SPECIALISED COURTS AND SENTENCING

Prof Arie Freiberg
The University of Melbourne

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There is a temptation to talk of revolutions in criminal justice, or of paradigm shifts, or, at least, of major changes in traditional practices. Restorative justice, therapeutic jurisprudence and the risk society have all been identified as recent theories or social changes which have affected how we conceptualise and operate the criminal justice system. How influential or important they are in day to day practice depends upon who you ask.

One such important development has been the growth of problem-oriented courts. Though this paper has been titled by someone other than myself as ‘specialised courts’ and sentencing, its true subject matter is an overview of some innovative forms of courts and their relationship to both sentencing and corrections.

Without wishing to sound pedantic, there is an important distinction between ‘specialised’ courts on the one hand and problem-oriented courts (or problem-solving courts (as the American literature prefers to call them), on the other (Freiberg 2001). Specialisation in the court system has been around for some time: civil and criminal courts; trial courts and courts of appeal, Children’s courts, coroners courts and more recently, family, environmental, industrial courts and the like. In legal terms, a specialist court can be seen as a court with limited or exclusive jurisdiction in a field of law presided over by a judge with expertise in that field (American Bar Association 1996). The advantages of specialisation include improved judicial decision-making through the use of judicial expertise, more efficient court processes because of judges’ and counsels’ familiarity with the subject matter and reduced backlogs in the generalist courts (Stempel 1995; Walsh 2001).

In contra-distinction, a problem-oriented court is a specialised court, but with a distinctive approach to the cases which come before it. A problem-oriented court has been defined as one which seeks ‘to use the authority of the courts to address the underlying problems of individual litigants, the structural problems of the justice system, and the social problems of communities’ (American Bar Association 1996). No small task. The Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) in the United States has stated that problem-solving courts are those which (2000) involve principles and methods grounded in Therapeutic Jurisprudence, including integration of treatment services with judicial case processing, ongoing judicial intervention, close monitoring of and immediate response to behavior, multi-disciplinary involvement, and collaboration with community based, and government organizations.

Examples of these forms of specialised courts include drug courts, mental health courts, domestic violence courts, community courts, teen courts and others (US Department of Justice). The concept is still emerging. The courts share a number of common elements which have been summarised as follows (Berman and Feinblatt 2001; Carney 2001):

- **Case Outcomes**
  Problem-solving courts seek to achieve tangible outcomes for victims, for offenders and for society. These include reductions in recidivism, reduced stays in foster care for children, increased sobriety for addicts, and healthier communities...

- **System Change**
  In addition to re-examining individual case outcomes, problem-solving courts also seek to re-engineer how government systems respond to problems like addiction, mental illness and child neglect. They promote reform outside of the court house as well as within...

- **Judicial Monitoring**
  Problem-solving courts rely upon the active use of judicial authority to solve problems and to change the behaviour of litigants. Instead of passing off cases – to other judges, to probation departments, to community-based treatment programs – judges at problem-solving courts stay involved with each case throughout the post-adjudication process….
• **Collaboration**  
Problem-solving courts employ a collaborative approach, relying on both government and non-profit partners (i.e., criminal justice agencies, social service providers, community groups, and others) to help achieve their goals…

• **Non-Traditional Roles**  
Some problem-solving courts have altered the dynamics of the court-room, including, at times, certain features of the adversarial process…. Problem-solving courts often engage judges in unfamiliar roles as well, asking them to convene meetings or broker relationships with community groups or social service providers.

The philosophical foundations for such courts can be found in the emerging theory of therapeutic jurisprudence, first articulated in the late 1980s by Wexler and Winick in the context of mental health law (Wexler and Winick 1992). Winick describes therapeutic jurisprudence as a study of the law’s healing potential. In his view, therapeutic jurisprudence (Winick 2000) seeks to assess the therapeutic and counter-therapeutic consequences of law and how it is applied and to effect legal change designed to increase the former and diminish the latter. It is a mental health approach to law that uses the tools of the behavioural sciences to assess the law’s therapeutic impact, and when consistent with other important values, to reshape law and legal processes in ways that can improve the psychological functioning and emotional well-being of those affected.

**Forms of Problem-Oriented Court**

**Drug Courts**

Briefly, a drug court is a court specifically designated to administer cases referred for judicially supervised drug treatment and rehabilitation within a jurisdiction (National Association of Drug Court Professionals in the United States; s.2, Articles of Association; Tauber 1994: 3; Inciardi et al: 1996; Hora et al 1999).

