Problem Solving under the *Dangerous Sexual Offenders Act 2006 (Western Australia)*

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Abstract

The Dangerous Sexual Offenders Act 2006 provides for continuing detention or community supervision orders concerning certain offenders under sentence of imprisonment for particular sexual offences who are found by the Supreme Court to be a serious danger to the community. The orders are for offenders' control, care and treatment and suggest a coercive or paternalistic approach. The literature suggests such an approach presents obstacles to offender rehabilitation. A problem solving approach as used in drug courts can help remove these obstacles and promote offender rehabilitation while monitoring offenders and holding them to account for their performance. It is an approach worthy of consideration by the Supreme Court and by lawyers representing clients in proceedings under the Act.

Introduction

The *Dangerous Sexual Offenders Act 2006* ("the Act") empowers the Supreme Court to order the indefinite detention in custody or community supervision of certain sexual offenders who have served or about to complete serving a term of imprisonment for sexual offences if the court is satisfied they pose a serious danger to the community. The Act is modelled on Queensland legislation: *Dangerous Prisoners (Sexual Offenders) Act 2003* ("the Queensland Act").[1] New South Wales has instituted a similar scheme: *Crimes (Serious Sex Offenders) Act 2006*.

A challenge to the Queensland Act's validity asserting it compromised the institutional integrity of the Supreme Court of Queensland by being inconsistent with Chapter III of the Commonwealth Constitution was dismissed by a majority of the High Court: *Fardon v Attorney General (Qld)* (2004) 223 CLR 575; [2004] HCA 46. The dissenting judge, Kirby J, found the legislation did contravene Chapter III. He found the Queensland Act sought to justify keeping an offender in prison beyond the end of the sentence rather than in a medical or treatment facility as is done in mental health civil commitment cases. He said imprisonment is "reserved to courts in respect of crimes that prisoners are proved to have committed. It is not available for crimes that are feared, anticipated or predicted to occur in the future on

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[1] McGinty J, "Dangerous Sexual Offenders Bill 2005, Second Reading" Hansard, 9 November 2005, 7005b-7006a, http://www.parliament.wa.gov.au/hansard, viewed 28 December 2006

evidence that is notoriously unreliable and otherwise would be inadmissible and by people who do not have the gift of prophesy" (at 647).

A principal concern of the government in introducing the Bill into Parliament was the protection of children from sex offenders.[2] While the legislation's paramount purpose is community protection, it does not say it is to be effected primarily through a continuing detention order. The court is empowered to make either a continuing detention order or a supervision order. Further, the Act contemplates the promotion of sex offender rehabilitation by means of either order.

There is growing recognition that courts impact upon justice system goals such as rehabilitation not only by means of the content of their orders but also by their processes. Increasingly courts are using processes to minimise negative effects on the wellbeing of those affected by them and that promote positive effects such as offender rehabilitation. Some of these initiatives result from legislation, others from court innovation.

Drug courts, family violence courts, the Geraldton Alternative Sentencing Regime and Aboriginal courts are problem solving court programs that use court processes to promote better community and participant outcomes.[3] The Columbus and Magellan projects in the Family Court of Western Australia and the Family Court of Australia respectively have used processes designed to promote better outcomes in problematic family law cases involving children.[4] Prerecording of children's evidence and the use of video-links for other vulnerable witnesses in court proceedings aim to safeguard their wellbeing as far as is possible.

The study of court and other legal processes from the perspective of their impact upon the wellbeing is the province of therapeutic jurisprudence.[5] A growing body of literature examines its application to diverse fields of law including criminal law, civil law, family law, child welfare law, legal and judicial education, constitutional law and international law. Evidence supports the effectiveness of problem solving court programs in promoting participant wellbeing and decreased recidivism.[6] A recent review of the Perth Drug Court

[2] McGinty, n 1

[3] King MS, "Problem Solving Court Programs in Western Australia" Paper presented to the conference "Sentencing: Principles, Perspectives and Possibilities", Canberra, 10-12 February 2006, http://law.anu.edu.au/nissl/sentencing.htm, viewed 4 January 2007

