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Intermediate court-based diversion in Australia

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Key Points

- Court-based drug diversion programs are usually designed to respond to drug-using offenders brought before the courts on a wide range of matters. These cover an assortment of offences, but typically property, driving and fraud offences. This is in contrast to police diversion interventions, which are designed to deal with drug charges (mostly cannabis charges) only
- Most participants of court-based drug diversion programs use multiple drug types, although many list cannabis as their primary drug of concern and as being integral to their overall drug use problem
- Court-based drug diversion programs operate across all states and territories in Australia
- While there are broad similarities between the different court-based drug diversion programs, they differ greatly from each other in terms of: eligibility criteria; referral processes; the type of offender targeted; program duration; the nature and degree of program monitoring; and whether the programs operate as pre- or post- (or both) sentence interventions
- Findings from court-based drug diversion program outcome evaluations are sometimes ambiguous (such as reducing re-offending and drug use in the long-term), although other findings are clearly positive. For instance, program participants generally have very poor health and social functioning at program commencement, but achieve significant improvements in these at program completion
- Preliminary evidence suggests that there are savings to be made through court-based drug diversion programs, particularly in terms of sentencing options imposed by magistrates
- The relative costs and benefits across all programs are yet to be rigorously tested



Background

There are several forms of drug diversion interventions that operate across a number of different points in the Australian criminal justice system. These interventions fall into three major clusters: police diversion, court-level diversion and drug court diversion initiatives. As outlined in a previous AIC Bulletin (Ogilvie & Willis 2009), these interventions are focused on diverting eligible individuals into education and/or treatment services, rather than to alternative forms of processing in the criminal justice system. This bulletin, largely based on a review of Australian diversion interventions (Wundersitz 2007), describes a group of interventions that are specifically designed to respond to regular drug-using offenders. These interventions are often referred to as ‘intermediate court-based programs’ or ‘court-mandated drug diversion programs’. They are differentiated here from the more intensive formal drug court programs that typically deal with offenders who have entrenched histories of offending and (often) polydrug use and who face imprisonment if they do not comply with program orders. In addition, unlike drug courts (in which a dedicated judicial officer or magistrate is appointed specifically to hear drug-related matters) court-based diversion programs do not require a fundamental shift in the way the court conducts its business. While most participants of court-based drug diversion use multiple drug types (see below), many list cannabis as their primary drug of concern and as being integral to their overall drug use problem.

Where does court-based drug diversion operate?

Court-based drug diversion programs now operate across all states and territories in Australia. While Victoria’s Court Referral and Evaluation for Drug Treatment program (CREDIT) and the NSW Magistrate’s Early Referral Into Treatment (MERIT) program were implemented in 1998 and 1999, respectively, all other programs were implemented in or after 2000. Currently, some 16 court-based diversion programs are in operation around the country. These include:

- MERIT and the ‘Wellington Option Program’ in New South Wales
- CREDIT, the ‘Deferred Sentencing Option’ and ‘Children’s Court Clinic Drug’ program in Victoria
- ‘Court Assessment and Referral Drug Scheme’ in South Australia
- ‘Illicit Drugs Court Diversion Program’ and MERIT in Queensland
- ‘Brief Intervention Regime’ (BIR), ‘Pre-sentence Opportunity Program’ (POP), ‘Supervised Treatment Intervention Program’ and the ‘Indigenous Diversion Program’ (IDP) in Western Australia
- CREDIT in the Northern Territory
- ‘Court Mandated Diversion’ in Tasmania
- ‘Court Alcohol and Drug Assessment Scheme’ and the ‘Court Treatment Referral Program’ in the Australian Capital Territory



Key program elements

There are broad similarities between the various court-based drug diversion programs. For instance, the majority target adult offenders and are located in the local or magistrates court. Most of these programs also exclude people charged with violent, sexual or serious drug offences (such as trafficking), with many also excluding people with prior convictions for these offences. A number of programs also exclude those who have a mental impairment if it is considered likely to impact on their ability to participate fully in the program.