The essential features of a drug court have been summarised as being the designation of a court for dealing with the specified class of offenders, integration of drug-treatment services within a criminal justice case processing system, early intervention, the use of a non-adversarial approach, a dominant and continuing role of the drug court judge, frequent substance abuse testing, frequent contacts with the court, a comprehensive treatment and supervision program and a system of graduated sanctions and incentives (United States, Department of Justice, Drug Courts Program Office 1997: 7, 9).

Three of the Australian jurisdictions have provided their drug courts with a separate legislative foundation, one as a special Act effectively establishing the drug court as a separate entity, (*Drug Court Act* 1999 (NSW)) and two as sentencing dispositions available in special divisions of the Magistrates’ Court (*Drug Rehabilitation (Court Diversion) Act* 2000 (Qld); *Sentencing Act* 1991 (Vic) as amended by the *Sentencing (Amendment) Act* 2002). South Australia operates under its general bail legislation (*Bail Act* 1985 (SA)), which provides judicial officers with wide discretion in dealing with offenders brought before the courts. Western Australia has a three tier scheme, some of which is based on the *Bail Act* 1982 (WA) and some of which is post-sentence (Makkai 1998; Freiberg 2002)
Mental Health Courts

Mental health courts attempt to identify mentally disordered defendants early in the criminal justice process, and, through a process of screening and referral to mental health agencies, attempt to prevent them being sent to gaol if they do not represent a threat to the community. The courts deal primarily with low level offending where the defendant consents to participation in the programs and where it is clear that the mental illness contributed to the commission of the offence. The distinctive features of these courts are that they attempt to intervene early in the process. The courts have developed multi-disciplinary teams which provide for intensive treatment and supervision under the control of the judge to whom the teams are accountable.

Mental health courts function as problem-oriented courts in that they attempt to remedy some of the failures of existing community and social services to deal with difficult populations by providing them with access to treatment and other services in a co-ordinated and disciplined fashion. South Australia established a version of a mental health court in June 1999 under the title of the ‘Magistrates’ Court Diversion Program’ (Hunter and McCrostie 2001). Under this program a magistrate, sits in open court for one day per fortnight. The court aims to assess offenders at the earliest possible time on a voluntary basis. Its powers are based on the court’s power to adjourn proceedings. It is supported by a Manager of the Diversion Program who co-ordinates the provision of health and housing services.

Domestic Violence Courts

Domestic violence courts differ from drug courts or mental health courts in that their focus is upon the nature of the offence rather than the offender. The jurisdiction is not ‘affliction’ based (e.g. addiction or mental illness), but is designed to deal with both the offender and the victim. The courts differ from the traditional criminal courts in that the specialist judges develop an expertise in the subject area, provide close monitoring and supervision of the orders and develop a range of creative sentencing options. In October 1999 the South Australian Magistrates’ Court established a form of ‘domestic violence’ court in which two courts set aside half or one day a week for hearing domestic violence cases. These cases are heard in closed court in order to provide privacy to the participant and are staffed by a small number of magistrates. The court exercises its sentencing powers over defendants by requiring them to participate in education courses as a condition of release on a bond.

In Western Australia, The Joondalup Family Violence Court opened in December 1999. It aims to improve the criminal justice response to family violence, make perpetrators accountable for their behaviour, support victims in the criminal justice system and ensure their safety and to reduce the incidence of family violence in the Joondalup district. The project is a pilot that engages a co-ordinated response involving other government and non-government agencies. There are reports that Victoria also intends to establish such a court.

Community Courts

In 1993 the Midtown Community Court was established in New York City to deal with low level offenders convicted of offences such as prostitution, shoplifting, illegal vending and the like, in recognition of the fact that these highly recidivist offenders often suffer from substance abuse, physical and mental health problems and homelessness (Lee 2000; Knipps and Berman 2000; Berman and Feinblatt 2000; Casey and Rottman 2000). These courts differ from traditional misdemeanour courts in that they attempt to bring together community organisations, local residents, merchants and other groups concerned with the amenity of their area, both in the organisation of the court (such as advisory boards, community mediation, and victim-offender mediation panels) and the provision of services.
Community courts primarily use sanctions such as community service but provide housing and other social services, health care, drug treatment and job placement or training services in or near the court complex. The court acts not just as a welfare broker, but uses the criminal process to emphasise the seriousness of the sanctioning process. The problem-oriented features which community courts contain include an enhanced and on-going judicial role in relation to the defendant, the use by the court of extensive personal background information relating to the offender, the employment by the court of resource co-ordinators who bring together and manage the legal and other services required to implement the sentence and the location of treatment and other providers in the court precinct to provide immediate assistance.

