, the defendant will be sentenced.

It should be noted that, as a consequence of bail being granted for a period of 6-7 weeks prior to the commencement of the six month sentence deferral period, defendants may, in District Court matters, effectively be subject to drug court supervision for 7-8 months.

### **9.5.2 Issues**

In essence, the protocol therefore makes the drug court Magistrate a ‘sub-contractor’ for the District Court. There was general agreement that, because of careful planning



and the very pragmatic approach taken by the Chief Judge and the drug court Magistrate, the protocol has generally worked well in a procedural sense. However, a number of systemic issues were raised.

- Many interviewees expressed disappointment that only 7.4% of drug court referrals have involved District Court matters.
- There was a concern that ‘inappropriate’ referrals had sometimes been made, where the case really called for a sentence of imprisonment.
- At the stage when offenders are initially admitted for drug court assessment, the proceedings are relatively brief and some reports (such as Victim Impact Statements and laboratory reports as to drug purity) only become available at the later date of arraignment. This can create difficulty if, for example, the offence turns out to be more serious than was originally perceived.
- The test in the protocol of whether imprisonment is ‘inevitable’ is not always easy to apply. For example, the Chief Judge noted that the Court of Criminal Appeal has taken a very strong stance against offences of stealing as a servant. However, in some cases, submissions by the DPP had stated that imprisonment was not, in their view, ‘inevitable’.

## **9.6 Children’s Court**

A form of the drug court has been implemented as an adjunct to the operation of the Children’s Court. This juvenile drug court is quite distinct from the adult drug court, and is governed by different legislation (the Young Offenders Act) which is not as time restrictive as the legislation governing the operation of the adult drug court. The procedure followed at the Children’s Court is also quite different from the adult drug court. The main difference is that the President of the Children’s court makes the initial determination and then refers the matter to the Children’s Court magistrate who handles the case. Unlike the adult drug court the drug court program for juveniles is anything up to 6 months in duration, this is because there is no limit on time on deferral of sentencing under the Young Offenders Act. The young offender who

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successfully completes drug court will typically get a 12 month Conditional Release Order. Combined with the drug court, this provides a period of approximately 15 months of supervision. In this way the provisions for engaging and supervising juvenile offenders are adequate and no changes to legislation are required.

The processes followed at the Children's Court have evolved over the two years of the pilot. Originally, the President of the Children's Court was involved in the whole process (referral, monitoring and sentencing) and drug court was conducted in open court. This process was changed as it was felt there was a conflict of interest between the different roles (sentencing versus mentoring/monitoring) and the process was very time consuming given the President's other court commitments.

Key legal stakeholders at the Children's Court have welcomed the extra resources provided by the PDCPP. The special juvenile CATS officer is seen as providing a useful service in brokering drug treatment services when sentencing is deferred. Regular juvenile justice officers usually only operate in this way following sentence. Furthermore the judicially supervised case work approach where all the legal stakeholders (prosecution, CATS, bail coordinator, lawyer, magistrate) operate as a team has been seen as providing a positive focus for the court. In the same way that the adult drug court attempts to capitalize on the motivation associated with avoiding imprisonment the juvenile drug court works with juveniles who would otherwise have received a sentence of detention, and who are aware that if they do not complete the drug court program they will be sentenced to detention. There is a particular motivation for 3<sup>rd</sup> strikers who would otherwise be facing a sentence of 12 months detention.

Legal stakeholders at the Children's Court believe that the Children's drug court is making a difference and has been a positive enhancement to the range of measures that can be taken to assist juveniles, reduce their offending and avoid detention. At the present time the Children's Court is considering broadening the criteria for acceptance onto the drug court. Generally, only juveniles who would otherwise have been sentenced to detention have been accepted. Consideration is now being given to juveniles who are facing an Intensive Supervision Order.

## **9.7 Is the Drug Court a ‘Top End’ or ‘Bottom End’ Alternative?**

One of the most important issues is where the drug court fits in relation to other possible options and approaches. This is of significance not only in understanding the current drug court regime but also in understanding the likely effect of pending legislative changes. The evaluation revealed very different views.

Two specific questions arise:

- What does the drug court offer that traditional sentencing options such as Intensive Supervision Orders (ISOs), Community Based Orders (CBOs) and fines do not offer?
- Is the drug court conceived primarily as a lower end option (i.e. as an alternative to non custodial sentences) or as a top end measure (i.e. as an alternative to imprisonment)?

In terms of the first question, it must be stressed that drug court programs involve conditions that are very similar (or identical) in content to those that can be imposed in a CBO or ISO – such as drug counselling and urinalysis testing. The key difference is that drug court offenders are monitored and managed by the court itself rather than by Community Justice Services.

In terms of the second question, there was agreement that the drug court currently operates as an alternative to both custody and to non-custodial options. However, there were considerable differences of opinion as to the balance. Magistrate Wager took the view that a large proportion of offenders would have gone to prison had it not been for the drug court. Others, including Legal Aid, would have placed a lower figure on this. However, the Legal Aid lawyers sensed that there has been something of a ‘swing’ and that a greater proportion of drug court offenders are people who would otherwise go to prison than was the case in the earlier days of the Court’s operations.

It is not possible to test these views conclusively. However, the investigation undertaken in earlier chapters suggest that many if not most drug court cases would have been unlikely to attract imprisonment. The reasons for this conclusion are as follows:

- The drug court is primarily (over 90% of cases) dealing with Court of Petty Sessions matters. It should also be noted, in this regard, that the Court of Petty Sessions also has quite limited jurisdiction compared with lower courts in many other jurisdictions (such as Victoria and New South Wales).
- The drug court only deals with cases where the person has pleaded guilty under the fast track system – and, for that reason alone, is entitled to significant credit in sentencing
- The offences are primarily dishonesty (47%), drug offences (14%), Road Traffic Act offences (8%) or Police Act matters (8%). There are few offences in the category of crimes that more commonly attract a custodial sentence such as burglary (6%) or assault (1%).
- The Bail Act requires that there is a ‘strong likelihood’ of a non-custodial sentence
- The District Court protocol precludes the drug court where imprisonment is ‘inevitable.’
- Over 56% of indicated sentences are non-custodial (mainly a CBO or ISO). Magistrate Wager stated that the indicated sentence is not a completely accurate guide because she will give credit for the person’s performance in the assessment period of around 5 weeks (and she may therefore give a lesser penalty than she would have given if she had simply been sentencing the person). On the other hand, the Legal Aid lawyers commented that they thought the indicated sentences were at the ‘higher end’ of the range of what would generally be expected.
- Only around 35% of people who are terminated from drug court are sentenced to a term of imprisonment. (37% are simply fined and around 40% receive a CBO or ISO.).

In summary, there appears to be a good deal of confusion about the proper place of the drug court but the evidence strongly indicates that it operates primarily as an alternative to non-custodial measures – and this is largely mandated by the legislative framework.

In principle, there is no reason why a properly – constituted drug court cannot to some degree serve a dual role - both as an alternative to custody and as an alternative to some non-custodial sanctions. However, there does need to be a general policy direction – ideally from Parliament - as to its basic position and role. Particular care must be taken to ensure:

- Reasonable parity in dealing with offenders (for example that one offender receives drug court and an equivalent offender is sentenced to a fine or immediate imprisonment);
- That undesirable ‘net-widening’ does not occur; in other words, that offenders are not swept into the drug court if their offences could have been dealt with by other less intrusive penalties;
- Cost effectiveness in concentrating drug court resources on those who really need a regime.

The next section also raises issues with respect to the drug court’s place. As we have seen, current practices see the Court mainly as a lower-end option but the Bill that is currently before State Parliament firmly locates it solely as an alternative to custody.

This generates some further awkward questions. The drug court pilot largely depends on Commonwealth funding for treatment agencies. However, the avowed basis for this Commonwealth funding appears to have been an early intervention model rather than an ‘alternative to imprisonment’ model.

## **9.8 Types of Substance Abuse**

The main focus of the drug court is on monitoring illicit drug use and the main monitoring tool is urinalysis. Subject to what is said later about the points system for

cannabis, this means that the main target drugs are opiates, amphetamines, benzodiazepines, methamphetamine and cannabis. This leads to two major limitations, as acknowledged by all those who were interviewed:

- The system excludes alcohol abuse (which is a legal drug and is not subject to urinalysis);
- The drug court regime offers little or nothing for ‘sniffers’ (i.e. those who abuse petrol, paint or solvents) or for poly-substance abusers who have a serious solvent abuse problem.

In other words, there is an inherent degree of selectivity in the type of offenders who are likely to access and benefit from the drug court as it is currently constituted.

This appears to provide at least part of the explanation as to why relatively few Aboriginal offenders have accessed the drug court to date; their patterns of substance abuse may fall beyond the reach of the current drug court. Certainly, many of the strongest concerns expressed by Aboriginal people revolve around ‘sniffing’ and alcohol abuse.

## **9.9 Access by Aboriginal Offenders**

Patterns of substance abuse would appear to provide part of the explanation for indigenous under-representation in the drug court. More detailed analysis would be required to unpick all the factors but other factors probably include:

- The comparative lack of indigenous – specific detoxification and treatment facilities;
- The fact that the Aboriginal Legal Service appears to have less engagement with the drug court than Legal Aid;
- The fact that many Aboriginal defendants acquire longer criminal records at an earlier age than their non-indigenous counterparts and may therefore be ‘higher end’ offenders.

It is a matter of considerable concern – shared by all those who were interviewed – that the drug court appears to be missing many Aboriginal offenders who have serious substance abuse problems.

To some degree this is symptomatic of the fact that Aboriginal people (and especially young people) bear the brunt of tough, pro-imprisonment strategies such as three strikes burglary laws: but invariably seem to have lesser access to diversionary options and innovative alternatives. These issues need to be taken into account when addressing future directions in dealing with Aboriginal offenders with substance abuse problems.