[4] Brown T, "Project Magellan" Paper presented to the conference "Child Sexual Abuse: Justice Response or Alternative Resolution" Adelaide, 1-2 May 2003, http://www.aic.gov.au/conferences /2003-abuse/brown.pdf, viewed 3 January 2007; Murphy P and Pike L, "The Columbus Project in the Family Court of Western Australia: Some Early Findings from the Evaluation" Paper presented to the Eighth Australian Institute of Family Studies conference, Melbourne 12-14 February 2003, http://www.aifs.gov.au/institute/afrc8/papers.html#m, viewed 3 January 2007

[5] Wexler DB and Winick BJ, *Law in a Therapeutic Key* (Carolina Academic Press, 1996); King MS, "Therapeutic Jurisprudence in Australia: New Directions in Courts, Legal Practice, Research and Legal Education" 15 JJA 129; See also : www.therapeuticjurisprudence.org, viewed 3 January 2007

[6] Berman G and Feinblatt J, *Good Courts* (The New Press, 2005)

found it was more effective in reducing recidivism than imprisonment or community supervision and that it was cost-effective.[7]

This article examines the Act's provisions concerning court processes from the perspective of their ability to promote the rehabilitation of sex offenders. It suggests strategies that judges and lawyers can use to promote offenders' rehabilitation. Given the similarities between the legislation, these strategies can be used under the Queensland and New South Wales Acts.

An Overview of the Act

Section 4 of the Act sets out its objects:

> (a) to provide for the detention in custody or the supervision of persons of a particular class to ensure adequate protection of the community; and
>
> (b) to provide for continuing control, care, or treatment of persons of a particular class.

In relation to a similar provision in the Queensland Act, that state's Court of Appeal stated:

> The phrase "control, care or treatment" must, as a matter of ordinary language, be read disjunctively.
>
> This disjunctive reading suggests that there may be cases where the basis for an order may be, either
>
> - the control of an incorrigible offender, or
> - the care of an offender whose propensities endanger the offender as well as others, or
> - the treatment of an offender with a view to rehabilitation.
>
> It will often be the case that more than one of these considerations will inform the making of an order (*Attorney General (Qld) v Francis* [2006] QCA 324 at [29]).

As formulated by the court, the first consideration implies coercion, the second paternalism and the third has the possibility of coercion or paternalism. This is significant in terms of a respondent's attitude towards and prospects of rehabilitation, a matter to be discussed below.

Proceedings under the Act are criminal proceedings (s 40). If a continuing detention order is made, the respondent is not committed to any specialised treatment centre; he is committed to prison, a place associated more with control and punishment than with care and treatment (s 45). The Act does not

[7] *A Review of the Perth Drug Court* (Department of the Attorney General, Western Australia, 2006), www.justice.wa.gov.au, viewed 28 December 2006

make provision for any treatment program to be made available for those detained. It appears that detainees may take advantage of whatever programs are made available in a prison pursuant to discretionary powers contained in Part IX of the *Prisons Act 1981*. However, provision of suitable treatment and support programs is essential to promote the Act's objects, particularly rehabilitation. It is an issue across jurisdictions.[8]

The Act empowers the Director of Public Prosecutions ("DPP") or the Attorney General to apply to the Supreme Court for a continuing detention order or a supervision order against a person under sentence of imprisonment for a serious sexual offence. If the person is in custody, the application may only be made if release is possible within 6 months. The applicant must serve the application and supporting affidavit within 2 days of filing and has the same obligations concerning disclosure as in a criminal prosecution (s 8(5) and s 9).

The Act defines "serious sexual offence" by reference to section 106A of the *Evidence Act 1906*. Serious sexual offences include offences listed in Chapter 31 of the *Criminal Code* where the maximum penalty that can be imposed is at least 7 years, for example sexual assault, aggravated indecent assault (when dealt with on indictment) and sexual relationship with a child.

To grant an application, the court must find the person is a serious danger to the community (s 17). That finding requires satisfaction "that there is an unacceptable risk that, if the person was not subject to a continuing detention order or a supervision order, the person would commit a serious sexual offence" (s 7(1)). The finding must be on the basis of "acceptable and cogent evidence" and "to a high degree of probability" (s 7(2)). The onus of proof is on the applicant. According to Murray J "unacceptable risk" suggests "a real risk of substance not merely a remote possibility" (*The State of Western Australia v Latimer* [2006] WASC 235 at [16]).