Most court-based programs involve two distinctive components:

- an initial clinical assessment to verify that the person has a drug problem that is in some way linked to their offending
- engagement in a treatment program usually provided by an accredited drug treatment agency. In many jurisdictions, these agencies are the same ones that are funded to provide treatment for individuals participating in police diversion interventions. All assessments and treatments occur in the community, rather than in custodial environments, although some programs offer a residential component as part of the treatment

Key program similarities and differences

Despite the underlying similarities, court-based programs differ greatly from each other in terms of: eligibility criteria; referral processes; the type of offender targeted; program duration; the nature and degree of program monitoring; and whether the programs operate as pre- or post- (or both) sentence interventions. Differences between these programs are more pronounced than are the differences between the various police drug diversion interventions, although the degree of separation between court-based drug diversion programs and the formal drug courts is not always as clear (Wundersitz 2007).

Eligibility criteria

Court-based drug diversion programs target individuals whose current offending is related in some way to their use of illicit drugs. The precise suite of eligibility criteria differ between the programs, although the following are generally applicable:

- offenders must have a demonstrable illicit drug problem that is related to their offending
- offenders must not already be on another court order with a drug treatment component
- offenders must be eligible for bail or release into the community
- offenders must not be facing charges of drug trafficking, sex or violent offences

Referral processes

Referral to court-based drug diversion programs is always at the discretion of the presiding magistrate. Referral rates can be influenced by the beliefs and understanding of those referring, including beliefs about the capacity of the delivery services, particularly if programs are understood to be operating at or near capacity. Other factors that may affect program referral include:

- beliefs about the efficacy of diversion (referrals may not be made if the program is perceived to be ineffective)
- lack of awareness of diversion programs among potential referrers
- programs implemented in defined geographic areas that automatically preclude certain offenders living just outside these areas who might otherwise be eligible



Type of offender targeted

As noted above, court-based drug diversion programs target individuals whose current offending is related in some way to their use of illicit drugs. In contrast to police diversion interventions that deal with drug charges only, court-based diversion programs are usually designed to respond to drug-using offenders brought before the courts on a wide range of matters — these cover an assortment of offences, but typically property, driving and fraud offences. There are two notable exceptions to this, Queensland's Illicit Drugs Court Diversion Program and Western Australia's Brief Intervention Regime, both of which are designed to deal only with minor offenders charged with the possession and/or use of other illicit drugs; however, both jurisdictions operate other court-based interventions that target drug-related offending (Wundersitz 2007).

Program duration

Official program duration ranges from six-eight weeks (Western Australia's BIR, POP and IDP) through to six months–two years (the Australian Capital Territory's Court Treatment Referral Program); however, official program duration is most often between three–four months. Despite this, official time periods are often exceeded in practice.

Program monitoring and compliance

Most court-based drug diversion programs require some level of monitoring or compliance, but the nature and intensity of that monitoring varies greatly. Key issues include:

- there is usually a requirement in court-based drug diversion programs that the defendant re-appear before the magistrate at least once prior to sentencing for his or her progress to be assessed, but the number of such appearances is often limited
- unlike drug courts, few programs use urinalysis to track an individual's drug use. Where urinalysis is used (for instance, the New South Wales MERIT program), it is used as a therapeutic tool, rather than as the basis for potential disqualification from the program
- successful adherence to the program may result in all charges being withdrawn — often the magistrate will take this into account when determining the final sentence. Failure to comply usually results in the charges being dealt with by the court in the conventional manner

Pre/post sentence options

Most court-based drug diversion programs are located at the pre-sentence stage of the court process; however, Queensland's Illicit Drugs Court Diversion Program operates at the post-sentence stage for adults (although at the pre-sentence stage for juveniles) and South Australia's Court Assessment and Referral Drug Scheme (CARDS) operates as both a pre- and post-sentence program for adults as well as juveniles. At the pre-sentence stage, if the defendant is considered suitable for the program, the matter is either adjourned or he/she is given bail in order to comply with the treatment plan. In the case of post-sentence programs, the individual is normally placed on a supervised order (such as a good behaviour bond) that lists program attendance as the primary condition (Wundersitz 2007).