## **9.10 The Team Approach**

The drug court's team approach is very different from the more individualistic, judicial officer focus of traditional courts. The multi-disciplinary approach attracted widespread in principle support but some difficulties and notes of caution were sounded. These are outlined below.

- In the words of the Chief Judge of the District Court, the notion of teams is “very alien; this is not necessarily a bad thing but raises questions about whether the drug court really is a *court*.”
- Some, including staff from the Office of the Director of Public Prosecutions, commented that the drug court procedures differs fundamentally from other legal proceedings in that important decisions are taken in the absence of the offender. However, most interviewees did not identify this as a major problem.
- The offender's legal representative will be present at team meetings but it was suggested that this can generate potential conflicts of interest or confusion of roles. For example, is the offender's legal representative there to ‘get the best deal’ for the client or to come up with the best therapeutic intervention model (which may be very different and far more intrusive than the ‘best deal’).

- It was also said that the prosecutors are placed in a difficult position. For example, the DPP's traditional approach is to emphasise punishment and public protection. The role of prosecutors in the drug court approach is less clear and prosecution notions of the 'public interest' are less clear-cut.
- Team discussions are not constrained by the rules of evidence that apply in normal courts. Given that the focus is on developing therapeutic interventions, this is understandable. However, it has generated some issues and the police prosecutor firmly expressed the view that the system is rather one-sided. He commented that positive statements about offenders by CATS officers and treatment agencies are almost always accepted at face value. However, he said that, when more negative questions arise out of police intelligence information, the traditional rules are invariably invoked and such intelligence tends to be discounted with comments such as "prove it"!

## **9.11 The Six Month Time Limit**

As already explained, the legislative linchpin of the drug court is the power under the *Sentencing Act* 1995 to defer sentence for up to six months. However, the effect of procedural factors is that different time frames result for District Court as opposed to Court of Petty Sessions matters. In the Court of Petty Sessions, there is often only 4-5 months left after the CATS assessments have been completed. However in District Court matters, the six months may effectively be extended to 7-8 months because of the period of assessment, on remand, prior to arraignment. These differences are not logical or deliberately planned and bear no relationship to the offender's possible treatment needs.

In any event, there was unanimous agreement throughout the consultations that six months is too short a period for a drug court program to be effective. Many interviewees even suggested that it is, in fact, particularly bad for a person's regime to be changed after 4-6 months as this is often a crucial time in treatment and a period when stability is important.



These problems are exacerbated by difficulties that exist in the transitional arrangements for ‘continuing participants’; in other words, for those people who move onto a supervised sentence such as a Community Based Order (CBO) or Intensive Supervision Order (ISO) after the period on drug court.

### **9.12 Transitional Arrangements for ‘Continuing Participants’**

Most of the offenders who successfully complete the drug court program (over 70%) are then sentenced to a Community Based Order (CBO) or an Intensive Supervision Order (ISO). These offenders have come to be called ‘continuing participants’. CBOs and ISOs can, of course, involve conditions that are, in many respects, very similar to those that apply during drug court – such as substance abuse counselling and urinalysis testing. The obvious intention is that there should be continuity of treatment and monitoring.

However, the evaluation revealed some major difficulties in terms of both monitoring and service delivery for offenders moving from the drug court regime onto a CBO / ISO.

- There is a structural change in the management regime. There is no longer case management through the drug court as the administration of community sentences is a matter for Community and Juvenile Justice Services (CJS). Thus, the offender no longer reports to the Magistrate in Perth but to a Community Corrections Officer (CCO) in, say, Midland, Fremantle or Mirrabooka.
- Offenders may have become familiar with the expectations and requirements of the drug court regime and this change can be difficult for them to manage.
- CCOs may have a different attitude and different expectations from CATS staff and the drug court Magistrate. CCOs also have a significantly higher case load than CATS officers, limiting the amount of time they can devote to a continuing participant.

- When the case is transferred to Community and Juvenile Justice Services, the offender may well be referred to a different treatment agency which services Community Justice Services in the area in question, with a consequential lack of continuity.

To some degree, these difficulties may be reflective of the different perceptions and perspectives of CATS officers and CCOs. However, the evidence clearly suggests that the problems are also structural. The drug court sits somewhat uneasily in the divisional structure of the DOJ. It straddles both Court Services and Community Justice Services and there does not appear to be any single person or senior management position with overall responsibility. Interviewees often commented that the DOJ appears to be supportive of the drug court and noted that numerous senior Departmental staff will generally attend meetings (when they are held). However, they commented that it is not clear who, exactly, has ownership, responsibility and oversight.

### **9.13 The Points System: Philosophy and Practice**

One of the most interesting innovations of the drug court has been the concept of the 'points system'. Offenders will lose points for non-compliance (for example, by returning a positive urinalysis test or failing to attend for counselling) but may also be able to 'win back' points for positive facets of their performance. If they exceed the prescribed number of points (generally 20) they may face termination.

In principle, this approach was seen to have significant benefits over the more traditional approach to community sentences where people tend to be penalized for breaching orders and have no formal capacity to 'redeem' themselves for such breaches. All those who were interviewed were of the view that an approach which embodies rewards as well as 'punishments' has a good deal of merit; it recognises that some degree of relapse is likely; it can help to keep people engaged even when they have taken drugs or are, for other reasons, facing difficulties; and it allows people to have a sense of how they are 'travelling' on their program.

It was also suggested that a structured model of rewards is one to which consideration could be given in other areas such as sentence implementation and parole supervision. At present, for example, offenders on parole have no equivalent structure for 'winning back' good standing.

It became clear that there have been a number of changes to the points system during the period of the drug court's operations. Magistrate Wager explained that these changes were a reflection of the fact that this was a new 'way of doing business' and that adjustments were to be expected. For example, the normal cut off under the points system is 20 points but some offenders may be given less latitude (some being allowed, for example, only five points).

Like other agencies, the drug court has experienced particular difficulty in developing its response to cannabis use. On the one hand, cannabis is an illegal substance but, on the other, it is generally considered to be less harmful than drugs such as heroin or amphetamines. At the start of the drug court Pilot, cannabis use would lead to a loss of points. However, the current strategy is generally to treat cannabis use more as a 'lifestyle' issue that merits counseling rather than penalizing the person with a loss of points. A different approach may, of course, be adopted if the cannabis use is especially problematic (for example, if it is associated with psychiatric problems).

The monitoring regime may also reveal problematic alcohol consumption. Since alcohol is a legal substance, the current drug court policy is to treat alcohol abuse also as a 'lifestyle' issue.

However, although all saw merit in principle a system of winning back as well as losing points, a number of issues were raised with respect to the implementation and enforcement of the points system. They included the following points.

- The points system is integral to the operation of the drug court but has no specific statutory basis. This is a particular problem given that the system provides the key monitoring tool and can lead to the drug court regime being cancelled and the offender being sentenced. The general view was that the

principle of the points system should have statutory force, with the detailed rules regarding loss of points being a matter for rules or court protocols.

- The absence of statutory authority for the points system is especially problematic given that it means, in effect, turning a legal blind eye to some degree of criminal behaviour (illegal drug taking).
- Concerns were expressed as to whether the rules are sufficiently clear. For example, Legal Aid representatives stated that the rules for counting the loss of points are fairly clear; but the rules that apply to getting points back are less clear. Cannabis use provides an interesting example. On the one hand, drug court practice is not to impose a loss of points for cannabis use. On the other hand, Legal Aid stated that positive cannabis tests hinder a person's ability to win back points.
- Some concerns were also expressed (notably by Legal Aid) as to whether there is consistency in the application of a lower points limit to some offenders as opposed to others.
- There was concern (especially on the part of the police prosecutor) that it was too easy for offenders to win back points and that the system appeared to be open to manipulation. One example that was given concerned a person who was to lose points for a positive urinalysis result. This loss of points would have resulted in the person going over the 20 point limit. However, the person was then given credit, in the form of points, for having attended drug counselling sessions, so that the points remained pegged below 20.

This last example is indicative of the overall philosophy of the points system. Discussions with the drug court Magistrate and others showed that *the points system is, in essence, a motivational tool rather than a termination tool*. In other words, it is operating to try to keep offenders engaged rather than as a coercive tool. This perception is strongly borne out by the statistics, which show that there have been only a handful of terminations from the drug court based on loss of points.

There is obviously room for considerable further debate around the use of the points system. In itself, it may not be a bad thing for the system to operate as a motivational rather than a coercive tool. However, there does appear to be considerable confusion over the purpose of the points system. Most ‘outsiders’ believe that it has a stronger coercive role and are surprised to find that it has resulted in few terminations. It is also a matter of concern – because it goes to the credibility of the regime - that some key players believe, at best, that points are too easily won back and that, at worst, scores are adjusted / ‘manipulated’ so that they hover just below the cut off point.

## **9.14 General Perceptions of Drug Court Case Management**

A number of issues have already been raised in earlier sections with respect to the perceptions of the drug court regime. It is worth now drawing some of these together and adding a few further observations.

- There is enormous respect for the professionalism, efficiency and enthusiasm of the key people involved in the drug court, from Magistrate Wager down.
- In principle, there is something to be said for judicial case management of the type employed by Magistrate Wager but some believe that:
  - It can confuse the judicial role;
  - It may confuse the role of prosecution and defence lawyers.
- Much of the value of judicial case management depends on the judicial officer. It was said by some interviewees that there have been some issues of consistency when other Magistrates have sat in the drug court.
- Judicial case management is a skill which requires commitment and appropriate training and consistency. For this reason, many interviewees expressed doubts as to whether the drug court scheme would be capable of being ‘rolled out’ even if the legislative basis for such a scheme is tightened up.

