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THE RESPONSE OF THE COURTS TO THE ICE EPIDEMIC

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(This is an edited transcript of Judge Dive's presentation))

1. There has been historically little sympathy in our community for people addicted to drugs and especially drug addicts who commit crimes. But there has certainly been some recent publicity, perhaps driven by some of the research. I think there seems to be something of a more sympathetic approach to what the use of methamphetamine or ice is doing to some young people. I was pleased to see that slightly sympathetic view coming across in some of the popular media.
2. The Drug Court is always interested in ongoing research and always looking for fresh information as to the way we can modify our procedures. Like many in the room this morning listening to the papers on the issues of ADHD and autism spectrum disorders, I thought that we could relate to and identify with many of those symptoms and issues. I have about 180 people on my program. I'm thinking: "well I've got 20 of those, 50 of those". I will re-assure you though that I won't go away and diagnose them in any way.
3. I was asked today to speak on the responses of our courts to the issue of speed and psycho stimulants. The good news is that there are some new programs in the courts which are looking for solutions. The big name is therapeutic jurisprudence - I often use the term "problem-solving courts" - where we are looking to actually use the criminal justice system in new ways to come up with solutions, rather than seeing that endless turnaround of people committing crimes, being arrested, going to jail, going back to their same issues, same problems and just going round and round the cycle again. There are a number of programs in NSW. The Merit program (which also exists in other states under different names) is a fairly short, well regarded intervention which takes place in the magistrates court before a plea of guilty or not guilty. That program provides some intervention monitored by the court for a period of time.
4. For some six years now there has been the Youth Drug and Alcohol Court, which is a very intense program provided in the juvenile jurisdiction. It is essentially a twelve month program.

5. We have a new program which is the Compulsory Drug Treatment Correctional Centre. It is a treatment jail set up at Park Lea for male prisoners who have a non-parole period ranging from 18 months up to 3 years still to be served. So we are talking about people with serious sentences. Then they can be compulsorily transferred into the treatment jail and have the opportunity of high level intense programmes in that jail. The first six months is a closed environment - no contact visits, activities every day, high levels of treatment. Then after that first minimum 6 month period they have an opportunity to go out on day release. So you could be someone with a 3 year non-period of 5 year total term, for example, and actually having some day leave after about 6 months. Now that is certainly the first innovation towards 're-entry into the community early' for prisoners in a very long period of time. The Drug Court has the control of that program as to their entry into the jail. There is an assessment and evaluation of prisoners as to their suitability and eligibility. Then the drug court manages their advancement or their progression through the phases of the program. It is essentially six months of closed attention, at least six months of a day release type of arrangement and then very extensive period of something like a home detention environment where they could live in the community.

6. The Drug Court is the program that I am principally involved in. Whilst it covers only half of the Sydney area, it is certainly a big program. We manage 180 or so offenders at any one time in the community. The Drug Court works as a treatment court working in partnership. The criminal justice system and the health system work together providing treatment and support for offenders in the community.

7. How it works, in a very quick way is that an offender going to jail for their crimes is referred to the Drug Court where they receive their sentence. That sentence is suspended on them entering into a treatment plan. The treatment plan has been developed by the area health services with a probation service. So there is a plan that they are released onto, that they must comply with. It is extremely intensive in the first phase - they meet with me on a weekly basis, coming to court and meeting with me personally. They do three supervised urine tests a week, they have day programs, individual counselling, home visits from probation. It is a very busy time indeed and the program is managed by a sanction and reward process.

8. Sanctions are often days in jail; rewards are such things as a round of applause. Now, there is a lot of applause and happy moments in my court, which is a fascinating part of it. When I first came to the drug court, I was a little doubtful about the round of applause for a successful week. But I quickly found how important it was to the participants. We certainly have some of those 'wheel of fortune' moments where they actually applaud themselves up at the dais where they meet with me. They care so much about getting the around of applause that it is a very important part of their week. They are often very sad if I have been told of some breach of program and so they don't receive that acclamation on a report back.

9. Drug courts are a big deal. There are more than 2,000 drug courts in America. Even Queensland has eight, something that I never fail to mention to our Attorney General. Just recently the research has continued to be extremely positive for drug courts. Our Bureau of Crime Statistics and Research did a big evaluation back in 2002 which was very positive as to effectiveness and as to other issues such as health, social functioning and reduced drug use.

10. Some Canadian research came out just the other day - the Department of Justice in Canada has gone through the world wide evaluations of drug courts across the world, seized on 54 evaluations of different drug courts that they regarded as being reputable evaluations, and then threw those together in meta analysis. Very interestingly and very importantly to the government, it made some strong findings as to drug treatment courts reducing re-offending. One interesting finding was that the longer the studies went (comparing a group that went through and a control group) - the longer the time frame, the better is the gap between the control group and those that have gone through a drug treatment court. That was a very important piece of research. If you have got 54 reliable evaluations being drawn together, there is something that is working.