Section 7(3) lists factors the court must consider when deciding whether to make a finding, including psychiatric reports ordered under the Act and whether the respondent cooperated in their preparation, other psychiatric, psychological or medical assessments, "information indicating whether or not a person has a propensity to commit serious sexual offences in the future", any pattern of offending by the respondent, efforts the respondent has made to address the causes of offending, the effect of any rehabilitation program in which the respondent has participated, the respondent's antecedents and criminal record, the risk of the respondent committing a serious sexual offence if not subjected to an order and the protection of the community from that risk.

Although the Act provides a general framework for dealing with applications, it also gives the court wide discretion to give directions concerning the conduct of applications (s 43). The hearing of an application is in two phases: a preliminary hearing under section 14 listed within 14 days of the filing of the application and then the hearing of the application under section 17. At the

[8] The Queensland situation is discussed in: Keyzer P and O'Toole S, "Time, Delay and Nonfeasance: The *Dangerous Prisoners (Sexual Offender) Act 2003 (Queensland)*" (2006) 31 Alt LJ 198. For New South Wales, see: *Attorney General (NSW) v Gallagher* [2006] NSWSC 340 at [77]

preliminary hearing the court must determine whether there are reasonable grounds for believing that a court might find the respondent is a serious danger to the community. If the court concludes there are grounds, then it orders that the respondent undergo examination by two psychiatrists and considers whether the person is to be in custody pending the hearing.

Murray J observed that the Act is deficient in that it although it empowers the court to order a respondent be kept in custody, it does not empower the court to release a respondent on bail: *The State of Western Australia v Latimer* [2006] WASC 235 at [7]. If the matter is adjourned with no custodial order made, the question arises as to how any conditions of release can be enforced. In *DPP (WA) v Allen* [2006] WASC 160, Blaxell J used the mechanism of adjourning a preliminary hearing while the respondent remained in the community on conditions. The matter could have been re-listed upon any breach of condition and an order for detention made. However a release on bail subject to conditions would be a less cumbersome process.

The psychiatric reports are to state "the psychiatrist's assessment of the level of risk that, if the person were not subject to a continuing detention order, the person would commit a serious sexual offence" and to give reasons justifying the assessment (s 37). As noted by Kirby J, critics point to evidence of the unreliability of such predictions: *Fardon v Attorney General (Qld)* (2004) 223 CLR 575 at 647; [2004] HCA 46.[9]

The Act provides that on the hearing of the application the court is to first receive admissible evidence from the DPP and then from the respondent (s 43(2)).

If the court is satisfied that the respondent is a serious danger to the community, then it may make a supervision order or a continuing detention order. The latter is not made if the court considers the community will be adequately protected by a supervision order with suitable conditions: *The State of Western Australia v Latimer* [2006] WASC 235 at [22].[10]

Part 3 of the Act provides for the court's annual review of continuing detention orders upon the DPP's application. If at the hearing of the review the court finds the person is no longer a serious danger to the community it must rescind the order. If the court finds that the person remains a serious danger, then it may make a continuing detention order or a supervision order. A person subject to a continuing detention order may also apply to the Supreme Court for leave for the order to be reviewed.

If the court makes a supervision order, then it must include standard provisions as to supervision by a community corrections officer including visits, notification of change in contact details, not leaving the state without the officer's permission and also not committing a sexual offence as defined in section 36A of the *Evidence Act*. The court may also include other provisions

[9] See also La Fond JQ and Winick BJ, "Sex Offender Reentry Courts: A Cost Effective Proposal for Managing Sex Offender Risk in the Community" (2003) 989 Ann NY Acad Sci 300

[10] This is also the Queensland situation: *Attorney General (Qld) v Francis* [2006] QCA 324 at [39]

it considers appropriate for community protection or "the rehabilitation or care or treatment" of the respondent (s 18). There are also provisions concerning dealing with breaches of an order and applications to amend an order (Part 2, Divisions 3 and 4). A Queensland case found that a court has no power to amend the length of a supervision order under the Queensland Act (*Attorney General v Hansen* [2006] QSC 35 at [32]-[34]). The Western Australian situation has not been determined by the Supreme Court. It is matter that should be clarified by legislative amendment.

Problem Solving Court Principles: A Therapeutic Perspective

Problem solving courts are intimately concerned with rehabilitation, care and treatment. Indeed, they endeavour to operate with an ethic of care – not in any paternalistic sense but in a way which empowers people to take responsibility for their rehabilitation.