## **9.15 The Sentencing Legislation (Amendment and Repeal)**

### **Bill 2002: Does it Serve the Drug Court's Needs?**

#### ***9.15.1 Introduction***

Almost all stakeholders believe that the most pressing single issue is that the drug court needs a firmer legislative basis. The Supreme Court holds some doubts about the very validity of the current structure and it is, at best, obscure. A range of more specific problems also arise, most notably the purpose and authority for the points system and the place of the Court in relation to other options (especially whether it is a lower or higher end option).

During the period of this evaluation, the State Parliament has been debating legislative changes contained in the *Sentencing Legislation (Amendment and Repeal) Bill* (SLARB) 2002. These reforms are intended, inter alia, to provide a firmer basis for the drug court and will have a major impact on its operations. At the time of writing, the Bill is before the Standing Committee on Legislation of the Legislative Council. This section analyses the proposed changes and asks whether they will address the gaps and issues raised in this evaluation.

The legislative position is further complicated by the fact that the DOJ is currently working on the development of a new *Magistrates Court Act*. Some senior departmental officials suggested to the review team that this will be the vehicle to address the issue of specialist courts such as the drug court, the Family Violence Court and other initiatives. However, such legislation will be a complex long term project, as it involves a complete review of the *Justices Act* and a number of other pieces of legislation. It will therefore be some time before it will be finalized and it remains in the early stages of development. In any event, SLARB contains important changes which fall quite outside any future *Magistrates Court Act*. This analysis is therefore limited to the SLARB amendments which the government aims to have in force by the middle of 2003.

If enacted, the new laws will meet some of the problems that have been identified; but that they will also radically change the place of the drug court; and they fail in several key respects to address the identified gaps or to provide a satisfactory model. The proposals were also developed without adequate prior consultation with key stakeholders.

### ***9.15.2 W(h)ither the current regime? Will there be a double track system?***

SLARB introduces a new measure, the Pre Sentence Order (PSO) that, according to official statements, was mainly designed to meet the drug court's needs. The details are discussed later but the first point to note is that SLARB does not herald any changes to section 16 of the *Sentencing Act* 1995, which is the basis of the current operations of the drug court, and which is based on a maximum deferral period of six months. In other words, it would appear that the current regime (with the various deficiencies identified above) may continue to have a life independent of the SLARB amendments.

It should be emphasised that, if it is so, it will increase confusion in that there may be two separate avenues to the drug court; one based on the existing model (*Sentencing Act* section 16 and the *Bail Act*) and the other based on the new *Sentencing Act* provisions relating to the PSO.

### ***9.15.3 The Pre Sentence Order***

The Pre Sentence Order (PSO) order applies to imprisonable offences (other than offences that carry mandatory imprisonment or offences against the *Prisons Act*). The PSO involves the court adjourning sentence for a period of up to 12 months.<sup>185</sup> The offender must then reappear for sentencing at the time and place specified by the court (the 'sentencing day').

Clause 33A states that a court may make a PSO if it considers that:

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<sup>185</sup> Clause 33B(2).

- (a) the seriousness of the offence warrants a term of imprisonment;
- (b) a PSO would allow the offender to address his or her criminal behaviour and the factors that contributed to it; and
- (c) if the offender were to comply with a PSO, the court might not impose a term of imprisonment.

Clearly, the PSO is not specific to the drug court but is of general effect; in other words, it can apply to any type of offence and does not necessarily connote drug court involvement. In addition to allowing a longer deferral period, the PSO (unlike the previous laws) also contains express authority for conditions to be imposed.<sup>186</sup>

#### ***9.15.4 The purpose of the PSO***

The explanatory notes to SLARB describe the PSO in some detail but offer no explanation as to why it has been introduced. During the Second Reading debates in Parliament, the Attorney General, Hon J McGinty explained the genesis and role of the PSO as follows:<sup>187</sup>

- |                      |  |
|----------------------|--|
| <i>“Ms S Walker:</i> | ...According to Dr Morgan, <sup>188</sup> the Bill appears to be driven by concerns about the basis of the drug court. |
| <i>Mr J McGinty:</i> | I think that is right  |
| <i>Ms S Walker:</i>  | Is it all a result of the drug court?  |
| <i>Mr J McGinty:</i> | That is the impetus  |
| <i>Ms S Walker:</i>  | Will it be used in only the drug court?  |
| <i>Mr J McGinty:</i> | Many of the amendments are designed to try to confine it to the substantial operation of the drug court.               |

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<sup>186</sup> See below.

<sup>187</sup> Hansard, 6 November 2002.

<sup>188</sup> Ms Walker was referring to a Submission to the Attorney General by the writer. The Attorney General had passed a copy of this Submission to Ms Walker for her information prior to the Parliamentary debates.



In other words, whilst the PSO is, on paper, an order of general application, its impetus and prime focus are the drug court.

#### ***9.15.5 Consultation and awareness***

Given that the PSO avowedly addresses the needs of the drug court (and, as we shall see, portends very significant change) one would have anticipated a high degree of awareness and debate about the proposed change. However, the review revealed a lack of knowledge about the scope, impact and often even the existence of the proposed PSO. The drug court Magistrate herself and Legal Aid have certainly given consideration to the proposals but most of the other interviewees had little or no idea of what is proposed and, if they were aware of the proposal, were not across the details or the implications until they were outlined by the research team. For example, many DOJ staff (including senior staff) who have been involved in the drug court pilot appeared unaware of the proposal for the PSO, and believed that the current legislative package only addresses issues to do with parole and remission.

The lack of awareness is compounded by a lack of detailed consultation prior to tabling. Given that the drug court was a small pilot program (and, to some extent, a ‘flagship’) involving only a handful of key players, it would not have been difficult to conduct detailed consultations with the key legal stakeholders prior to the Bill being drafted. However, people interviewed for this evaluation felt they had not been adequately consulted about the PSO prior to the Bill’s second reading. Magistrate Wager and Chief Judge Hammond could not recall any consultations. The Chief Justice said that the first he knew was when the Bill arrived on his desk on the second reading date.

This lack of consultation continues a pattern that developed in the area of sentencing reform during the 1990’s; but it may also have been influenced by the fact that there appears to be no single person in the DOJ with responsibility in the area. Unfortunately, a lack of consultation augurs badly for legislative reform meeting its objectives.

**9.15.6 Does the PSO reflect / support drug court-style case management?**

As stated, the PSO is a generic order which is not drug court specific. It also seems to proceed on a different assumption from the drug court model in that the core regime is precisely the same as that which would apply to many people sentenced to a CBO or ISO.

- The *standard obligations* are that, during the adjournment period, the offender must comply with a range of standard obligations. The standard obligations are to report to a Community Corrections Officer within 72 hours; to notify a CCO of any change of address; and not to leave WA without permission.<sup>189</sup>
- In addition to the standard obligations, every PSO must contain one or more '*primary requirements*'.<sup>190</sup> The three primary requirements are a 'supervision requirement'; a 'program requirement' and a 'curfew requirement'.

These conditions are spelt out in some detail<sup>191</sup> but will not be repeated here; the basic point is that they precisely mirror the terms of the conditions which can be imposed when a person is sentenced to a Community Based Order (CBO) or an Intensive Supervision Order (ISO). The only condition that may be imposed in an ISO / CBO but not in a PSO is community work.<sup>192</sup>

To a large degree, the PSO therefore seems to be a *pre-sentence version of existing sentences*. The only difference is that the Bill anticipates that the courts may take a more active role in monitoring conditions than is generally the case with the CBO / ISO. It does this by making provision for 'performance reports' to be given by

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<sup>189</sup> Clause 33D.

<sup>190</sup> Clause 33E.

<sup>191</sup> Clauses 33F to 33H.

<sup>192</sup> The original drafts also allowed for community work obligations in a PSO but this has been removed.

Community Corrections Officers to the court during the deferral period, should this be requested by the judicial officer.<sup>193</sup>

When it comes to the sentencing day, the court will consider performance reports and proceed to sentence the person. However, there is no requirement or presumption that the original judge will sentence the person on sentencing day and no requirement that the original judge gives an indicative sentence at the point of deferral. This poses some problems in that the judge who presides on the sentencing day may have no idea of the prison term that the ‘deferring’ judge had in mind. In this sense, the PSO is quite different from a suspended sentence, where the term is spelt out.

In summary, it therefore seems to be assumed (though the legislation is by no means clear) that the deferring Judge will retain some level of ‘case management’ over people who are on a PSO. But the mechanics of the PSO appear to be ad hoc and also to be somewhat different from those which have hitherto operated in the drug court.

In terms of the issues that were raised in previous sections, it should be stressed that the Bill fails to provide a firm statutory footing in two key areas of drug court operations:

- The ‘team’ approach
- The points system

#### ***9.15.7 Where does the PSO ‘sit’?***

The previous chapter showed that the drug court is currently only available in cases where the person pleads guilty and, in District Court matters, where the person is under the Fast Track system. By operation of the *Bail Act* and relevant protocols, it also operates largely as an alternative to non-custodial options. It cannot be used, for example, where imprisonment is ‘inevitable’. The data strongly support the

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<sup>193</sup> Clause 33I

conclusion that drug court is currently mainly an alternative to non-custodial measures.

The PSO will be an entirely different creature. First, it is not limited to cases where there is a guilty plea. Second, it is to be imposed only where the offence ‘warrants a term of imprisonment under Part 13 [of the *Sentencing Act*]’. Part 13 of the Sentencing Act deals with sentences of immediate imprisonment. In other words, the PSO is a ‘top end’ alternative to immediate imprisonment. It is not to be used in lieu of, say, a fine, CBO, ISO or a Suspended Sentence.

In summary, the official ‘impetus’ for the PSO was to address the operations of the drug court and it is in the context of the drug court that it is expected to have its primary role. However, the PSO will change the fundamental bases upon which the Court currently operates. In particular, it will not depend on a guilty plea and should, in future, only apply to cases where imprisonment *is the only other option* – the diametric opposite of current practice. As we have seen, this will also happen without many of the key players having been aware of such a fundamental shift.