Program outcomes

Evaluations covering Australian court-based drug diversion outcomes are emerging. Outcomes assessed tend to address court outcomes and re-offending, although impacts on drug use and health/wellbeing are also often included. A small number focus on costs/benefits.

Court outcomes

Overall, evaluations of court-based drug diversion programs have demonstrated that these programs are impacting on the types of sentences imposed by the courts, with those who complete the programs being less likely than either non-completers or non-participants to receive a custodial sentence. In particular, evaluations of the MERIT and CREDIT programs indicated that actual sentences imposed on those who completed the programs were less severe than the sentences the magistrates considered would have been imposed if not for their involvement in the program (Wundersitz 2007).

Re-offending

Evaluation findings in relation to re-offending following participation in court-based drug diversion programs are more ambiguous, with some studies finding no difference in the offending rates of program completers and non-program completers, while others have found that program completion is significantly associated with lower levels of offending following program commencement. For example, evaluations of both the CREDIT and BIR programs that compared (respectively) program participants with non-program participants or matched comparison groups did not find any significant differences between them. However, an evaluation of the MERIT program found that program completion was significantly associated with lower re-offending levels following program commencement (Wundersitz 2007).

Drug use

Evaluation findings relating to drug use are also somewhat equivocal. For instance, an evaluation of POP in Western Australia found that while on the program, participants reduced their drug use across most drug categories, including daily use of alcohol, cannabis and amphetamines. Attrition rates were high for the program and only two program participants were available for post program follow-up. As such, no conclusions could be drawn about the longer-term success of the program in reducing drug use (Wundersitz 2007).


An evaluation of MERIT in New South Wales found significant reductions in self-reported drug use, including polydrug use, among participants who had completed the program. In particular, program participants were seen to significantly reduce their preference for heroin and amphetamine use; however, decreases in the use of these drugs were also related to significant increases in the use of cannabis, which may have been due to their decision to substitute cannabis for heroin, or to a continued use of cannabis in the absence of heroin (Wundersitz 2007).

Health and wellbeing

Overall, evaluations of court-based drug diversion programs have found improvements in terms of the health and wellbeing of program participants between program commencement and completion. For example, evaluations of MERIT in New South Wales and POP in Western Australia found statistically significant improvements in mental, social and physical functioning among program participants (Wundersitz 2007).

Costs/benefits

As noted above, few evaluations address the relative costs and benefits of court-based drug diversion programs. Of the few that have, evaluators suggest that there are savings to be made to the criminal justice sector, particularly in terms of reduced sentences given to program completers. These evaluations have also identified savings resulting from reductions in re-



offending and hospitalisations. For example, an evaluation of MERIT in New South Wales produced an estimate of an annual net benefit of \$16,622 per program completer in 2003 (Wundersitz 2007).

Summary

Court-based drug diversion programs are an attempt to better respond to regular drug-using offenders whose use of illicit drugs is seen as directly related to their offending behaviour. While there are underlying similarities across the various programs operating in Australia, differences between the programs (particularly in terms of eligibility criteria, referral processes, the type of offender targeted, program duration, the nature and degree of program monitoring, and whether the programs operate as pre- or post-sentence interventions) mean that it is difficult to allocate these programs to neat, clearly defined groupings. Despite these differences, intermediate court-based drug diversion programs are clearly distinct from police diversion programs and the formal drug courts.

A recent review of evaluation findings suggests that there is a place for court-based drug diversion programs and that there are some clear benefits to offenders who complete such programs, but also to the criminal justice system, health and other sectors. Although outcome findings are in some cases ambiguous (particularly in terms of reducing re-offending and drug use in the long term), other findings are positive. For instance, program participants generally have very poor health and social functioning at program commencement, but achieve significant improvements in these at program completion. Preliminary evidence suggests that there are also savings to be made through court-based drug diversion programs, particularly in terms of sentencing options imposed by magistrates. The relative costs and benefits across all programs are yet to be rigorously tested.

References

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