11. We evaluate our program in a number of ways. Last year 36 of our participants graduated and 149 completed their drug court programs in one way or another. Of the 149, just on half 49% (73) were not required to go back to jail. Remembering they all received a sentence of imprisonment at the beginning of their program, half didn't have to go back to jail. This is a pretty rough and ready sort of mathematics, but I looked at those 73 cases. I looked at their original non-parole periods and they added up to 67 years of jail time. That is a lot of time in jail for a lot of people that they were not required to serve. For the economists, I multiplied it by the \$190 a day it costs to keep someone in an adult jail, and that's \$4.6 million.

12. Why treat drug offenders in this special way? Basically because they are the ones who are committing so many crimes. So if you want to look at where do we devote our resources, drug addicted offenders are a very good start. The jail figures show that 70% of our roughly 10,000 people in jail identify drugs and/or alcohol as the reason why they offended. 50% of burglars have an acknowledged serious drug problem. It's certainly true that a relatively small number of people commit a large number of offences. I noticed recently that the Bureau of Crime Statistics has calculated that a burglar commits an average of 38 burglaries per year and the statistical chance of being apprehended is .045, which is 5 in 100 chance of being caught. So a lot of burglaries are happening and the likelihood of the police being ever able to catch them all and lock them up is obviously a fantasy.

13. Mind you, I've always thought that my burglars, who are a very special bunch, are much more likely to be caught than others. We have had things like leaving your bail notice at the scene. Or they often take something out of the fridge and have a drink - you take a can of coke out of the fridge; you leave your DNA on the inside and your fingerprints on the outside. There was a lovely set of facts recently where the wife and husband come home and she gives her husband a hard time for leaving an open can of coke on the ironing board - he said "I didn't do that". They realise that they have been broken in to and there were lots of fingerprints and lots of DNA. One offender actually broke into a University and stole \$20,000 worth of computers. He actually paid for the coke in the vending machine with a \$2 coin. He was apprehended in the same way but at least he paid for his Coca Cola.

14. I looked at the cases of the 104 participants in the Drug Court Program who I saw personally last week. Of the 104, 50 weren't using anything in the last few weeks, 54 were - Methamphetamine 18, heroin 16, cocaine 7, chronic cannabis 7, benzodiazophanes 4 and ecstasy 2. So there are very similar numbers of speed and heroin users. They all talk about speed but they are all getting methamphetamine. I haven't seen anyone with just straight amphetamine alone in the two and a half years that I've been at the Drug Court. Lots of them are saying they are using ice and but of course we have all of the names used at the times.

15. Over the years we have certainly seen a growing number of drug users using psycho-stimulants and we have had to adjust our treatment. The health services are the ones who put together the treatment plans for me. Many of those went into residential rehabilitation services anyone who is on pharmacological therapies, such as methadone or bextra-morphine. Speed users can go there and the psychologists in the area health services use a lot of cognitive behavioural therapy.

16. Geographically we can only do one half of Sydney. We sometimes have to have court cases about where someone ordinarily resides and where you ordinarily reside is often related to where you sleep. We had this fascinating case recently where a fellow came out of jail, went on a speed binge, hadn't really slept anywhere over the last five or seven days so - how do you decide where he actually lives if he doesn't actually sleep anywhere in particular, and of course can't remember where it was if he did ?

17. We are not seeing an increase in violence to our treatment providers. A lot of people are using speed. But violence to other participants or to health providers just simply hasn't been an issue, but no doubt is coming up as an issue broadly across Sydney .

18. As to our strategies on treatment, there are a number of things that we do. Firstly, I've got this team work arrangement which is so different from any other court process. I literally have a team which comprises justice, all of the area health services that we work with, the DPP, legal aid, probation and parole and the police service through a senior prosecutor. We literally sit down each morning, have a meeting and talk about each individual who is coming in that day and receive the reports from all the agencies. Then from 11am those participants actually come in to court and have a meeting with me and we review the week. It is that level of intensity and follow-up that is effective. There is really no way that they can avoid taking part in the program or face the real option of going back to jail. So when I talk to them at 11am, I already know if they have been to counselling this morning - their justice health representative will get a text message, and I'll know if they were home for their curfew at 7pm last night.

19. I am quite good at just taking quick notes about little bits and pieces that we've talked about. The other day I said to one "how are the wedding plans going?" He looked at me, "how did you know about that?" I said that you told me last week, but he had forgotten that he had told me. That is the sort of thing I do. I have babies names and I have partners names and I know if they are arranging to get married. One fellow wanted to go and serve some sanctions in jail because his sanctions were pretty high. He was getting married the following Saturday and he didn't want to run the risk of ending up being in custody when he was supposed to be getting married. So he said, "Can I go in for five days to get my sanctions down before I get married?" The family had gone to a lot of trouble with the invitations, people overseas. So he popped into jail for the week to be in good shape for the wedding.