The PSO must also be seen in the context of the other legislative changes that are in train. The Bills that are currently before Parliament will abolish sentences of six months or less and will also require courts to reduce the level of most sentences by one third to take account of the abolition of remission. *This means that the PSO should only be used where the court would sentence the person to more than nine months under the present laws.*

As noted in the previous chapter, this development also has broader potential implications. The Commonwealth funding to treatment agencies was intended to target early intervention; this may be at odds with the conception of the drug court as a higher-end option which would clearly be the effect of the PSO.

### **9.15.8 What happens on sentencing day?**

Another example of the confusion surrounding the development of the PSO can be seen in the provisions dealing with the powers of the court on sentencing day. The original drafting of the Bill appeared to mean that the only options open to the court after the deferral period would have been an immediate custodial sentence or a suspended sentence without conditions.<sup>194</sup> This would clearly have been counter-productive; courts would hardly want to imprison people who had successfully survived the drug court regime in the community; and a suspended sentence (to which conditions cannot attach) would often be less appropriate than a CBO or ISO which allows continued monitoring and supervision.

Following representations by a number of people, this part of the Bill has now been changed so that it is clear that the sentencing court can use any of the sentences under the *Sentencing Act* 1995, including a CBO or ISO.

### **9.15.9 The time limit**

As noted earlier, we may be on the cusp of a double track system; where some people access the drug court through the existing processes (with a six month upper limit) and others through a PSO (with a twelve month upper limit).

We have already seen that six months is regarded as far too short and the general view is that 12 months (i.e. under a PSO) is a more appropriate timeframe for treatment. However, there will still be a need for more effective transitional arrangements to be put in place for ‘continuing participants’ who move from the drug court to a CBO/ISO.

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<sup>194</sup> It stated that, on deferring sentence, the court would have to be satisfied that if the offender complied with the PSO, the court might *either reduce the term or impose a suspended sentence*.

#### **9.15.10 What does the PSO give that we don't already have?**

At first sight, the existing non-custodial sentences (Conditional Release Order (CRO) CBO and ISO) seem to offer all that can be achieved by the PSO – and, in many respects offer rather more flexibility.

- The CRO, CBO and ISO all entail the court imposing conditions on the offender
- If the person breaches the conditions or re-offends, the court may then resentence that person for the original offence as well as for the latest offence or breach
- CROs, CBOs and ISOs can be longer in duration (up to two years)
- The conditions in a PSO directly mirror those which can be placed in a CBO or ISO (with the exception that the CBO / ISO can also contain a community work condition)

One has to ask, then: *What is the point of the PSO?* It would appear that the main differences are:

- the possibility of some level of judicial case management (though this is not necessary);
- the fact that the PSO is a 'pre-sentence' order rather than a sentence.

However, these do not seem to be particularly substantial differences, especially when weighed against those difficulties which the PSO generates in terms of the hierarchy of sentences and the sentencing process.

#### **9.15.11 The sentencing hierarchy and the sentencing process**

Section 39 of the *Sentencing Act* 1995 sets out a clear hierarchy of sentences. The court must not impose any particular sentence unless satisfied that it is not appropriate to use any of the earlier listed sentences. It is obviously important to ask where the PSO fits into such a scheme. The basic ranking of sentences is as follows:

- Fine;

- CRO;
- CBO;
- ISO;
- Suspended Sentence;
- Immediate Imprisonment.

Since the PSO is not a sentence but an order imposed *before* sentencing, it would appear logically to be a matter which would fall to be considered *before* the court turns to the sentencing options under section 39. However, as we have seen, it is an order that can only be imposed in lieu of immediate imprisonment. This means that it should not be imposed unless the court has already traversed section 39 and ruled out all the other options (the fine, CRO, CBO, ISO and Suspended Sentence). This raises an obvious question:

*How could a court have eliminated, as unsuitable, all those sentences that involve supervision (including a CBO and ISO); only to then defer sentence on the basis of imposing precisely the same conditions (other than community work) that it could have imposed in a CBO / ISO – but which it has eliminated as unsuitable?*

Again, the answer seems to be that it may allow judicial case management (though, as noted earlier, this is not a requirement and may be quite ad hoc).

A further question must also be asked:

*Is it right in principle to impose onerous conditions in an option which is not designated a 'sentence' but is merely a 'pre-sentence order' (especially when it is the most severe option short of immediate imprisonment)*

## **9.16 Conclusion**

### ***9.16.1 Current operations***

This chapter has revealed a number of positive features but also a large number of issues with respect to the drug court's legal framework and practical operations.

- The legislative structure reflects an understandable desire to get the drug court pilot program up and running but has many deficiencies:
  - There are some problems of principle in basing a scheme of judicial case management of conditions on an 'enterprising' use of the deferral provisions of the Sentencing Act in combination with the Bail Act;
  - It has been assumed that the drug court constitutes 'exceptional circumstances' for the purposes of the Bail Act. This is open to question;
  - The points system and the use of 'teams' which do not operate under the normal rules of evidence are integral to the process, yet neither has a legislative basis.
- These problems have been a factor in the Supreme Court not yet having engaged with the scheme. However, young, drug addicted people who commit armed robberies at the lower end of the scale of seriousness are an important target group for treatment – based alternatives
- The District Court protocols have worked well in a procedural sense but there have been relatively few District Court referrals and there are concerns that some important information (such as Victim Impact Statements) is not always available at the point of referral for assessment.



### *Evaluation of the Perth Drug Court Pilot Project*

- There is a degree of confusion as to whether the drug court is a ‘lower end’ or a ‘top end’ option. However, the legislative framework and the protocols are consistent with the data, which suggest it is primarily an alternative to non custodial measures.
- The monitoring process (especially urinalysis) places inherent limitations on the scope of the court and excludes alcohol abuse and ‘sniffing’
- Aboriginal offenders are under-represented in the drug court.
- The multi-disciplinary ‘team approach’ has many positive features but raises some challenges with respect to the roles of the Magistrate and the lawyers. Questions have been raised as to whether the drug court really can be called a ‘court’ and about the use (or non-use) of material that is not subject to the normal evidential rules.
- The six month time limit poses major problems and is far too short.
- There are serious difficulties surrounding the transition of drug court defendants onto a Community Based Order (CBO) or Intensive Supervision Order (ISO). These problems appear structural / managerial and not merely a matter of individual staff.
- It would have been beneficial if somebody in the DOJ (rather than a number of committees) had been given clear responsibility in the drug court pilot.
- The points system whereby people can win back as well as losing points is very attractive in principle. The system has inevitably evolved over the lifetime of the project and different approaches have been taken to cannabis use.
- The points system is used as a monitoring tool rather than a termination / coercive tool and there is evidence that the scores tend to be pegged just below the cut-off point.

Overall, it would appear that the drug court has depended on the enthusiasm, professionalism, efficiency and integrity of those who have been involved in the scheme.

### ***9.16.2 Current proposed legislation***

The *Sentencing Legislation (Amendment and Repeal) Bill 2002* raises as many problems as it solves. It appears to generate some confusion, to be conceptually flawed in terms of its relationship with sentences and it does not provide the drug court with what it needs. The salient points are outlined below.

- It appears to leave in place the existing scheme based on a six month deferral under the Sentencing Act and the use of Bail Act conditions; but adds a new variation on deferrals in the form of a Pre Sentence Order (PSO) that can run for up to 12 months. This is, at best, confusing.
- There is a surprising lack of awareness about the proposed PSO and there was little or no prior consultation with key stakeholders.
- The primary rationale of the PSO is to address the drug court's operations but it does not reflect the judicial case management model of that court. More specifically, it fails to provide a clear statutory basis for two of the most important facets of the Court's operations – the points system and the team approach, both of which are potentially open to challenge.
- The PSO fundamentally changes the status quo in that it will allow drug court access for people who have not pleaded guilty.
- The PSO differs radically from the current system in that it will target much higher end offenders. The drug court currently applies mainly to offenders who would not otherwise go to prison. The PSO can only apply to offenders who would be sentenced to an immediate term of imprisonment of more than six months (which equates to nine months under the current laws).

- The change in focus may raise issues with respect to Commonwealth funding which is supposed to target early intervention.
- The 12 month time limit on the PSO is preferable to the current six month limit but it will still be important to ensure continuity of service if offenders are then sentenced to a CBO or ISO
- The PSO seems to offer little of substance that is not already available by sentencing the person to a CBO or ISO.
- The PSO is confusing in theory and in terms of its ranking in the hierarchy of options: it is not a sentence and yet it ranks above all the sentences that exist in Western Australia apart from immediate imprisonment
- It is arguably wrong in principle to impose onerous conditions in an order that is not a sentence, but breach of which can have dramatic consequences.

In conclusion, our analysis of the Bill suggests that the PSO is ill-conceived and will not meet the drug court's needs. Our consultations also revealed almost unanimous support in principle amongst the legal stakeholders for a different approach which reflects two key principles:

- There should be legislation that is more Drug-Court specific rather than a generic new pre sentencing option which is, in all bar name, a sentence;
- It would be preferable if the drug court's powers were a sentencing option rather than being 'pre-sentence / post-conviction'.

## **10. A REVIEW OF THE DRUG COURT**

### **10.1 Introduction**

This chapter is designed to draw together the essential findings and observations from the evaluation. First, we will outline the salient findings in relation to the stated goals of the drug court. The details of these findings have been provided in the previous chapters. Second, we will isolate and discuss the various issues that have been raised in the course of the evaluation. Third, we consider the performance of the PDCPP in terms of some widely agreed principles of best practice. This chapter will not consider in any detail what may be done to remedy the problems that are identified, as this will be the focus of the final chapter.

