

# Drug Courts in Victoria: evidence & options

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## Overview

**This paper describes the current Drug Court model in Victoria and proposes an extensive program of expansion through strategically applying the Drug Court model to all regions of Victoria. It provides the most up-to-date evidence regarding the cost effectiveness of the Victorian Drug Court. The paper also calls for the trialling of a Family Drug Court model (currently operational in some international jurisdictions), to ensure better outcomes in cases where alcohol and other drugs are a key factor in child protection issues.**

## Introduction

The Drug Court of Victoria is a 'multi-disciplinary and multi departmental' response to drug dependency and drug related crime, and emphasises a therapeutic response to these issues (Department of Justice 2006). It also provides a prime example of a cost effective 'whole-of-government' response to alcohol and other drug (AOD) issues, with the most recent review finding a return on investment of more than \$5 saved from other areas including justice and health related portfolios for every dollar spent on the Drug Court (Acumen Alliance 2005, p 6). Despite its recorded successes, Victoria has only one drug court which is situated in Dandenong. This Drug Court was piloted from 2002 – 2005 (Department of Justice 2005) and achieved permanency thereafter.

The aim of the Drug Court is to reduce recidivism and therefore protect the community by addressing the AOD issues in presenting participants (King and Hales 2004, p 1). This is undertaken through the provision of AOD treatment and a range of other supports with a view to 'reintegrating' participants into the community (Magistrates Court 2013).

This paper advocates for the establishment of Drug Courts in all regions of Victoria. This would yield significant health benefits for the participants as well as community wide benefits through a reduction in recidivism. Downstream economic savings would also be evident through reduced imprisonment and crime related costs. Furthermore, this paper also calls for the piloting of a Family Drug Treatment Court model in Victoria for a three year period. These courts have been used successfully in the USA and UK to maximise child re-unification and minimise out-of-home care in families where parents have alcohol and other drug issues.

## How does the Victorian Drug Court Work?

- Individuals can receive a drug treatment order for up to two years
- A number of conditions can be included in that order
- Breaches of these conditions can result in brief periods of imprisonment or cancellation of the order, which results in imprisonment.

Drug Courts are an example of 'problem solving courts', which recognise that recidivism is caused by a range of elements including social, economic, physical and psychological factors. Consequently, therapeutic social interventions have been shown to be more effective and economically viable than punitive responses such as incarceration (King, Freiberg, Batagol and Hyams 2009, p 139).

Drug Courts are common in a number of international jurisdictions. Most jurisdictions in Australia currently administer varying versions of a Drug Court, with some targeted at youth and others operating as a form of bail or diversionary scheme.

The Victorian Drug Court can sentence an individual to a Drug Treatment Order (DTO) for up to two years. They would also be simultaneously sentenced to a custodial term of imprisonment which is held in abeyance but can be reactivated if the conditions of the DTO are breached (Magistrates Court of Victoria 2013). The Drug Court details various conditions of the DTO which includes providing samples for drug testing, reporting to the Court and attending various treatment programs. The Court uses a number of sanctions or rewards depending on treatment engagement or behaviour change. This can result in the participant serving a brief period of incarceration if enough sanctions have been accrued.

Currently, access to the Drug Court is limited to those living within specific suburbs in the outer south-eastern suburbs of Melbourne.

### **Effectiveness of the Drug Court**

- Reviews of the Drug Court (completed in 2006) indicate a cost benefit ratio of 1:5.81
- Individuals completing a DTO are generally less likely to reoffend and experience higher levels of employment, than those with similar criminal and AOD related circumstances

The most recent review of the Drug Court of Victoria was completed in 2006 with an earlier review completed in 2004. Both reviews found that those who completed a DTO were less likely to reoffend than the comparison group or those who only partially completed a DTO. One review (King and Hales 2004, p 15) found that those who completed DTOs committed half the number of offences than they had prior to the DTO. A comprehensive analysis of a range of drug court models including those in Australia indicated that those who had participated in the drug court had a recidivism rate of approximately 25 per cent less than those who had not participated (Mitchell, Wilson, Eggers and MacKenzie 2012, p 24).

The most recent cost benefit review undertaken by Acumen (2006, p 4) found that upon completion of the DTO, the number of participants employed full time doubled (from 11 to 25 per cent) and there was a 32 per cent reduction in unemployment.

Acumen (2006, p 38) found that the Drug Court of Victoria, while costing the state \$2.78 million, derived benefits valued at \$16.65 million, achieving a cost benefit ratio of 1:5.81. Some of the tangible benefits outlined by Acumen (2006, p 39) include savings through reduced recidivism with subsequent reduced demand on prison capacity and reduced strain on health and welfare services. In the long term, this includes a reduction in demand for drug treatment, increased employment and safety in the community, and improved quality of life for individuals, families and ultimately the community.

Statistics from the Magistrates Court of Victoria (2012) annual report indicate expenditure of the Drug Court during 2011-12 at \$1,434,900. Given that there is an average of 58 participants on a DTO

each day, the cost per participant is \$67.78 per day compared to \$257.35 per prisoner, per day. These figures indicate significant financial savings achieved by the Drug Court. However, further examination of recidivism, suitable participants and other wellbeing measurements should be undertaken.

