

Drug-Crime Diversion



I N F O R M A T I O N S H E E T ■ A U G U S T 2 0 0 2

Breaking the cycle of drugs and crime

There is a significant link between drug use and crime. Many drug users rely on crime to pay for the drugs they use (eg property theft).

Drug-crime diversion gives offenders who use drugs the chance of undertaking treatment and/or education aimed at helping them to stop using drugs, and committing further crimes.

By targeting less serious drug offences, drug-crime diversion programs also aim to prevent a potential new generation of drug users committing drug-related crime.

Drug-crime diversion does not change the legal status of drugs. The possession and use of illegal drugs remain criminal offences.

The Commonwealth Government, through the Illicit Drug Diversion Initiative, is working with all State and Territory Governments to establish a nationally consistent approach to drug-crime diversion.

How does drug-crime diversion help the community?

- linking drug education and treatment programs with the justice system provides strong incentives to stay in treatment
- providing treatment for drug problems helps prevent crime
- programs encourage participants to take responsibility for their drug use and related crimes
- there are fewer people before the courts on minor drug charges.

What is being done about drug-crime diversion in NSW?

There are five drug-crime diversion programs operating in NSW. Some apply across the State, while others are being trialed in specific areas. These programs are being adapted to suit the needs of local and regional communities.

Each program targets offenders at different stages of the criminal justice system. Early intervention is the focus for minor offenders with limited involvement in crime, while offenders with serious drug problems enter into heavily supervised programs.

Participants in the programs must fulfil program requirements that can include strict regulation and monitoring.

All drug-crime diversion programs are monitored and evaluated. Where the evidence shows an approach works, it will be considered for further use in NSW. If it does not work it will not be continued.

1. Changes to the Young Offenders Act*

In April 2000 the Young Offenders Act was amended to include minor drug offences (such as possession of small quantities) committed by young people.

This change allows minor drug offenders to get help and aims to stop them offending again. It applies in all areas of NSW.

Possession is still illegal. The Young Offenders Act simply provides alternatives to Court in some cases. In all cases, police still have discretion to charge offenders.

Young people suspected of supply or drug trafficking will not be dealt with under the Young Offenders Act. They will be charged. The police follow strict legal guidelines in deciding when and how to apply the Act.

How can young offenders be dealt with under the Act?

The Act applies to young people who are apprehended by police for a wide range of offences, including:

- the possession of small quantities of illegal drugs
- the possession of equipment for using drugs, or
- committing other summary drug offences^o.

A young offender can receive a *warning* or a *caution*, or can be referred to a *youth justice conference*.

Warnings can be given by police for less serious non-violent offences. A warning is given on the street and the young person is not required to admit to the offence. Police record the details of the young person and the offence.



A *caution* is a formal procedure where the young person is arrested and admits guilt. When cautioned the young person is accompanied by a parent/guardian and possibly a drug and alcohol worker. The young person signs a formal caution notice. The young person is given information about the legal and health consequences of drug use and information about treatment and counselling services.

If the circumstances are more serious a youth justice conference may be held. Police and/or the Court can refer offenders to a youth *justice conference*. A conference is facilitated by a convenor, trained by the Department of Juvenile Justice.

During a conference the young offender is brought together with those who have been badly affected by the offence or the offender's actions. Support people accompany each party. The young person is required to explain their actions and take responsibility for their offence. The young person and the victim, agree to a suitable outcome plan that the young person must complete. The plan is designed to address the drug and other problems that have contributed to their criminal behaviour. The plan may include treatment and counselling. Progress is monitored.

If the plan is completed no further action is taken. Otherwise the case is returned to the police or Court.

For more information contact the Department of Juvenile Justice Phone: (02) 9289 3319.

*Summary offences can be dealt with by a Local Court.

Nicky, a 15-year-old girl, was arrested for stealing and possession of a small quantity of heroin. The Police interviewed Nicky and because of her age, a Police Youth Liaison Officer (YLO) was called in to assist. During the interview, it became clear that the stolen property was to be sold to purchase drugs. After the interview, the YLO spoke with Nicky and her mother about possible drug treatment options.