In drafting this chapter, we aimed to draw out the key decisions and critical issues which will need to be processed by decision makers in modifying or expanding the drug court. Choices will need to be made in regard to various aspects of the drug court and the consequences of pursuing one strategy rather than another need to be made clear. We hope that this chapter will be useful in pointing out some of the advantages and disadvantages of the various options in regard to establishing the drug court on a permanent basis.

An underlying assumption of the discussion in this chapter is that some form of drug court or court based diversion for substance abusing offenders will be continued in WA. The prospect of the termination of the drug court was not considered to be a realistic outcome. This is for three main reasons. First, the whole development of drug courts and various forms of sentencing options for drug dependent offenders is on the ascendant throughout the world and across Australia. There has been no suggestion that this is a fundamentally flawed development or that it should be terminated. In this context, and given the tentative nature of the PDCPP and the current evaluation, the move to terminate the nascent development of court based diversion in WA would be seen by most observers to be unwarranted and/or premature. Second, and most importantly in terms of the current evaluation, there is nothing to suggest that the drug

court has “failed” and is not seen as a highly valued service by workers and stakeholders. The third reason for dismissing the option of terminating some form of drug court is the degree of good will that has been established in the treatment community around this option (see chapter 9). The drug court has now established itself on the “radar screen” of the treatment community. The consequences of closing down a development that is almost universally considered innovative and well intentioned may damage the reputation of the Department of Justice and jeopardize the amount of future co-operation with innovations in this area.

## **10.2 Salient Findings in Relation to the Goals of the Drug Court**

### ***10.2.1 Reducing the re-offending of drug dependent offenders***

The results of the recidivism analysis (chapter 6) were inconclusive. There were no significant differences observed in recidivism rates between drug court offenders and their comparison groups. This may be a function of the small sample sizes and the short periods of time available for the recidivism analysis. While differences were not significant, offenders who completed DCR/STIR had lower recidivism rates than those who were terminated from DCR/STIR or who were not accepted onto a drug court program. Similarly, the median time to fail (rearrest) for drug court completers was three times longer than for those offenders who were terminated from the program or were not accepted onto a drug court program. These are encouraging findings, but must be interpreted in the context of the lower risk estimates these offenders had prior to referral to the drug court. Clearly, a further recidivism analysis should be conducted when there are larger numbers of offenders who have been through the drug court and longer periods of time have elapsed. More offenders and longer time periods will allow for a more reliable recidivism analysis.

### ***10.2.2 Reducing the level of drug dependence amongst those offenders facing the courts***

It must be acknowledged that the number of offenders dealt with by the drug court represent a very small proportion of all drug dependent offenders dealt with by all the

courts in Western Australia. However, if we focus solely on offenders from the drug court, two lines of evidence suggest reduced drug use by those subject to the drug court regime. The first line of evidence comes from the reduced levels of positive urine tests over time for those who complete the drug court regime (chapter 5)<sup>195</sup>. However, it is possible to argue that the same degree of reduction would have occurred for this set of offenders independently of the drug court. Second, the results of the interviews with a sample of participants provide some support for the reduction in spending on drugs. Although these lines of evidence are far from conclusive they do support the beliefs of those involved in the court that it is making a difference in terms of the level of drug dependence.

### ***10.2.3 Reducing the number of drug dependent offenders being imprisoned***

From the analysis conducted in chapter 7 (section 7.4.3.3), it can be concluded that the drug court reduces the number of offenders with substance use problems who are being imprisoned, at least in the short-term. However, the size of this reduction over the pilot period is extremely small and was limited to a maximum of 134 offenders (18% of all referrals to the drug court). This consists of 92 offenders who completed DCR/STIR and 42 offenders who were terminated from a program. These findings provide qualified support for the finding that the drug court does, to some degree, reduce the number of offenders with substance use problems being imprisoned in the short term. The reduction occurs mainly for those offenders who complete a drug court program, and operates to a lesser degree for those who are terminated from a drug court program.

Because the number of offenders being processed by the drug court represents only a very small proportion of those entering prison over the same period it is unlikely that in terms of absolute numbers the PDCPP could have produced a significant reduction in the number of drug dependent offenders being imprisoned. However, part of the rationale of the drug court approach is that reductions in recidivism will come about

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<sup>195</sup> On average the percentage of clean urine tests increased over the time an offender was on the programme. Less than half (43%) of all urinalysis tests taken in an offender's first month on the drug court were clean. By the final stages of the program the majority of urinalysis tests were clean (see Figure 5.5.3).

as a result of providing more treatment leading to a change in the individual that lessens the likelihood of future imprisonment. Despite the fact that we are unable to provide evidence for such a claim in the current investigation it is still hoped that the intensive treatment provided by the drug court will have longer term effects reducing the numbers imprisoned in the future.

Because this objective (reducing the number of drug dependent offenders being imprisoned) is stated in absolute rather than relative terms, even a reduction of one drug dependent offender entering prison may be seen as a positive result, regardless of the costs involved. Clearly the more meaningful question is “does the investment in the drug court present a cost effective way to reduce the number of drug dependent offenders entering prison?” Perhaps there are other measures that could be taken with the same amount of resources as have been invested in the drug court that would produce an equivalent, or greater, reduction in the number of drug dependent offenders entering prison. For example, perhaps the former CDS enhanced with urinalysis, or maybe a streamlined brokering of services with treatment agencies could produce the same level of effect at a smaller cost or a greater effect at the same cost. There are a range of potentially more cost effective options and this has become an important component of drug court research around the world and across Australia (see chapter 2).

#### ***10.2.4 Reducing the supervision requirements of drug dependent offenders***

Most stakeholders involved in working with drug dependent offenders were quick to point out that this goal is incompatible with the model of intensive case management embraced by the drug court. Indeed, a sign of the success of the drug court is in providing for more supervision, not less. The point is that the drug court should engage serious drug dependent offenders and such engagement will lead to more interaction with treatment agencies and criminal justice workers, not less. The point made clearly by stakeholders from the treatment community (see chapter 9) was that the drug court was welcome as a realistic high intensity investment for a highly needy group of offenders. The point was also clearly made that the intense investment made for the four or five months that the offender is subject to the drug court regime needs

to be followed up with treatment and other servicing for a period of up to one year (or more in some cases). The concept of drug dependent offenders being treated for four months and then not requiring further intensive supervision is considered by most to be quite fanciful. No doubt the intention of those who drafted this particular objective of the PDCPP was that eventually, following sufficient treatment, the offender will be in a position where aspects of their life will be normalised. They will be less dependent on drugs and not committing crime and consequently they will require less supervision (than they would if they had not been treated). However, until the reductions in drug abuse and offending are achieved, higher levels of supervision are not only to be expected but are actually a sign of a programmatic intervention operating as it should. Thus increased supervision is a positive performance indicator, not a negative one.

#### ***10.2.5 Improving the life circumstances of offenders who have been through the drug court***

Evidence from the qualitative analysis indicates that the drug court has “worked” for many of the clients who have been successfully engaged. Subsequent to entering treatment, these offenders received support and guidance and have generally been provided a higher level of attention than would have otherwise been the case. The drug court has helped generally and thus there seems little doubt that it has met this objective. However, support for this conclusion will remain little more than anecdotal unless systematic measures are taken upon completion of programs with further follow up some time after their involvement in the programme.

#### ***10.2.6 Ultimately providing a more cost effective intervention in relation to drug dependent offenders***

As detailed in chapter 8 the actual “cost” of the drug court (that is expenses over and above what would normally be involved in processing offenders involved in the drug court) has been in the order of \$3 million. Further, we argued that this rather modest investment in a new way of dealing with drug dependent offenders was largely offset by the reduction in prison and detention costs for offenders. Precise costs are difficult to estimate with the added complication that this State government initiative depends



on treatment places funded by a largely unconnected Commonwealth funding programme. Subject to a number of caveats, we concluded from our cost analysis (chapter 8) that the costs of the drug court and traditional sentencing are roughly equivalent. If we accept this position, the question of which method is most cost-effective is dependent upon the benefits that are achieved from each alternative. Although the recidivism analysis was not able to be conclusive in regard to which method produced more “crime reduction”, theoretically the drug court would appear to have greater potential than imprisonment in terms of reducing recidivism as well as providing other non crime-reducing benefits.

### **10.3 Issues Raised in Relation to the PDCPP through the Evaluation**

#### ***10.3.1 What is the drug court?***

The first key issue to emerge in the analysis was the central issue of the place and role of the PDCPP. The literature review revealed that compared with most other Australian drug courts, the PDCPP is geared more towards early intervention than a “last stop before imprisonment”. This may be a function of the close involvement of drug treatment authorities in its development, or the unique dependence on Commonwealth early intervention funding. Whatever the reasons for it, the softer complexion of the PDCPP will affect the types of offenders processed and its ultimate impact on crime reduction and imprisonment reduction.

One of the clearest ways to reflect the softer focus of the PDCPP is to consider the proportion of offenders who have been placed on BIR or STIR, two programmes designed for offenders who would otherwise face an alternative non custodial penalty. This group makes up a third (34%) of the 392 (first) referrals placed on a program by the drug court (section 5.4). Furthermore, of those offenders placed on DCR, only 45% were given an “indicated” sentence of imprisonment (section 5.1). Quite apart from the effect this has in moving the drug court to mainly dealing with lower level offenders, there is also the concern that in attempting to administer three separate

programmes or “regimes”, the focus and effort of the court may be somewhat fragmented.

The treatment agencies appear to be keen to engage this less serious group (see comments in chapter 9) and a large sum of Commonwealth diversion resources is available for precisely this group of offenders. Therefore the more routine referral of such individuals to treatment agencies would appear to make sense. This would also have the important advantage of freeing up some of the pressured resources of the drug court.