**Problem-Oriented Courts, Sentencing and Corrections**

As is evident from this brief overview, there are some notable differences between the ways in which these courts operate and the traditional sentencing structure and division of labour. Offenders are brought into court as rapidly as possible. The offending behaviour is seen as a catalyst for action by the offender and the state. Resources, in terms of screening, assessment and treatment are brought to bear early and tend to be multi-disciplinary. Services tend to be on site, or at least close to the court. Cases are closely managed from beginning to end by case managers or similar persons. Supervision is not delegated to corrections officers but is retained by the court. Judicial supervision is on-going, dispositions or sanctions are individualised and closely monitored. Non-compliance is dealt with quickly and flexibly. Sanctions or rewards can be imposed or awarded whilst the primary sentence is still in place.

Both sentencing and corrections have been subject to a considerable amount of criticism over recent years, primarily because they are seen as having failed to have ‘solved’ the crime problem. Leaving aside the question of whether this is an appropriate or even an achievable task, there is no doubt that correctional theory and practice are undergoing considerable change. The renaissance of rehabilitative ideals, a growing, but pragmatic, commitment to finding out ‘what works’ (and how), risk management techniques, evidence-based practice, outcome-based performance indicators and the like have changed the face of correctional organisations. From welfare, to contract management to therapeutic interventions, all in one generation.

One of the reasons for the growth of problem-oriented courts has been the failure, or inability, of the courts and corrections to deal with offenders with deep seated social, psychological or psychiatric problems within the conventional criminal justice framework. Courts and policy makers have sought alternative means of responding to chronic recidivist behaviour.

Breaches of conditional orders have been particularly problematic. In Victoria, the Anderson Consulting Review of community corrections noted that approximately half of all offenders on some form of conditional order had breached the order in the past (47% community-based order, 47% community work orders, 56% fine default orders, 67% intensive correction orders, 44% parole). Of course, the issue of breaches is a complex one. Breaches are of two broad types: breach of condition and breach by further offending, with the former category being far more common. The failure of an offender on an order may be due to a number of factors: inadequate targeting of offenders to order type, length and conditions; inadequate risk assessment; lengthy orders; drug or alcohol problems; poor supervisory practices; inadequate deterrence of sanctions for breach (Freiberg 2002a).

This is not the forum to debate all of the issues relating to the difficulties faced by courts and correctional authorities in relation to intermediate sanctions. Rather, I would prefer to pose the question whether there is anything that community corrections can learn from the recent experience of problem-oriented courts. This is important for a number of reasons. First, because correctional
officer are currently members of drug court teams in one capacity or other. In other words, corrections are, or can be, part of the problem-oriented court experiment. This has meant changes in their professional practices. Secondly, there have already been calls to generalise and integrate the principles and practices of drug courts into ongoing court operations. The Conference of Chief Justices and State Court Administrators in the United States resolved to:

encourage, where appropriate, the broad integration over the next decade of the principles and methods employed in the problem-solving courts into the administration of justice to improve court processes and outcomes while preserving the rule of law, enhancing judicial effectiveness, and meeting the needs and expectations of litigants, victims and the community.

Finally, having been involved in the establishment of Victoria’s first drug court, I can be identified as a supporter of the problem-oriented court experiment, though I am not messianic about it. In Australia, most courts are still in their pilot phases, and any final judgment must await the results of the evaluations. The first, of the New South Wales drug court (*), I consider to be reasonably positive, so, like the chief justices and administrators, I believe that there are valuable lessons to be learned.

Lessons to be Learned

Drug courts are a complex mix of components, a ‘coordinated collection of functions, methods and activities’ (Goldkamp et al 2001: 41). Their desirable features are non-adversarialism, early intervention, access to services, on-going judicial supervision and interaction and inter-agency co-operation. If they are successful in achieving their aims of reducing crime and drug use, it is not yet possible to determine which of the components influence the outcomes. There are so many dimensions and combinations that obtaining a clear picture of which feature is most influential is probably not possible.

Cresswell and Deschenes (2001) asked participants of programs which factors they considered were the most important to their own success or otherwise. In order, they were drug testing, drug treatment, attending Alcoholics Anonymous/Narcotics Anonymous meetings, probation supervision, help to stay in treatment, regular appearances before the judge, educational counselling, mentoring programs and vocational counselling.