After considering whether to deal with Nicky under the Young Offenders Act, the YLO decided that she was entitled to be cautioned for these offences. Because this was a minor and a first offence, the Police decided to issue a caution. The YLO remained in contact with Nicky's family during the time between the interview and the giving of the police caution. Nicky's drug use continued during that time.

At the caution, Nicky agreed that drug treatment would be in her best interests. The YLO made contact with an adolescent residential program and Nicky attended the facility.

All reports indicate that treatment is going well. It is hoped that the time in treatment will help Nicky to manage her life without re-offending or using illicit substances.

2. Adult Cannabis Cautioning Scheme*

The Adult Cannabis Cautioning Scheme, introduced by the NSW Government as a one-year trial in April 2000, has been extended for another two years. The Statewide initiative gives police the discretion to caution rather than charge minor cannabis offenders.

The scheme does not decriminalise or legalise cannabis. In NSW, using, possessing, cultivating, importing and selling cannabis remain illegal.

Adults caught with a small amount of cannabis leaf (not more than 15 grams) and/or equipment for the administration of cannabis can be issued a cautioning notice by police. The notice provides health and legal information on cannabis use, and provides a contact phone number for the Alcohol and Drug Information Service (ADIS). ADIS (24 hour 1800 number service) has been expanded to provide cautioned offenders with information about treatment, counselling and support services. The scheme means minor cannabis offenders avoid getting a criminal conviction.

A person can only receive two cautions. An offender who receives a second caution will have to undertake a mandatory counselling and education session.

If offenders continue to use cannabis and are caught by police, they will be charged and have to attend court.

People with a history of violent, sexual or drug offences cannot be cautioned.

For more information contact the NSW Police Service Phone: (02) 9265 5185.

3. Magistrate Early Referral into Treatment (MERIT)*

The Magistrate Early Referral into Treatment (MERIT) program is designed for defendants who are eligible for bail and who show potential for treatment and rehabilitation. MERIT aims to prevent defendants committing crimes and returning to drug use, by making participation in drug treatment a condition of bail.

The program was successfully piloted in Lismore and will be established in all NSW Area Health Service regions during the next two years.

Under MERIT magistrates refer defendants to dedicated treatment and rehabilitation programs as part of their bail conditions. MERIT is voluntary and the defendant's progress in treatment may be considered during the final hearing and sentence.

Participants are closely case-managed throughout their bail period by specially trained health and welfare professionals. The magistrate receives regular reports on their progress until the court case is finalised at the end of the bail period, which is usually three months.

Defendants charged with violent or sexual offences are excluded.

How does MERIT work?

A drug treatment program is designed for the participant. A health caseworker provides support and guidance throughout the treatment. The program may include:

- detoxification
- methadone or other pharmacotherapies (medical treatments for drug dependency)
- residential and other rehabilitation programs
- individual and group counselling
- relapse prevention programs to prevent the defendant using drugs again.

If the defendant fails to attend treatment, commits further offences, or does not comply with bail conditions, the magistrate is notified and may stop the program. When the program is completed the magistrate may consider the defendant's level of progress at final sentencing.

For more information contact the NSW Attorney General's Department. Phone: (02) 9228 7620.

Peter is 25 years old and has been using heroin for 9 years. Peter was charged with a break and enter offence related to his drug use. This is the first time he has appeared in court.

Because of his drug-use history Peter was referred for assessment for the MERIT Program. Peter's drug problem was assessed by a health professional. Peter agreed to go onto a methadone program, attend MERIT educational groups and have regular counselling sessions with his Caseworker. The court case was adjourned while Peter took part in MERIT. The Magistrate was provided with regular reports regarding Peter's compliance with the MERIT program.

Peter successfully graduated from the MERIT Program after 15 weeks.

Peter's Court proceedings will soon be finalised. He has decided to plead guilty. A report on Peter's progress through the MERIT program will be provided to the Magistrate for consideration.

Peter is currently in stable employment and is staying with the methadone program.

4. Adult Drug Court

The first Drug Court in Australia opened in Parramatta in February 1999. The Drug Court aims to help adult offenders, who have serious drug problems, break the cycle of drugs and crime by providing a supervised program of treatment and rehabilitation.