### ***10.3.2 Legislative base***

The most pressing issue facing the drug court is undoubtedly to provide it with a firmer legislative basis. This conclusion is based on a detailed legal analysis and consultation with stakeholders (as described in chapter nine). To date, the court has operated through an enterprising use of legislative provisions that were never designed with a drug court in mind. This reflected an understandable desire to establish a drug court pilot, but it has many deficiencies which now require remedy. First, there are issues surrounding the jurisdictional basis of the court’s operations. For example, it is open to question whether the drug court does constitute ‘exceptional circumstances’ for the purposes of the Bail Act; and neither the points system nor the use of ‘teams’ (which operate outside normal court procedures) has a clear legislative basis.

Second, the District Court protocols have worked well in a procedural sense but there have been relatively few District Court referrals and there are concerns that some important information (such as Victim Impact Statements and analysis reports as to drug purity) are not always available at the point that the person is referred for assessment.

It is therefore of paramount importance that the drug court is given a firmer legislative foundation. In developing a new legislative framework, the most important policy decision will be whether the court provides a ‘lower end’ or a ‘top end’ option. The

current legislative framework and District Court protocols are consistent with our data, which suggest it is often an alternative to non custodial measures.

The Sentencing Legislation Amendment and Repeal Bill that is currently before State Parliament involves a major policy shift in terms of the place of the Drug Court, but that policy shift has not been made explicit in official debates and documentation. The Bill (which was developed with little or no prior consultation with key stakeholders) appears to herald two routes to the drug court – either through the existing scheme or through the option of a Pre Sentence Order (PSO). It is, at best, confusing to have two avenues to the drug court.

The PSO does have some advantages, especially in that it can run for up to 12 months. However, despite being prompted by the drug court, it is a generic order. This means that it still does not provide a clear statutory basis for two of the most important facets of the Court's operations – the points system and the team approach. The major policy shifts are that the PSO will target higher end offenders who would be sentenced to an immediate term of imprisonment of more than six months (which equates to nine months under the current laws). It will also extend drug court access to people who have not pleaded guilty.

Stakeholders also expressed the view that the PSO offers little of substance that is not already available by sentencing the person to a CBO or ISO and that it will be a confusing addition to the hierarchy of sentencing options. The conclusion is that the best option is for legislation that is drug court-specific and which provides a sentencing rather than a pre-sentence option.

### ***10.3.3 Limited time for intervention***

The consequence of tacking the drug court onto the Sentencing Act and the Bail Act is that the time period for treatment is severely limited. The maximum deferral period is six months and in Court of Petty Sessions matters, this leaves only around four months for intervention by the time assessments have been completed. It is universally agreed that this is too short a time frame for a meaningful, effective or

helpful intervention for a drug dependent offender. In an ideal world, of course, the treatment period could be extended if there was a smooth transition from drug court onto a community based sentence. However, the evaluation indicated significant structural problems in terms of the transitional arrangements for ‘continuing participants’. The limited time period emerged as the major focus of criticism from stakeholders in the treatment community. Apart from the fundamental question of the efficacy of the PDCPP, the inadequate time frame strains the legitimacy of the drug court and more generally the credibility of Department of Justice initiatives in this area.

#### ***10.3.4 Efficiency***

A central issue in considering the viability, sustainability and any expansion of the drug court concerns processing of referrals through the system. The current case flow is dictated by the cap placed on numbers by the CATS team. The monthly average of the number of cases dealt with by all three programmes has fallen steadily over the period of the pilot (see section 5.2). The workload issue of the CATS officers is not a matter that can be investigated here but should perhaps be reviewed within the context of an overall management review. What is at issue is how cases are selected for treatment and which kinds of cases are kept and rejected. Theoretically, given a limited capacity, it would appear to make sense to adjust selection and retention criteria to maximize the likelihood of a treatment effect. There is also the possibility that, in terms of returns for investment, it may be possible to work slightly less intensively with more clients, to free up the bottle neck and open the flow through the system. One option would be to explore the possibility of the CATS team to partner more formally with treatment agencies so that those agencies could take up some of the work currently undertaken by CATS officers. This would have the effect of increasing the flow through the court whilst retaining a high level of treatment intensity.

A further inefficiency in the referral process is the high number of inappropriate referrals made to the drug court. Magistrate Wager indicated that one court day per week is currently spent on new referrals and many of these clearly do not meet the eligibility criteria. The high number of inappropriate referrals to the drug court

(documented in section 5.4) suggests inefficiency in the referral process and a matter that should be remedied, perhaps by installing some mechanism to check and filter potential referrals before they arrive at the drug court. We suggest that such a procedure be instigated at the first opportunity

### ***10.3.5 Management***

Problems with the lack of a management structure emerged throughout the evaluation. It directly affected the evaluation in that half of the five months available for the evaluation passed before a full data set was available to the evaluators. More fundamental problems emerged in a number of interviews, particularly with the workers. The three key areas where a lack of management appeared to affect the drug court were:

1. Program direction, implementation and monitoring;
2. Role clarification, boundary maintenance, reviewing procedures, and team management (especially across disciplines and Department of Justice divisions); and
3. Collaboration with the treatment sector (e.g. monitoring treatment integrity and sharing data).

These three areas of management need could be described as direction, review and communication. A number of areas of confusion and tension within the drug court would need to be settled before the drug court could be expanded. Despite the enormous amount of good will that is apparent at all levels for the drug court, its operation, without sufficient management direction and support, would not be viable on a wider or ongoing basis. Some of these areas have been outlined throughout the report. For example, many stakeholders called for a greater degree of collaboration and information sharing, and a more active partnership with the field (chapter 8). There was also a concern that treatment programmes be properly vetted and monitored to ensure that they are of sufficient integrity to be able to deliver a treatment benefit.

In the absence of a strong and viable management structure Magistrate Wager appears to have assumed the role as de-facto manager. However, most resources involved in the drug court are provided through the Community Justice Services section of DOJ and the evaluation is provided through the Planning, Policy and Review section of the Department (which also comes under Community and Juvenile Justice). The Court Services section, to which Magistrate Wager is administratively attached, controls little of the budget, direction or monitoring of the drug court. This disconnection between the key leader of the drug court and its operation leads to a number of problematic issues in direction and management. Problems stemming from a lack of management are even greater at the Children's Court with the drug court team managed by the magistrate in virtual isolation from the adult drug court. Furthermore, there appears to be little direction for joining the efforts made at the Children's Court with a wider response in the community to young offenders with drug problems. This requires negotiation and brokerage that should be part of a well managed initiative.

### ***10.3.6 Design issues***

Issues related to the design of the drug court can be distinguished from problems associated with management (or lack of management). In terms of its nature and design, the drug court is clearly aimed at "mainstream" offenders with an illicit substance abuse problem. Many stakeholders characterized the model of the drug court as being "white and middle class". This is because the court requires offenders to comply to extensive obligations, appointments and monitoring. This approach does not suit many individuals from poor and/or marginalized backgrounds. Many individuals in these groups do not have many supports, facilities nor a history of appointment keeping and compliance with authorities. This affects many indigenous offenders but also relates to many juvenile offenders. Indigenous juvenile offenders are doubly affected by these contextual factors. The decision to exclude alcohol also affects its applicability to many indigenous offenders. Another substance abuse problem of great relevance to many indigenous communities is solvent abuse.

The reasons that the drug court has perhaps failed to process many juveniles (only about 50 over the two years of the pilot) is because there already exists a plethora of

orders and options designed to keep juveniles out of prison. Furthermore, the *modus operandi* of the juvenile justice division is already somewhat similar to the drug court in terms of its intensive level of intervention (as reflected in its case loads). Indeed in establishing the appropriate case loads for the CATS team the Juvenile Justice case loads were taken as a guide. Furthermore it is acknowledged that it is generally harder to engage juvenile offenders, many of whom may not be of sufficient maturity or at a point in their drug abusing career that is optimal for the kind of intervention that the drug court represents. Nevertheless, despite these constraints and the low numbers involved, key stakeholders at the Children's Court remain committed to the provision of a juvenile drug court as this offers an enhanced level of service and supervision (section 9.6).

It may be better to recognize the drug court approach for what it is, accept that it is designed for a largely white and adult offender group, and design more strategically focused approaches for juveniles and indigenous offenders. Both these groups have substantial drug abuse problems which are related to offending behaviour. In the case of both of these key groups the main problem is not the lack of a suitable drug court or justice approach but the lack of suitable treatment modalities in the community. The problems are thus much wider than justice but affect justice directly. One solution is for justice to engage directly with DAO and the drug treatment community in building capacity and systems that may more appropriately deal with the needs of these groups.

Another key design issue which may be seen more directly as a "design fault" concerns throughcare. This is a particular problem when considered together with the very short time period for treatment in the PDCPP. A plan for throughcare needs to be developed. To achieve this the most logical option appears to be to connect the work of CATS more effectively with the mainstream CJS. This would serve to provide a special "track" to allow the offender who begins a treatment with CATS to be followed up through the system. It would also be important to ensure that information is shared to provide a seamless provision of service from the client's perspective. This may require that CATS dedicates one or two officers to throughcare.

### ***10.3.7 Data and information***

As indicated throughout the report, there were delays experienced in obtaining the data required for the evaluation. For some key areas complete data could not be obtained. The process of trying to obtain the required data highlighted the problems in linking information across different databases that the DOJ maintains. In particular, difficulties were experienced in linking between the DVD and TOMS, CHIPS and SRCASE. The process of obtaining imprisonment information from the TOMS database for drug court offenders involved an extensive manual matching process. DOJ were unable to complete this process for the comparison groups, despite INOIS identification numbers being provided. Obtaining sentencing data for drug court clients was a time intensive exercise involving manual sentence calculations from CHIPS data for offenders sentenced through the drug court or the Children's Court; and a manual review by DOJ staff for offenders sentenced through the District Court. Neither process resulted in complete data for all offenders. In light of the difficulties experienced linking across databases, it is recommended that all sentencing information be recorded in the DVD database.