Seizing the Moment

Problem solving courts and other therapeutic jurisprudence based court programs, particularly in but not confined to criminal cases, draw on findings from the behavioural sciences and from the experience of criminal courts that a person coming before a court is often more motivated to consider behavioural change than at other times. A life crisis, of whatever nature, can cause a person to reflect and consider whether behavioural change is needed to limit the crisis and/or prevent its recurrence. For an offender, the crisis may also involve the possibility of an immediate term of imprisonment with its resultant suffering and restrictions on personal liberty.

In criminal cases, courts can make the most of the opportunity offered by an offender's increased motivation by deferring sentence to facilitate the offender engaging in suitable rehabilitation and support programs.[11] This procedure is used in diversion programs, problem solving court programs and in presentence orders under the *Sentencing Act 1995*. The offender knows that ongoing compliance with the program is needed to avoid the possibility of a prison term (where applicable). Review hearings allow a court to monitor compliance.

Thus in Perth Drug Court, after assessment, if appropriate, the court can admit an offender to a court program and will give an indication of the sentence the offender will receive if the program is not completed.[12] The court also will inform the offender that graduation from drug court will mean that the court will revisit sentencing and most likely impose a lesser sentence. The court regularly reviews each participant's progress providing praise where progress is made, offering encouragement where needed and promoting

[11] Wexler DB, "Robes and Rehabilitation: How Judges Can Help Offenders 'Make Good.'" (2001) 38 *Court Review* 18, http://aja.ncsc.dni.us/courtrv/cr38-1/CR38-1Wexler.pdf, viewed 18 April 2006
[12] King MS, "Perth Drug Court Practice" (2006) 33(11) *Brief* 27

resolution of problems with the aid of the participant and drug court team members.[13] In interacting with participants the magistrate draws on findings from the behavioural sciences as to the mechanics of how people change and motivational processes that support change.[14] It holds a graduation ceremony that recognises participant achievement and contributes to participant reintegration into the community.

Self-Determination, Treatment and Process

The right to personal liberty is a principal concern of Kirby J in his judgement in *Fardon v Attorney General (Qld)* (2004) 223 CLR 575; [2004] HCA 46. Kirby J noted that it is so precious that courts are particularly vigilant in scrutinising laws empowering the Executive to deprive people of their liberty (at 632-633). His Honour also acknowledged that the right to liberty is not unqualified. He referred to High Court decisions upholding an individual's detention for community wellbeing – as in the case of quarantine detention and the detention of the mentally ill – or for some other legitimate purpose such as the detention of those subject to deportation or those whose application for entry into the country has not been determined or the imposition of indefinite prison terms in relation to certain offenders.

Personal liberty involves not only the ability to live and move within the community but also the ability to exercise effective control over important aspects of one's life, such as daily routine, work, recreation, personal relationships, and travel. Naturally these aspects of personal liberty are constrained by detention, whether in a prison or otherwise.

The right to personal liberty has been cherished in legal and political thought for centuries. An individual's ability to choose is at the basis of diverse areas of the law including contract law, marriage, wills, criminal law and legal processes including the initiation and conduct of litigation. As Winick pointed out, diverse philosophers such as John Locke, John Stuart Mill and Thomas Jefferson have seen the exercise of liberty, of self-determination to be essential for individual and social wellbeing.[15] For Mill, deciding to act engages the different faculties of the individual needed to perform the action while acting contrary to choice is injurious to both intellect and feeling.[16] According to Mill, self determination is essential for the development of an individual's full potential.

Mill's position gains support from modern psychology. From a psychological perspective, self-determination is intimately connected with personal wellbeing, happiness, the ability to recognise any need for behavioural change and to implement behavioural change strategies. Winick observes that choice promotes motivation, confidence, satisfaction and "increased

[13] These processes are explored in greater depth in: King M and Wager J, "Therapeutic Jurisprudence and Problem-Solving Judicial Case Management" (2005) 15 JJA 28; and King MS, "The Therapeutic Dimension of Judging: The Example of Sentencing" (2006) 16 JJA 92
[14] King, n 5; King and Wager, n 13
[15] Winick BJ, "On Autonomy: Legal and Psychological Perspectives" (1992) 37 Vill L Rev 1705
[16] Winick, n 15 at 1714

opportunities to build skills necessary for successful living".[17] Research in procedural justice has found that litigants who can exercise choice and participate in a court or tribunal's decision making processes are more likely to be satisfied with and respect its decision.[18]

Coercion and paternalism can produce the opposite effect. They may produce resentment and resistance to change.[19] Paternalism sends the message that the person is not competent to make healthy decisions; it undermines motivation and self-efficacy. Further, Winick comments:

> "individuals coerced to participate in education and treatment programs – whether coerced by judges, correctional authorities, parole officers, mental health professionals, or others – often just go through the motions, satisfying the formal requirements of the program without deriving any real benefit. Indeed, such coercion may backfire, producing a negative "psychological reactance" that creates oppositional behaviour and leads to failure".[20]

Those who choose to participate in treatment or other activities have an internal commitment that is generally lacking in those with only external sources of motivation.