The New South Wales drug court process evaluation found that most respondents agreed that the major factor in the Drug Court program was ‘the level of structure and support provided’ (Taplin 2002: 80). It was the unique combination of services and resources which was the key to success, comprising team work, cooperation between agencies and continuity of care and supervision. Part of the success was due to the court structure and regime and the provision of coerced treatment.

Freeman’s survey of participants’ satisfaction with the program found that that over 50% of respondents rated ‘treatment’ (including pharmacotherapy, counselling, relapse prevention and rehabilitation programs) as the best aspect of the program, followed by ‘general support’ from the Drug Court team and service providers (15%), probation and parole, regular court appearances (3-5%) and regular urine testing (4-8%) (Freeman 2002:30). Bean (2002) reports a survey of 400 drug court participants in the US in the final stages of their programs which shows that the critical factors in success were close the supervision and encouragement provided by judge, coupled with intensive treatment, rehabilitation and ongoing monitoring within the program. Looking at these in more detail.
Judicial Supervision

Unlike traditional correctional services, problem-oriented court do not hand over their supervisory responsibilities to probation or correctional services. Preferably, it will be the same judicial officer throughout the operation of the order. It is argued that correctional officers or agencies do not have the same prestige as a judge, lack their status, powers and cannot act as quickly, decisively or conclusively. In their study of drug court processes, Senjo and Leip observe (2001):

*Studies on the impact of court monitoring on offender behavior change have yet to emerge in the drug court literature. However, there is literature on the importance of judges, who are primarily responsible for court monitoring, in the drug court. Cooper and Bartlett (1996) conducted a study that focused on participant perspectives and asked questions about the drug court judges. Their findings, based on 157 participant responses, showed that “50% of all respondents indicated that the opportunity to talk over their progress and problems with a judge was very important, 27% felt it was somewhat important, while 12% cited this program element as not important” (Cooper and Bartlett 1996:6). Sixty-five percent of the respondents said that they would not have been able to complete the drug court program if they appeared before a judge less frequently and 34 percent said they would have completed the program. When asked if they would have been able to complete the program if they had appeared before different judges rather than the same judge, 73 percent indicated that they would not have completed the program (Cooper and Bartlett 1996).*

If the role of the judge in post-conviction proceedings can be important, if not crucial, in what ways might it be enhanced? The relationship between sentence imposition, sentence management, sentence monitoring and breach is a complex one and it is not obvious that the appropriate balance has always been struck between the courts and correctional authorities. The Halliday Report in the United Kingdom noted recently (United Kingdom 2001; para 7.5):

*there is currently a sharp division of roles between sentencers who confine themselves to the immediate offences, and surrounding circumstances, and the prison and probation services who implement the sentences passed. There is no requirement to work collectively in managing the sentence as a whole, or to take account of the offender’s progress during sentence. Sentencers as a rule receive little or no ‘feedback’ from their decisions. There is little flexibility during a community sentence … to reward an offender who is doing well by ‘lifting’ some of the penal measures in the sentence...Sentencers can, and sometimes do, order progress report and the review has heard that where this happens, it improves the likelihood of successful completion of community orders. A system which, like the DDTO [Drug Testing and Treatment Order], engages sentencers in the post-sentencing process and encourages them to focus more on the outcomes and implications of their sentences could help improve results, in terms of crime reduction and public confidence.*

In my recent review of sentencing in Victoria, I raised the possibility of establishing a Community Corrections Board to deal with failures to comply with intensive correction orders and community-based orders (Freiberg 2002a). It was suggested that in view of the relatively high breach rates across all orders, this new form of oversight and flexibility might have a significant impact upon the failure rate of these orders. Such a tribunal could also develop a level of consistency in response to breaches which might currently be lacking. The Paper also suggested that the Board could be chaired by a serving judicial officer of County Court or Magistrates’ Court status or, if that were thought inappropriate, by a senior legally qualified person or person distinguished in public service or service to the community. In effect, the Board would replace the court’s powers of variation but it would be limited to powers to suspend, vary or confirm the orders made by the court. There was considerable opposition to the proposal on the ground of practicality, process and cost, among
others and the proposal was dropped. However, in the course of my consultations, I was informed of a informal process which has been adopted by a magistrate in one of Melbourne’s eastern suburbs who has created a ‘breach’ list whereby offenders who have breached conditions of their orders, but against whom formal proceedings have not been taken, are brought before the magistrate for discussion and a warning. This is done in co-operation with the correctional authorities. It has no formal status, but is said to provide a valuable intervention that sits somewhere between formal breach proceedings and administrative discipline.