Difficulties were also experienced with some variables in the DVD database. Two areas deserve specific mention. First, indicated sentences are not routinely recorded on the database, nor are they easily obtained from other sources. Complete information was not obtained over the course of the evaluation, despite two manual reviews by DOJ staff. Second, treatment data is poorly recorded. There was a large amount of missing data on treatment type, and no data recorded on outcomes of referrals to treatment. Based on these, and other minor problems experienced with the DVD database, changes to the DVD database are recommended for consideration (see Appendix 11.1).



## **10.4 Achievements of the PDCPP in terms of the ADCA Best Practice Guidelines**

Another way to consider the performance of the PDCPP is to measure various elements against the stated and widely agreed principles of best practice. As discussed in the literature review the ADCA best practice guidelines were developed in relation to Australian diversion programmes and provide a good starting point for the planning and assessment of diversion programmes including drug courts. Using the ADCA guidelines the following comments could be made in relation to the PDCPP.

**Harm reduction** The PDCPP is largely benign and it appears to reduce harm to the offender. As far as the community is concerned, there appears to be no evidence that it makes things worse. Where this assessment might fall down, however, is if we were to consider the opportunity costs of the drug court. Opportunity costs refer to the benefits that might be achieved with the same degree of resources if applied differently. This concerns the efficiency and the cost effectiveness of the drug court. As we shall discuss further below, a more strategic approach adhering to risk responsivity principles and drawing in a greater number of offenders who could benefit from engagement with treatment, could perhaps reap greater rewards.

**Social change focus** The CATS team works hard to provide a holistic service. Magistrate Wager has been a fierce advocate for a treatment focus for the courts and has likely helped build acceptance in the legal community to this approach.

**Broad range of options** In terms of the continuum of diversion programmes, there is a good range of options at the “low” end, although more are needed at the “hard” end. There is a limited number of treatment options, in particular for minority groups such as indigenous offenders (although as noted earlier, this is not necessarily a fault of the PDCPP but reflects a wider community problem). The PDCPP would certainly benefit from a greater range of treatment options and alternative criminal justice pathways for unsuitable offenders. However this is not so much a criticism of the PDCPP as much as a reflection of the paucity of

alternatives within Perth. The lack would naturally be greater in regional and rural areas.

**Legislation** No specific legislation has been developed to support the drug court. This is the single most important issue and in many ways the clearest and earliest reform that is needed.

**Planning** Although the planning process has been inclusive and involved many parties, more ongoing planning involving offenders, parent groups and treatment agencies would have helped. Planning has also suffered from insufficient leadership and structure. Proposed legislative changes have also proceeded without sufficient consultation.

**Communication** This has been a shortcoming of the PDCPP according to both external stakeholders and workers. Too little communication between treatment providers and the drug court has alienated some in the treatment community.

**Program documentation** Workers have specifically mentioned the unavailability of guidelines, and where guidelines have been developed, that they are not adhered to. A manual has been in development since the inception of the drug court but has still not been completed. Furthermore, the evaluation was severely hampered by the lack of documentation, in particular an incomplete database. In the absence of clear management, attendance to completing all the necessary documentation has been lacking.

**Clarity of roles** Workers pointed to the blurring of professional lines of responsibility and the need for clear role definition and accountability mechanisms to be enforced. Clearer overall management of the drug court may help to sort the vexed issue of professional boundaries and lines of responsibility.

**Client rights** The judgment must be mixed here. There is no suggestion of any flagrant violation of client rights. However at the “low end” some offenders may experience a more onerous penalty than they would otherwise have received. Indeed this has been used to explain the relatively low participation rates of

indigenous offenders and juveniles. There does need to be clear advice as to the likely prospects in terms of outcomes. There are a number of agencies apart from CATS that should be involved here to ensure a protection of clients' interests.

**Accessibility** The PDCPP is by no means equally accessible to all clients and was only designed as a pilot in the Perth courts. However, even within the Perth courts, access is determined by a "lottery" of uneven knowledge and concern amongst those that could refer combined with the operation of the caps.

**Follow up** No provision has been made for follow up and this remains one of the major criticisms of the PDCPP. Some stakeholders have suggested the four month time limit of the PDCPP with its limited capacity to follow up, may actually set clients up for failure or make things worse. Even outside of such possibilities the lack of follow-up clearly violates a fundamental tenet of treatment effectiveness and urgently needs to be remedied.

**Training** Although there have been some training days, few of these include all relevant parties, although new arrangements are being made to include those from the treatment agencies. Some have observed that the drug court has proceeded to recruit staff with no special skills or training in dealing with drug dependent offenders. No special or on-going training in the special needs or issues for this group appears to have been provided.

**Funding** Funding was only provided on a two year basis and importantly the current operation of the drug court has depended on Commonwealth funding of treatment places.

**Evaluation** Not all the required information to allow evaluation of the agreed outcomes was collected. No qualitative data demonstrating the impact of the program on the lives of offenders was collected although this was remedied somewhat in the current evaluation exercise. No provision was made for the development of a data base that would be nationally compatible.

In summary there are a number of significant areas where improvements can be made especially in regard to legislation, accessibility, client rights, follow up, clarity of roles, planning and communication.

## **10.5 Conclusion**

This chapter has provided a summary of the major points to emerge from the evaluation. Although the evaluation is not able to provide conclusive evidence that the drug court has resulted in reductions in the recidivism of offenders that have been placed on the program, there are no indicators to the contrary. In terms of an analysis of costs compared to benefits, the rather moderate investment in the drug court pilot has likely paid for itself in the direct and immediate terms of imprisonment that have been averted through the presence of the drug court. More importantly, the drug court has established a strong “street credibility” and has provided an encouraging example of how justice and the drug treatment community can work closer together in helping drug dependent offenders. For most observers, the benefits would outweigh the costs, even if the averted imprisonments did not cancel out the cost borne by the Department of Justice.

Despite its highly visible and attractive nature there are some distinct problems with the PDCPP which are fairly well known. The first, and most important, is the lack of supporting legislation and the limitations consequently placed on the duration of the drug court programme. Second, is the lack of an effective management structure and associated free floating system of referral management. The lack of an effective management structure is also apparent in a general lack of direction and focus. Third is the problems associated with reaching difficult to engage groups, particularly juveniles and indigenous offenders.

The problems identified here are not insurmountable and some of these, particularly the third group of issues discussed above, are not necessarily the responsibility of the drug court as it is currently designed. It is suggested that an alternative approach involving additional services is probably the best course of action.

### ***Evaluation of the Perth Drug Court Pilot Project***

In summary, the drug court has established itself as a viable and welcome addition to the panoply of efforts aimed at engaging and dealing with drug dependent offenders. There is still much work to be done in refining and focusing the initiative. It is now time for a re-launching of the drug court with a better informed and re-invigorated focus. If this is achieved then the pilot project will have served well as a pilot establishing some ground as to what is possible and what is needed to maintain a useful drug court for Western Australia. The pilot has been useful in allowing the drug court to be established on the basis of some valuable lessons learnt through the period of the pilot and the results of the current evaluation.

## **11. RECOMMENDATIONS**

### **11.1 Introduction**

The drug court represents a positive and innovative development by the WA Department of Justice that has been welcomed by the treatment community. The drug court has been successful in establishing positive partnerships and revitalizing diversion efforts and the community based drug treatment of offenders. The PDCPP has also been important in building on the success of its forerunner, the CDS, and in ensuring that WA has not been left behind in the nation-wide building of drug courts. Despite a number of distinct management problems the PDCPP has also been an important illustration of the willingness of the various sectors of the WA Department of Justice to work together. The PDCPP experiment in co-operation and collaboration has largely been possible and positive because of the dedication and good will of all concerned. Co-operation and collaboration has also been demonstrated by other sections of DOJ (in particular the CATS team) and the treatment community. The success has also been the product of the leadership and advocacy shown by the hard working and dynamic drug court Magistrate Julie Wager. As one stakeholder commented “we have been extremely fortunate to have her”.

This chapter draws together the key recommendations, suggestions and implications that emerge from the main points raised in the previous chapter. The structure of the evaluation does not require formal recommendations, however the review of the drug court points to some distinct areas of reform that are best articulated as specific recommendations. The details of how reforms, adjustments and the necessary structures can be achieved are clearly outside the brief of the evaluation. However these areas for reform appeared to be so critical and essential to any further development of the drug court that we believed they were worth drawing out in this fashion. The recommendation areas are presented below in terms of a plan or an agenda for reform.

## **11.2 Plan for the Treatment and Diversion of Drug Dependent Offenders in the Community**

It is recommended that the drug court be seen in the context of a continuum for dealing with drug dependent offenders in the community. Consequently, the development of the drug court should go hand in hand with other diversion and treatment options. The drug court needs to be seen as one particular tool that is likely to be effective for those offenders who are ready for treatment and are able to take advantage of the opportunity presented.

There are other groups of offenders for whom different approaches are needed. Other more tailored options need to be developed for these groups. For example, it is likely that it will be advantageous to introduce a specialized indigenous drug court. Such a court is needed to provide a strategy that effectively engages with the particular problems experienced by different groups of indigenous offenders. Similarly, the current drug court model does not appear suitable for implementation in rural and regional areas, therefore a different approach will be needed to address the needs of drug dependent offenders in these areas. Although alternatives to the drug court need to be developed there is value in these being held in a process of synergistic dialogue with the court. Further, there is a particular need to develop facilities to share information and refer between the diversion programmes.