The Department of Justice (2005) found that the offending rate from those who had successfully completed a DTO was 23 per cent less than the offending rate of a comparison group which had been imprisoned. This point is particularly salient, as the Victorian Auditor-General (2012, p xii) recently found that a capacity crisis would envelop the Victorian prison system by 2016 with a shortfall of 1400 beds, and also found that rehabilitation and treatment program provision has not maintained pace with prisoner population growth. This service limitation will only compound the capacity crisis at great economic and social cost to all Victorians. The report also noted that over the past six years, incidents (including assault, attempted suicide and self-mutilation) have almost doubled. Reflecting on the now abolished Queensland model, the Queensland Chief Magistrate indicates that the Court saved 588 years of prison time over its period of operation (Magistrates Court of Queensland 2011, p 31). Such data provide strong health, wellbeing and economic-based reasoning to implement strategies which can divert people away from the overburdened and expensive prison system into treatment pathways which are both less harmful and more efficacious.

### **Drug Courts: a comprehensive response to complex problems**

Many of the participants in the Drug Court experience a range of challenges and vulnerabilities, many which contribute to their AOD use as well as offending behaviour. These vulnerabilities are evident in the prison population and drug using populations. They include a range of morbidities, such as a high prevalence of blood borne viruses<sup>1</sup>, education and housing issues as well as challenges in finding employment post release. There may be a history of family violence victimisation as well as past engagement with juvenile justice.

The Drug Court facilitates access to a range of services such as housing and employment – this is an essential component which should be enhanced with a view to providing comprehensive ‘wraparound’ service provision and support from a wide array of health, education and welfare service systems. It should also provide access to a range of vocational and life-skills related training opportunities. This could be done through partnering with health, welfare and educational services beyond those currently working with the Court.

Drug Court participants also have access to a range of alcohol and other drug treatment services.

### **Enhancing the Drug Court**

- Continuing care must be provided at the expiration of the DTO, especially in cases where a DTO has been cancelled

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<sup>1</sup> The Victorian Ombudsman (2011, p 8) found that 41 per cent of prisoners are Hepatitis C virus (HCV) positive compared to one per cent of the general population. It is not unreasonable to assume that similar infection rates may be evident with Drug Court participants due to: i) injecting drug use increases the risk of HCV infection (HCV Projections Working Group 2006, p. 7); and ii) Drug Court participants have been effectively sentenced to a period of not less than two years imprisonment and are likely to have similar demographics to prisoners with regard to risk factors.

In line with the application of the concept of therapeutic jurisprudence underpinning the Drug Court and based on the premise of maximising the wellbeing of those involved in the justice system (King et al 2009, p 22), participants should be provided with a wide range of training and personal development opportunities, including vocational and life skills as well as relevant health information. Drug Court participants should also have the option of continued engagement with services linked with the Drug Court beyond the expiration of the DTO. The expansion of the Drug Court has been articulated and endorsed in *Victoria's Reducing the alcohol and drug toll Victoria's plan 2013 – 2017* (Department of Health 2012, p 35) and should be prioritised. It's expansion would be much more cost effective than the alternative of incarceration. In stating this however, it should be noted that the Drug Court may not be the most effective means of assisting every individual who broadly fits the criteria; there will be many individuals who have committed offences where AOD has played a large part but who may have significant criminogenic issues, but not AOD dependency issues. Therefore, similar to the forensic AOD treatment system, there is a need to ensure that the screening and assessment processes in place are robust and maximise attendance for suitable individuals. Such a priority may reduce the number of individuals who do not complete a DTO. Care should be taken, however to ensure that this does not result in individuals with high needs being refused access to the Court on the grounds that they may be less likely to complete a DTO than those with less complex issues.

Participants who have accrued a number of sanctions resulting in temporary incarceration should be provided with support post release; these individuals in many cases will already be experiencing instability and this will be exacerbated by transitions evident with short term incarceration. If these individuals have been irregularly using drugs (especially opioids where reduced tolerance occurs following a period of abstinence), there is a high risk of overdose post release. These individuals must be supported by a range of services, including seamless access to pharmacotherapy both whilst in prison and post release. Furthermore, those individuals who have breached a DTO and subsequently serve the remainder of their sentence in prison should be provided with comprehensive support post release. It is likely that they will have breached their DTO through continued AOD use and it would be unrealistic to assume that prison may reduce this use. It is quite possible at the expiration of their prison sentence that they may still be experiencing AOD issues and thus support should be provided to this vulnerable cohort.

### **Expansion of the Drug Court**

- Access to the Drug Court model should be state wide, with Drug Courts situated in each Court jurisdiction

Currently, the Drug Court of Victoria has a catchment area covering the south eastern region of Melbourne including growth corridors in that region. The Drug Court has been operational for over a decade and has undergone a number of reviews, the results of which have been summarised in this position paper. The benefits of the Drug Court should be applicable state-wide, as it would be naïve to assume that the drug related law and order issues are confined to the south east region of Melbourne. A state-wide roll out would improve the health and wellbeing of drug using populations. Ideally, Drug Courts should be located in every region in Victoria with smaller Court jurisdictions maintaining a part time Drug Court Magistrate. Each Court should broadly maintain fidelity to the processes of the existing Drug Court model.