These are important issues affecting how a court should approach a case where a desired result – such as rehabilitation – includes a person's behavioural change. The experience of problem solving courts is instructive. Often these courts deal with those with serious records and whose first appearance in the court is in custody. The court will often remand a case until a residential treatment bed is available before bail is granted. A remand in custody restricts personal choice. But in programs such as the Perth Drug Court and the Geraldton Alternative Sentencing Regime, the decision to seek entry to the court's program rests with the offender; offenders are not coerced into a program – although it is for the court to determine whether the entry criteria for the program have been met.

Further, the court uses processes that respect individual integrity, competence and the right to choose. At the start of their Perth Drug Court program participants are encouraged to determine their goals and strategies. The court reviews these goals and strategies providing positive feedback and reinforcing the participants' ability to engage in the strategies and to achieve the goals. From time to time during their program the court refers participants to their goals, praising them for goals achieved and questioning them about their situation where they have not implemented their strategies or where they need revision. According to Winick setting goals "provides direction for the individual and focuses his or her interest, attention and personal involvement

[17] Winick, n 15 at1766
[18] Tyler T, "The Psychological Consequences of Judicial Procedures: Implications for Civil Commitment Hearings" in Wexler and Winick, n 5
[19] Winick, n 15
[20] Winick, n 15 at 1767-1768

on the effort".[21] Further, the Liverpool Desistance Study found that active offenders had "little vision of that the future might hold" and felt powerless whereas desisting ex-offenders had a plan for their lives and "were optimistic that they could make it work".[22]

Commonly problem solving court program participants are invited to enter into a behavioural contract with the court agreeing to implement the strategies they have formulated. In the health sector, such an approach has been found to enhance participant compliance with programs.[23]

This exercise promotes internal motivation for rehabilitation. Perth Drug Court's experience is that many participants enter the program primarily to avoid a term of imprisonment. They may well have other goals – such as breaking free of a drug using lifestyle and re-establishing family relationships – but they are secondary. However, as they progress, many participants find their motivation shifts from the external to the internal, to the goals they have set for personal growth and achievement in life. Their commitment to rehabilitation thereby gains a stronger basis. While the coercive nature of the criminal justice process cannot be entirely avoided, a therapeutic approach can help minimise its negative side-effects.

Judicial Interaction

Human interaction impacts upon the wellbeing of those involved. Those in authority – whether parent, teacher, coach, employer, doctor or judicial officer – are uniquely placed to affect the lives of those who they come into contact with by virtue of the status accorded to their position by society.

Procedural justice research emphasises the value litigants place on judicial officers exercising an ethic of care – showing litigants that they are interested in their case and the impact of the case upon the litigants.[24] It emphasises the importance of voice, validation and according respect to the litigant. Voice means enabling a person to present their case to an attentive tribunal while validation means the judicial officer showing that the case has been heard and taken into account. These are principles that should be applied in any court proceeding. Both the manner and content of judicial interaction are important for participant respect for and satisfaction and compliance with the justice system.

However, there is a further dimension of judicial interaction that has emerged with the introduction of drug courts, family violence courts, Aboriginal courts and similar programs. Up until the introduction of these courts, the potential of judicial interaction to more comprehensively resolve legal problems and to

[21] Winick, n 15 at 1760
[22] Maruna S, *Making Good: How Ex-Convicts Reform and Rebuild their Lives* (APA, 2001), p 147 and ch 4
[23] See generally: Winick BJ and Wexler DB, *Judging in a Therapeutic Key* (Carolina Academic Press, 2003)
[24] Winick and Wexler, n 23; King, n 13

promote greater satisfaction with the justice system has been largely untapped.

It is not simply that there are far more appearances before the judicial officer in a problem solving court program than in other cases; there is far more interaction between judicial officer and participant than in conventional court proceedings, where, except in the case of unrepresented litigants, the judicial officer mainly interacts with counsel.