Another means of involving judicial officers is through a deferred sentence process. Victoria currently has a limited deferred sentence power in the Magistrates’ Court which allows the court to defer sentence on young offenders for up to 6 months. I have recommended that the power to defer be granted to all courts, in respect of offenders of any age, for up to 12 months, for the purposes of diversion schemes, restorative justice schemes or pending medical, psychological or psychiatric programs and advice. In relation to all of these provisions, I recommended that the court be given the power to ‘order that the offender report back to the court at specified times or intervals’, in other words, to have the ability to maintain ongoing supervision of the offender. This would not necessarily involve correctional authorities. I am aware that many judicial officers are quite antagonistic to any form of on-going responsibility for an offender, but there are many who would like to take an active and continuing interest in their progress, and this is one, relatively limited way of doing so.

**Treatment and Service Provision**

Together with judicial supervision, the provision of treatment services is another core element of the drug court regime. Treatment can be effective (Day and Howells 2002). Every jurisdiction differs in the range and intensity of the treatment services it provides, depending on the number and nature of clients, their problems and backgrounds and the resources available to the courts. Though resource issues are always a problem, and it is often said that problem-oriented court divert resources from the mainstream agencies, the point remains that if any form of correctional intervention is to have a chance of succeeding, it must provide adequate treatment service.

**Teamwork**

The notion of a drug court ‘team’ is a feature of the drug court initiative. A team is a group of legal, health, law enforcement and correctional professionals which works with the drug court judge on a regular basis to help determine eligibility, deal with legal or logistical matters such as outstanding charges, to monitor an offender’s progress, to formulate treatment plans and services, recommend program conditions or changes to them, advise on changes to program phases and on rewards and sanctions, including prison and advise on whether or not the program should be terminated for success or lack of it. It requires a range of disparate groups with often conflicting interests to work together.

Case management and multiple service provision is not new in corrections. The question is whether it can or ought to be strengthened in the correctional setting. In the United Kingdom, Youth Offending Teams have been introduced to bring together probation officers, health and education workers with an aim of preventing offending by children and young people (Bottoms et al: 10).
Rewards and Sanctions

A distinguishing feature of the drug court program is the application of a range of rewards or sanctions by the court while the offender is under its jurisdiction. This use of ‘smart punishment’ (Tauber 1994: 9) is regarded as essential to achieve the purposes of the program because it applies both positive (cf traditional courts) and negative reinforcement techniques quickly, consistently and publicly on persons who require a great deal of external motivation to successfully complete their programs.

Some forms of rewards might be built into our present sentencing options. For example, an offender who makes excellent progress might be rewarded by an early discharge of the order. Administratively, rewards might be given to offenders, especially young offenders, who attend programs or appointments regularly, who excel in the performance of their obligations or who manage to complete their required programs or courses. These rewards need not be monetary, but can be in the form of peer recognition, certificates, prizes or vouchers.

Procedural Justice

A factor which is not mentioned explicitly in the therapeutic jurisprudence and drug court literature, though it is implicit in the processes of the court and the interactions between the court and the offender, is that of procedural justice.

In recent years there has been an increased emphasis on the importance of process in compliance. In this context, Professor Tom Tyler, a social psychologist, has urged a move away from deterrence strategies to a proactive model of social regulation based upon encouraging and maintaining public trust in the character and motives of legal authorities (Tyler 2001). Process is the key issue, because, it is argued public trust is encouraged when authorities make their decisions through procedures that participants view as fair. In this framework, the legal outcomes (conviction, sentence) are less important than the behaviour of the legal authorities during personal encounters with the public. He calls this ‘motive-based’ trust. People are more willing to accept decisions of legal authorities whose motives they view as benevolent and more trustworthy. The issue is how are the motives and intentions of the authority perceived. If they are perceived to be acting in good faith, the affected party is more likely to accept the decision. The core conclusion of the procedural justice literature is that people’s reactions to their personal experiences with social authorities are rooted in their evaluations of the fairness of the procedures that those authorities use to exercise their authority. Ultimately, Tyler argues that we need to understand the psychology of human motivation and to develop a psychological model of jurisprudence. From decades of research on why people obey the law, he concludes unequivocally that deterrence is limited. He argues that to effectively shape behaviour authorities we need to be able to move beyond motivation linked to deterrence effects and instead to elicit cooperation linked to people’s desire to buy into the decisions of enforcement authorities (Tyler 2001: 5). In other words, we need to understand forms of motivation other than fear of sanctions. In corrections terms, the process of supervision and sanctioning must be seen by offenders as fair and reasonable.