20. What you find when you actually start to work with people who have got multiple issues (mental health issues, personality troubles, poor social skills, very poor records of employment etc) is that it is always a changing process. So a chronic drug user who is in a long-term relationship over a long period of time will stop using drugs. But then their basic unpleasant personality comes back out, so she doesn't love him anymore because he's not nearly as nice as he used to be. So she kicks him out and he is homeless and he wants to see the kids on father's day, but she won't let him see the kids unless he brings the stereo back. So we have not got a whole new set of problems to deal with, and their relationship may or may not ever get back on track.

21. Of course, some of the relationships come and go quite quickly. I got a report the other morning that an offender's marriage was over and when he came in I said "look I hear things aren't going too well at home" - he said "no, no its all right, she left me this morning but the car would not start so she came back". I think we in the Drug Court would go mad if we didn't enjoy some of these little bits and pieces.

22. We set short term goals - a week drug free is a very long period of time and that's where that applause comes in. Managing to get through a week, keeping all of their commitments and not using drugs is a huge problem - often they will concede defeat and so will come back into court. That can lead to strange times. One day a class of year 12 girls from a private school came to visit the court. They were sitting up the back and when we adjourned for lunch I went to see if they had any questions they wanted to ask me. A young fellow by the name of Wayne, one of the prisoner participants, came in. He probably had a bit of cannabis to smooth over the first day or so. So I told him to sit over next to the door where the sheriff could take him down to the cells. Wayne thought the girls were quite a nice audience, so he Wayne starts answering their questions. I was quite pleased when the sheriff came up and took Wayne away.

23. We do a lot of work as to instilling responsibility in participants in the Program. They are so used to everybody telling them what to do, not liking anyone in authority and have a very poor history of dealing with people in authority. So I am often turning things around. I'm saying "look I want you to succeed out there in the community, I want you to learn to cope out there, but if you keep missing your counselling, if you are not home for your home visits then you are going to have to end up back in jail". So I actually put the responsibility back on them. That is a very interesting process.

24. Now I have come upon the technique of putting people on a 'next use to serve', which unfortunately shortens down to 'nuts'. But they like that. They see that as the ultimate issue: "I know I'm going to go into custody if I use again". Sometimes that last moment of absolute expectation of going into custody will help them stop. It has become a big part of the program. It is not usually me imposing them now. The offenders will actually say "I have used again this week; can I be put on a 'next use to serve'?" They might have found that a month ago that worked really well and so will ask to be put back on.

25. We have some fantastic results. Only last week a man self terminated from the program so he will not be one of the graduates. During this year he came to court with a laminated pay slip. He is a man in his 40's. It was the first pay slip he had ever had in his life. He went and got it laminated. Around June of this year he was a very nervous man - in 20 years he had never been out of jail in June and he hadn't had his birthday in the community with his family. So he was very nervous, he was like a man flying but actually suddenly the ground's a long way below him and he was finding it very strange to be still out of jail after all this time. He decided to self terminate because he had been, for the second time, offered a promotion in his job in a big ware-house facility. To do the job as the manager he couldn't keep up all the obligations for the drug court, so the self terminated from the program.

26. We have amazing things. One offender brought in a piece of paper. He didn't know what it meant. It was a group certificate. He had no idea that it was a really good piece of paper. He had only been working for 6 months so it actually meant he was going to get a large refund.

27. We are very determined but we are not unrealistic. Some participants believe that we will give up on them as has every other adult in their life perhaps has before. So they almost unconsciously self sabotage their program. So, we are not unrealistic but we will bat on with people who seemingly are inclined to make you to give up on their program. The team may think to themselves “Oh, grief, is he still on the program, he is not an easy man to deal with”. But when he does come to court he gets the respect that he deserves, and that fairness, respect and dignity is a key issue time and time again at graduation.

28. It is a very unusual court. Offenders will tell me confidentially: “look when I came here I never intended to get off drugs; I just wanted to get bail and get out and keep going; but I got caught up in it and you have treated me with respect and no-one had treated me with respect for 20 years, and so it just seemed to be an opportunity to do something different”.

29. Lastly the sobering thought is that you want to keep people alive. It’s been nearly three years since anyone has died on the program. The program has been running for nearly 8 years now. There were nine deaths in the first five years, so that’s a serious aspect of the program. If someone is chaotic, placing themselves in danger then I’d just put them back in jail - they will end up serving their sentence and maybe next time there’s an intervention it might be more successful. We work very closely with area health services to ensure their safety as well.