In a problem solving court applying therapeutic jurisprudence the judicial officer expresses an interest in participants by, for example, asking them to set goals and strategies, giving positive feedback and supporting their ability to implement the strategies and achieve the goals, on each appearance asking how they are progressing, listening to their concerns, expressing empathy where needed, praising where progress is made and engaging in a creative problem solving exercise and encouraging participants where they have had problems.

The effect of this kind of interaction can be profound. Some participants have never had a positive experience in a court or ongoing support from someone in authority. A judicial officer showing an interest in the participant can help promote participant wellbeing and compliance with program conditions. For example, an evaluation of the Geraldton Alternative Sentencing Regime (GASR) states:

> Participants perceived the opportunity that the GASR provides for them to interact directly with the magistrate as positive. One Indigenous offender currently on the programme described being in front of the magistrate and for the first time in his life being able to '*speak up about myself'.* This person also reported that whenever he had lost focus in the programme the regular and direct relationship with the magistrate helped him. Others described the magistrate as helpful and providing good advice and the opportunity to speak in court as building a sense of personal respect.
>
> > *The magistrate didn't treat me like a criminal and he took an interest and genuinely cared. (male)*.[25]

Further, a recent graduate of the Perth Drug Court commented:

> The Magistrate Courts don't seem to care as much, [sic] your just another number. Where Drug Court is focused on helping you and thats all some people need, a bit of positive encouragement.

According to Makkai and Braithwaite, praise can have "cognitive effects on individuals through nurturing law-abiding identities, building cognitive

[25] Cant R, Downie R and Henry D, *Report on the Evaluation of the Geraldton Alternative Sentencing Regime* (Social Systems and Evaluation, 2004), p 24

commitments to try harder, encouraging individuals who face adversity not to give up…and nurturing belief in oneself".[26]

Of course, problem solving courts are not simply a unique style of judging – they commonly use a multi-disciplinary team to support participants in implementing their strategies and addressing underlying issues, community corrections or juvenile justice officers to supervise participants, a variety of treatment and support programs and a mainly collaborative rather than adversarial approach. It may be that the effectiveness of problem solving court programs is due to a synergy of some or all of their various elements.[27]

Some problem solving courts also take a broad approach to offender rehabilitation, not only addressing specific problems such as substance abuse but also promoting the development of skills in various life domains to equip participants to function as valued members of the community. For example, the practice direction of the Geraldton Alternative Sentencing Regime states: "The end result of rehabilitation should be the person's empowerment to lead a productive, harmonious and fulfilling life in the community".[28] Thus the Perth Drug Court not only offers drug treatment programs, it also offers accommodation support, financial planning, relationship counselling, referrals to sexual abuse counselling, domestic violence programs, education and training, employment agencies and recreation programs – depending on participants' needs and their goals and strategies.

Problem Solving, Therapeutic Jurisprudence and the Reintegration of Prisoners

It is possible to take a problem solving approach to dealing with those returning to the community after serving a custodial sentence. Indeed, this is the approach of United States reentry courts.[29] These courts use variety of approaches.[30] Some allow sex offenders entry if they agree to engage in treatment, others do not. Some target drug offenders, others accept offenders generally.

According to Maruna and LeBel:

> A reentry court is a court that manages the return to the community of individuals being released from prison, using the authority of the court to apply graduated sanctions and positive reinforcement and to

[26] Quoted in Maruna S and LeBel TP, "Welcome Home? Examining the "Reentry Court" Concept from a Strengths-based Perspective" (2003) 4 WCR 91 at 101

[27] King MS, "Innovation in Court Practice: Using Therapeutic Jurisprudence in a Multi-Jurisdictional Regional Magistrates Court" (2004) 7 CIL 86

[28] King MS and Ford S, "Exploring the Concept of Wellbeing in Therapeutic Jurisprudence: The Example of the Geraldton Alternative Sentencing Regime" (2006) 1 *eLaw Journal* (Special Series) 9, https://elaw.murdoch.edu.au/special_series.html, viewed 28 December 2006

[29].Maruna and LeBel, n 26

[30] Lindquist C, Hardison J and Lattimore PK, *Reentry Courts Process Evaluation (Phase 1), Final Report* (2003), http://www.ncjrs.gov/pdffiles1/nij/grants/202472.pdf, viewed 5 January 2007

> marshal resources to support the prisoner's reintegration, much as drug courts do, to promote positive behaviour by the returning prisoner.[31]

Reentry courts' principles and practices are in the process of development. However, they commonly use strategies used by other problem solving courts, including needs assessment and planning, the preparation of a treatment plan by the prisoner and court team members, behavioural contracting, the use of diverse treatment and support services, involvement of community groups such as victims organisations and citizen advisory boards, judicial review, graduated sanctions for program violations and rewards for program compliance including early release from parole.