Problem-oriented courts and, in my view, restorative justice procedures, draw their greatest strength from the process itself. Offenders (and others) are given a chance to talk, put their point of view and are required to listen to others. Though this is time consuming, anyone who has observed a drug court in operation is struck by the radically different modes of communication between the parties. Not only is there direct dialogue between the court and the offender, it takes place frequently and over a long period of time. Sometimes, it is even honest. The contrast with traditional court forms is stark.
Avoiding the Pitfalls

Lest it be thought that I am painting too sanguine a picture of problem-oriented court or suggesting that they are a panacea to our social ills, it is salutary to note some of the problems of problem-oriented courts. They are resource intensive. Conferences take time and personnel to organise and run and the sanctions must be supervised and enforced. Drug courts, mental health and other courts require services, case managers, co-ordinators and administrative resources to function. Judge time is expensive and scarce. The theoretical and empirical question is whether these up-front investments ultimately save money in terms of reduced crime and imprisonment rates. A very common complaint from ‘traditional’ or mainstream court and correctional authorities is that given the same level of resources, they could achieve the same results. Possibly, but the question which remains to be answered is whether it is just a matter of resources, that is, more of the same, or whether it is also the different paradigm of service delivery which contributes to success (Bean 2002; 2002a)

Problem-oriented courts have also been criticised as being too narrow. They pre-suppose problem’ to be solved. If the ‘problem’ is not the crime (which is only regarded as the symptom of some underlying trouble or pathology), then the solution must depend upon an accurate diagnosis of the precipitating cause, or causes, of the problem. Rarely is there a single ‘cause’ of crime. Drug addiction is usually symptomatic of a range of other personal, medical or psychological problems which are often compounded by other difficulties such as housing and income support.

Other criticisms are that they place too much power in the hands of judges, who may be idiosyncratic in the way they run their courts, so that the courts become less ‘legal’ and more ‘personal’. There have already been instances in Australia where the problem of ‘unsuitable’ judicial officers has arisen.

Problem-oriented courts are said to compromise the adversarial system and undermine the role of both prosecution and defence by rendering them too ambiguous. It is not clear whether they are there to serve their clients or the court or some greater interest, the public welfare. Where there are no limits on court intervention, sanctions can be onerous and the length of the order may be disproportionate to the original offence. All of the dangers of the ‘therapeutic state’, of rampant medical positivism, rear their heads again.

Sociological critiques question whether problematising the individual rather than broader contributing factors returns the criminological debate to the ‘disease’ model of crime which masked its political and social dimensions of crime. ‘Treatment’, particularly in relation to drug addiction, is not yet a fully proven quality.

Hybrids and Compromises

Recognising the limitations of the drug court model, particularly in terms of the number of courts it was economically feasible and politic to establish, I have suggested, in my sentencing review, a non-judicial version of the drug court, that is, one which removed the element of judicial supervision, but attempted to retain some of the other features I have outlined.

This order, known as the Drug and Alcohol Program Order (in contrast to the Drug Treatment Order which is available only to the drug court) would be a form of the community-based order. Its purpose is to ‘facilitate the rehabilitation of the offender by providing an administratively supervised drug or alcohol treatment and supervision regime in the community’. It would require court based assessment of addiction and the contribution of that addiction to the commission of the offence. It would be imposed when a community-based order would be appropriate and could not
be used in combination with other community orders. It would require supervision by correctional officers in relation to residential or non-residential treatment, regular and random testing and a range of other conditions. Case management would be a feature. The officer could vary the treatment and program conditions without application to the court, but consent is required of the offender. Refusal to consent does not breach the order, but would see it return to the court, which could vary it to another suitable order within the same range or orders.

If the officer believes that there has been full compliance and it is not necessary for the purposes of the order for it to continue, the officer may apply to the court which imposed it for its cancellation (ie, early discharge).

Conclusion

If nothing else, problem-oriented courts will force us to critically examine the way the criminal justice system has done business to date. The system is seriously flawed, particularly in areas where the causes of crime are deep-seated, chronic and multi-dimensional. Problem-oriented courts are not the answer, but may well point the way to finding it.
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