Population health planning should be integrated with Court data to ascertain the health and welfare challenges evident with those presenting to the Court in each specific region. Such information should inform the resourcing and integration of specific service types assisting the Court.

Comprehensive screening and assessment processes would also be necessary.

### **Proposal for a Family Drug Court**

- A Family Drug Court should be piloted in Melbourne over a three year period, given the high prevalence of AOD issues in child protection matters.

In 2011-2012 in Victoria, there were over 3000 new applications for the protection of children and more than 7000 secondary applications to extend or vary existing orders. Due to a lack of follow up, support and co-ordination of treatment recommendations, most parents do not comply with the orders. Consequently, the goal of family reunification, recognised to be in the best interests of children, is rarely achieved in practice, and many applications result in the removal of children from parental care (often permanently). Around 50-70% of children placed in care via the Children's Court have one or more parents with an AOD problem.

The Vulnerable Children's Inquiry (Cummins, Scott and Scales 2012) found that: children are most vulnerable when parents have problems such as AOD, mental health and family violence; that there has been a decline in stability of placements for children; and that further traumatisation can occur for families through the current court processes due to its adversarial nature. They recommended: specialist listings and docketing processes in Children's Courts; a less adversarial model; strategies for better collaboration between AOD, Child Protection and Family Services; increased investment in reunification initiatives; and more timely permanent care when reunification is not viable.

Family Drug Treatment Courts are specialist non-adversarial, problem solving courts which fulfill these recommendations. They operate successfully in the USA and the UK and are for child protection cases where one or more parents' use of alcohol and other drugs is a key issue for child safety and wellbeing. They have a central goal of achieving reunification of families, or earlier permanency decisions if this fails. They provide parents with access to time limited intensive support, treatment, and comprehensive services for the whole family.

Family Drug Treatment Courts are voluntary programs which typically include holistic assessments, drug testing, sanctions and rewards, and a skilled team of multidisciplinary professionals using a strength-based approach. They provide links to AOD outpatient and/or residential treatment programs, as well as links to a range of other services including family violence, housing, relationship counselling, mental health, health, child care, and education services. A key feature is the use of a docket system for monitoring and review, whereby the Magistrate has a direct relationship with parents through frequent hearings or reviews. Some also include use of peer support groups and peer mentors.

Research indicates that Family Drug Treatment Courts are more effective than current court processes in terms of: savings due to a reduced use of Foster Care; increased chance of a parent's recovery from AOD issues; and an increased chance of reunification of a child with their parents (Oliveros & Kaufman, 2011). For example Marlowe and Carey's (2012) review found that Family Drug Treatment Court participants: were twice as likely to go to treatment; had 20-30% higher treatment

completion rates; had children which spent significantly less time in out-of-home care placements, such as foster care; had family re-unification rates that were 20-40% higher; and had 33% fewer arrests with drug charges over time when compared to control groups.

A Family Drug Treatment Court has been proposed for Melbourne as a three year pilot. This would be the first of its kind in Australia. For more information see The Winston Churchill Fellowship (2011) of Magistrate Gregory Levine (with Barbara Kamler) "A Study of Family Drug Treatment Courts in the United States and the United Kingdom: Giving parents and children the best chance of reunification".

## Conclusion

Despite the success of the Drug Court of Victoria in reducing recidivism, reducing costs, and improving employment and housing outcomes for its participants, no further courts have been established across Victoria. The current trend of successive governments has been an emphasis on imprisonment which continues to return high levels of recidivism at a great financial and social cost to the community and now has been found to be unsustainable based on current growth forecasts determined by the Victorian Auditor-General.

Individuals on DTOs present with a range of needs and addressing these needs is key to maximising the wellbeing of the attendees and community as a whole. This is better dealt with through application of the Drug Court rather than incarceration. Based on this, VAADA is supportive of the extension of the existing Drug Court system across the state as well as the piloting of the Family Drug Court to deal with the complex matters arising where there are vulnerable children within a family setting where AOD issues are a significant issue.

## VAADA's Recommendations

VAADA recommends that

1. The Drug Court of Victoria be rolled out state-wide and be accessible from all Magistrates Courts in Victoria;
2. The resourcing of Drug Courts be determined through population health planning as well as Court, AOD treatment, police and sentencing data;
3. Appropriate support is provided to Drug Treatment Order participants who have been temporarily incarcerated due to the accumulation of sanctions as a means of reducing the risk of overdose upon release due to reduced tolerance; and
4. The Victorian Government fund a Family Drug Treatment Court Model as a pilot over a three year period with a comprehensive evaluation process.

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### Disclaimer

While efforts have been made to incorporate and represent the views of our member agencies, the position and recommendations presented in this Paper are those of VAADA.