Defendants from Western Sydney can be referred by the Local Court to the NSW Drug Court. Entry is only possible if they:

- participate in a detoxification process
- have potential for rehabilitation, and
- were not charged with violent or sexual offences, or with a wholly indictable drug offence[†].

How does the NSW Drug Court work?

The Drug Court team develops an individual program for each participant that lasts 12 months or more. This involves regular:

- drug treatment and rehabilitation sessions
- counselling sessions
- education and job training
- drug screening
- reporting back to the Court.

A case manager monitors each participant. The Judge and the Drug Court team monitor individual progress and may change or end the program if required.

At the end of the program offenders receive a final sentence from the Drug Court. This takes into account the offender's original sentence and their progress in the Drug Court program.

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[†] Wholly indictable drug offences cannot be dealt with by Local Court.

Andrea was 39 years old when she first appeared in the Drug Court. She is a single mother of three children, who have lived most of their lives in the care of their grandmother.

Andrea left high school at the age of 15 years and worked intermittently in supermarkets and service stations.

Andrea has a lengthy criminal record and has served time in both a juvenile detention centre and adult prison. Her offences have varied but were all related to her heroin dependence.

Andrea started using drugs when aged 13, and has had a significant dependence on heroin since she was 16. She tried methadone treatment but her chaotic lifestyle (no stable employment or accommodation) made it difficult for her to stick with a program. Andrea said she only had friends who were drug users and involved in crime.

Andrea appeared before the Magistrate on possession charges. She received a fixed term of imprisonment of three months and one week. Her sentence was suspended, pending inclusion in the Drug Court program.

While on her Drug Court program she lived with her family, including her three children. Her mother gave her a great deal of support.

Andrea had some initial problems settling into a routine with her family but was able to address these in counselling. She completed an 18-week TAFE course and has cut ties with her former associates.

Andrea successfully completed her Drug Court program. Since graduation, she has maintained contact with her case manager and counsellor and has remained drug free.

5. Youth Drug Court*

The two-year trial of the Youth Drug Court began in July 2000 in Western Sydney. Young offenders at the Children's Court can be referred to the Youth Drug Court if they:

- have a serious drug or alcohol problem
- plead guilty
- live in Western Sydney
- are not able to be dealt with under the Young Offenders Act
- are suitable for treatment and rehabilitation, and
- agree to enter into a treatment program while on bail.

How does the Youth Drug Court work?

The young person is given an individual program plan that they must follow. It lasts six months or more and includes treatment schedules, regular appointments with the court, and assistance with health, housing and education needs. A support worker helps participants with their program plan. Families are also encouraged to play a role in the treatment program.

The program plan can be stopped if the young person continues drug and alcohol use or commits other offences. If the young person does not complete the program they return to Court to face their initial charges.

When the program plan is complete, the young offender's participation and progress is considered at final sentencing.

For more information contact the NSW Attorney General's Department. Phone: (02) 9228 7620.

Max, 17 years of age, had many problems in his life when he was referred to the Youth Drug Court. He was smoking approximately \$50 worth of heroin per day, committing offences to get money to support his drug use, hadn't had contact with his family for over five years and had no stable accommodation.

After assessment of his drug problem, an individual case management plan was developed which required him to attend regular counselling sessions and find stable accommodation. He returned to his family home and complied with strict bail conditions and supervision.

While on the program, he enrolled at his local TAFE and was awarded a Diploma in Information Technology.

As he was showing progress, Max's bail conditions were relaxed and the frequency of report backs reduced. He was allowed to travel unescorted on trains and had his curfew hours removed.

After six months, Max was due to graduate from his YDC Program but elected to extend his Program for a further three months, so he could complete his Stage Two Information Technology Certificate before he went before the Court for sentencing.

Since being accepted onto the YDC Program, Max has not re-offended or had any reported or suspected incidents of drug use.

* Under the Illicit Drug Diversion Initiative, of the Council of Australian Governments, the Commonwealth Government is contributing to the funding of this diversion initiative.