Many of the problems identified with the PDCPP occur because the drug court is either trying to do too much on the one hand or not enough on the other. The most efficient way to resolve this is to place the drug court as one option, albeit the most serious treatment based option outside of the prison system, within a clearly articulated continuum of diversionary options. This would in effect require a plan or strategy for the diversion of drug abusing offenders. Such a comprehensive diversion plan would allow for the more realistic establishment of objectives and performance indicators, as well as the overall management of the drug court and related justice services. This plan would also facilitate the expansion of the drug court and associated services. The plan should also address the basic requirements that services should be reasonably and equally accessible to all offenders at the same level of risk with a

similar level of substance abuse problems. For a variety of reasons (not least of which is basic equity) this goal should govern a range of efforts on a state-wide basis.

As most of the resources required for such a plan are located in Community Justice Services, the plan should probably be structured and promoted by this section of the Department of Justice. The development of a drug diversion plan incorporating the drug court may well depend on the establishment of a suitably senior position within CJS to take responsibility for it. This position (and the associated section of the Department) could be charged with the responsibility for managing the plan and developing links with community drug and alcohol treatment services on the one hand and prison based drug treatment services on the other.

The most viable model for state-wide services is the development of two distinct but related justice components. First, the success of the current arrangement is largely encompassed by the CDS model. Therefore, the CDS approach (engaging offenders in treatment whilst the anxiety of facing prison is high) should be expanded as far as possible. If possible, the CDS should be incorporated as part of the ongoing procedures managed by CJS (this will have consequences for the CJS budget). However, the bail-based options encouraging offenders to engage in treatment should be considered only one “half” of the complete package. There will also need to be a discussion about whether judicial case management should be involved at this time or whether compliance with CDS is a matter that the CATS officer should monitor and report on at the point of sentence.

The second, and complementary, component rests on the introduction of a new sentencing option akin to the Victorian drug treatment orders (DTO). This will require new legislation. As a sentencing option it is quite different from the proposed PSO. It would have a link to the CDS in that the performance of offenders on treatment in the bail phase can be assessed by CATS and this will give the judicial officer a very firm basis for making the DTO as an alternative to imprisonment. The CDS can, therefore, still contribute by providing a first step in the process. Thus the benefits of capitalising on the fear of imprisonment and providing for a period of assessment and testing will not be lost. Indeed they will be enhanced because they will provide



valuable information for the magistrate as to the suitability of a DTO as a sentencing option.

It remains important that the DTO only be used as a strict alternative to imprisonment in order to avoid netwidening. Other options still exist for those offenders who would otherwise not face imprisonment and these should not be usurped by the new DTO. If it is implemented as a real alternative to imprisonment the DTO should have an impact on the numbers of people going to prison. However, given the tendency for these orders to “drift downwards” the imprisonment reducing impact of this order should be closely monitored.

This plan has the possibility of accommodating the current operation of the drug court and giving it a more meaningful context within which to operate. The Perth drug court could serve as a centre for dealing with the most serious cases and for providing a base for magistrates throughout the state in regard to sentencing options for drug dependent offenders. Outside of the metropolitan area there will need to be an expansion of CJS with the appointment of specialised Community Corrections Officers. These officers should be specially trained or skilled in the field of the treatment and management of drug dependent offenders. In particular it is envisaged that these specialist officers should be highly informed in regard to community treatment options and able to effectively broker treatment services on behalf of the court.

The plan and the model for service delivery outlined above needs to be built within a firm recognition that DOJ can itself only do so much in terms of dealing with drug abusing offenders. Indeed the fate of drug diversion initiatives is almost entirely dependent on the presence and the capacity of appropriate services in the community. Therefore, it is fundamental that DOJ work in close collaboration with the community treatment sector and where possible, or necessary, contribute to the development and support of community treatment facilities. A partnership between DOJ and DAO is probably the best way to expand and facilitate the development of suitable and/or quality treatment services to the full range of substance abusing offenders. For example, some attempt to assess the efficacy of treatments for amphetamine

dependent offenders should be sponsored as it represents a special feature of Western Australian substance abusing offenders.

In the following sections of this chapter more specific suggestions will be outlined. These should be seen as fitting within the parameters of the plan outlined here, indeed the plan largely depends on the initiation of the suggestions outlined in the following sections.

### **11.3 The Need for Specific Enabling Legislation**

The drug court is not able to exercise its full potential because it does not have the power to deliver a comprehensive set of procedures in managing offenders. This point has been made throughout the evaluation, but particularly in chapter 9. To be effective the Western Australian drug court needs to operate within a clearly defined set of guiding parameters derived from legislation. At present the WA drug court lags behind developments in other states of Australia in providing drug courts with enabling legislation. The current legislative framework is flawed and the proposed Pre Sentence Order fails to address these. However, there are now many suitable models to draw upon. The Victorian model would seem to be most suitable to the needs and mood in Western Australia, unless there is a significant change of heart and the endorsement of a NSW style drug court based in the District Court is to be embraced. The Victorian Drug Treatment Order is a sentencing option with protections against the possibility of netwidening. In principle and in practice, there are strong arguments in favour of onerous conditions being firmly located in a sentence rather than as a pre-sentence order. Critically, the legislation should allow the drug court to break free of its single biggest criticism – the short time span. The time frame within which the PDCPP has been operating is so far removed from the reality of the needs of offender treatment that it threatens the credibility and legitimacy of the drug court.

### **11.4 Management and Structure**

#### ***11.4.1 Organising the resources***

The drug court needs firm leadership and a strategic plan aimed at reaching achievable objectives. Movement towards meeting the objectives outlined in the

strategic plan needs to be closely, regularly and accurately measured. The strategic management of projects such as the PDCPP needs to achieve three interrelated functions: a reasonable budget that is in proportion to the purported goals; an effective information system to ensure that the project can be guided and directed toward its objectives; and close management of practice to ensure clear lines of responsibility and accountability are observed and that the project is able to operate efficiently and effectively. This strategic management can not occur without a clear line of responsibility and direction. Such management should be able to publish regular (for example quarterly) updates of its operations and measure its performance against clearly articulated indicators that are related to its objectives and are clearly thought through at the outset.

Many aspects of the operation of any future drug court operation are premised upon effective management. Some would flow naturally once a meaningful structure is developed and a sufficiently senior position is established with its own budget. However it is anticipated that these elements would include the following features:

- a clear articulation of lines of accountability and responsibility;
- a comprehensive data base;
- a mechanism to ensure an adequate supply of suitable approaches, requests or referrals for the drug court;
- an efficient and effective mechanism for providing a screening of referrals along agreed parameters of risk and responsivity;
- mechanisms for assessment and placement;
- effective collaboration with qualified treatment providers;
- a mechanism to ensure the quality and intensity of treatment being provided; and
- a comprehensive monitoring and review system to monitor the progress of the drug court.

#### ***11.4.2 A strategic plan to ensure access, equity and effectiveness***

Any expansion of the PDCPP beyond the experimental or pilot stage will raise broader questions of access and equity that the pilot nature of the project has so far been protected from. If there is to be a budget for providing effective diversion, or to provide non custodial drug treatment options, then a fair and meaningful plan would need to ensure that all suitable offenders had a fair chance of being accepted on to the programme. The reasons for inclusion and exclusion would need to be clearly articulated and able to be justified. This should not be viewed as a constraint but as complementary to good and efficient management – the flow of referrals should be maximized and the method for sorting through likely candidates should be determined on an explicit basis that ensures all are eligible and the most suitable are chosen.

It would appear to be most efficient for the first “sorting” of referrals to be performed on an automatic basis on the grounds of actuarial risk – excluding offenders with either too high or too low a risk. Given that the referrals provide the starting point for the operation of the court it is critical that the flow of referrals be managed in a manner which is planned and explicit. It is also important that the main component of the treatment involves a competent treatment agency that is able to manage the case in concert with the CATS team so that program compliance is continually monitored.

#### ***11.4.3 Need for regular reporting, monitoring and auditing in terms of stated goals, performance indicators and best practice***

This set of reforms is designed to ensure that the drug court does target the right group of offenders, with the correct level of treatment and takes adequate and necessary steps to censure and process those that need to be placed on an alternative program. The evaluation has shown that the drug court has the potential for slippage in terms of the referral mechanism, the quality and intensity of the treatment and the consistency of sanctions. Each of these areas should, therefore be subject to regular external monitoring to ensure best level of service for the investment in drug courts. The quality of the drug treatment is best monitored and reported on by the agency with expertise in this area, DAO.

Evaluation should be built in as a component of management so that management can use the results of ongoing evaluation to steer the program in ways that are more likely to achieve program objectives. There is a need for the maintenance of a meaningful and robust data base to serve the goals of both management and evaluation. Suggestions in regard to problems with the existing DVD and how they may be resolved are presented in Appendix 11.1

## **11.5 Conclusion**

The series of recommendations in this chapter have sought to build on the strengths and popularity of the drug court while attending to some of the systemic and particular challenges it has experienced. These recommendations are posed in a general way, as is appropriate. The task of considering this evaluation report and implementing any changes to the drug court will obviously rest with the Department of Justice. Key policy decisions will need to be taken. In our view the first step is the development of a comprehensive plan for the treatment of drug dependent offenders in the community. The place of the drug court should be specified within this plan. The drug court also has the potential to serve as a key resource and as a high visibility diversion service. The drug court itself should attempt to restrict its caseload to those that are almost certainly facing a prison term and the achievement of this focus should be audited regularly.

With the drug court as a centre for drug diversion programmes in Western Australia, an organisational structure should be developed to ensure that diversion programmes are well targeted, well organised, efficient and regularly monitored. Comprehensive management should allow the dissemination of regular reports providing all stakeholders with information on the progress of its diversion programmes. Ultimately the operation of diversion should be subject to external and independent evaluation. The value of external evaluators working with programme managers has been demonstrated in the evaluation of the NSW drug court and a similar arrangement may be beneficial in Western Australia.

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