La Fond and Winick suggest that reentry courts for sex offenders could be used with programs and procedures to meet their special needs.[32] Their proposal includes graduated release from custody, decreasing levels of supervision according to progress made towards rehabilitation, other therapeutic features of problem solving courts and a unique proposal of using polygraph tests to measure participant veracity.

Maruna and LeBel criticise the predominant model of reentry courts that combines seemingly contradictory principles involving punishment and control (coercion based) on the one hand and rehabilitation and reintegration (motivation based) on the other. As has been discussed above, psychological research and practice does not support coercion as an effective means of behavioural change. Indeed, it may produce the opposite effect. Certainly, as Maruna and LeBel point out, there is research that those compelled to enter drug treatment programs do as well as those entering voluntarily. But as they also observe, "consistent coercion may produce minimal levels of criminal behaviour but it also produces minimal levels of prosocial behaviour".[33]

Maruna and LeBel advocate a "strengths based" approach to reentry courts where the emphasis is on the reconstruction of offenders' lives and their reintegration into the community rather than on past mistakes or violations of parole. The focus would be on "monitoring, recording and judging what the individual has done to redeem him or herself through victim reparation, community service, volunteer work, mentoring and parenting".[34] While criminal courts commonly are involved with the conviction and sentencing offenders which can result in stigmatisation of offenders, here it is proposed that courts be involved in dispelling that stigma and in welcoming offenders back into the community. Issues of parole violation would be left to other enforcement mechanisms.

Some problem solving courts focus on building strengths using therapeutic jurisprudence based approaches but also use sanctions. As noted above, the Perth Drug Court uses diverse therapeutic strategies including therapeutic

[31] Maruna and LeBel, n 26 at 92
[32] La Fond and Winick, n 9
[33] Maruna and LeBel, n 26 at 96
[34] Maruna and LeBel, n 26 at 100

judicial interaction.[35] But it also uses a breach point system and, as a last resort short of program termination, will use time in custody as a sanction. This system is necessary where there are no other methods to deal with program condition breaches.

Though some reentry courts results are positive, extensive evaluation is needed, including measuring their impact on recidivism and determining their effective elements.[36] Still, the results of international and Australian problem solving courts suggest the establishment of a pilot reentry court is warranted. The court could target offenders with intensive rehabilitation needs including sex offenders and those with chronic substance abuse problems.

A Problem Solving Approach under the Act

The Act does not specifically provide for a problem solving approach but does not prohibit it. Indeed, the Act gives the court wide discretion in determining its procedure (s 43), wide enough to embrace a problem solving approach. Similarly, the Perth Drug Court and the Joondalup Family Violence Court are not creatures of specific statutory provisions but of the general power of the Magistrates Court to determine its processes. But the Executive has provided funding for the support structures needed for a problem solving court in each case.

While a full problem solving court program is unlikely to proceed without Executive support, the Supreme Court can apply problem solving and other therapeutic jurisprudence based principles to procedures under the Act. As a matter of principle, there is no reason why the Supreme Court could not take a problem solving approach. Indeed, Malcolm CJ suggested the possibility of a drug court approach in the Supreme Court in his opening address to a conference on therapeutic jurisprudence.[37]

Challenges to a Problem Solving Approach

There are unique challenges to taking a therapeutic approach under the Act. In a normal criminal case, upon conviction a court is called upon to sentence for specific criminal conduct. A judicial officer acting therapeutically will condemn the conduct, not the person and will endeavour to motivate an

[35] King, n 13

[36] Gebelein RS, "Delaware's Reentry Drug Court: A Practical Approach to Substance Abusing Offenders" Presented to the European Perspectives on Drug Courts conference, 28 March 2003, Strasbourg, http://courts.delaware.gov/Courts/Superior%20Court/pdf/?Reentry_France_27Mar03.pdf, viewed 5 January 2007; Farole DJ, *The Harlem Parole Reentry Court Evaluation: Implementation and Preliminary Impacts* (Center for Court Innovation, 2003), http://www.courtinnovation.org/_uploads/documents/harlemreentryeval.pdf, viewed 5 January 2007 Lindquist, Hardison and Lattimore, n 30

[37] Malcolm DK, "At the Cutting Edge: Therapeutic Jurisprudence" Opening address to the conference "At the Cutting Edge: Therapeutic Jurisprudence in Magistrates' Courts" Perth, 6 May 2005, http://www.supremecourt.wa.gov.au/publications/pdf/CuttingEdge-Therapeutic_%20Jurisprudence_%20Conf2005.pdf, viewed 2 January 2007

offender to rehabilitate, even when the circumstances of the case require a sentence of imprisonment.[38]

However, an application under the Act asks the court to find the respondent is a serious danger to the community, which is effectively a finding as to his character and ability to lead a law-abiding life, one that contributes to community wellbeing. A possible negative result of such a finding – made by a person in authority representing the community – is to lower a respondent's sense of self-worth and motivation to rehabilitation. There is also the potential for the finding to label offenders and provide additional shame, stigma and alienation to what a respondent may already experience due to his convictions for sexual offences.[39] The respondent may come to consider his identity as one being who is a serious danger to the community.[40] The danger is that it may reinforce a respondent's sense of being a victim of circumstances who is powerless to effect positive change – an attribute of persistent offenders studied by Maruna.[41]

Like many offenders appearing in court, a respondent sex offender faces a crisis, for if the application is granted the respondent will be at risk of being returned to prison for an indefinite period. Upon service of the application the respondent may well have mixed feelings. He may experience increased motivation to take action to avoid an adverse outcome. However, he may also experience anger and resentment, feeling that he has paid his debt to society and should be able to go and lead his life back in the community.[42] The latter feelings may be a barrier to efforts of the court to promote rehabilitation.

Nevertheless, the Supreme Court and the respondent's lawyer have the opportunity to seize the moment and provide an opportunity for the respondent to pursue rehabilitation. But they need to be sensitive to the feelings and attitude of the respondent in determining their approach.

The availability of suitable treatment and support programs also affects the court's ability to take a therapeutic approach and the respondent's ability to take steps to prevent his continuing detention. In one case, a Queensland judge ordered an offender's continuing detention. The parties and court approved a plan that included the offender's participation in treatment programs for his rehabilitation and ultimate release. The authorities failed to implement key elements of the plan. The Court of Appeal observed that there:

> may be cases in which departmental recalcitrance, in relation to the rehabilitative treatment of a prisoner in continuing detention, will give rise to a question on subsequent review by the court as to whether the continued detention of the appellant is justified...(*Attorney General (Qld) v Francis* [2006] QCA 324 at [24])

[38] Wexler, n 11; King n 5
[39] Winick B, "Sex Offender Law in the 1990s: A Therapeutic Jurisprudence Analysis" (1998) 4 Psychol Pub Pol'y & L 505
[40] Winick, n 39 at 556
[41] Maruna, n 22
[42] Maruna and LeBel n 26 at 94-95

Preliminary Hearings: Judicial Processes

The Act allows a judge to conduct a preliminary hearing in the absence of the respondent or to make a determination without hearing the respondent (s 41). This procedure may have anti-therapeutic effects. The respondent may believe that the court places little value on his contribution on a matter that significantly affects his liberty and wellbeing and has pre-judged his case. Consequently, the court may well lose the respondent's respect and the opportunity to engage with the respondent and promote his rehabilitation and compliance with court orders.

While preliminary hearings will involve reliance on affidavit evidence and the submissions of counsel, if the respondent is present the judge may also wish to speak directly with him and ask him whether he wishes to say anything. The judge should acknowledge both factual and affective aspects of the communication and refer to the respondent's words and situation in delivering reasons for decision.[43] Here the respondent could speak personally to any plans for the future as discussed below and raise any issues of concern.

Lawyers, as far as possible, have shielded their clients from direct communication with a judicial officer for the clients' best interests – less they say something to make their case worse. However, provided the judicial officer is sensitive to the person's legal rights and the lawyer has prepared the respondent client as to what to expect, the communication can proceed with minimal possibility of prejudice to the respondent.[44] Such involvement can promote the respondent's respect for the court and its decisions and help motivate the respondent to address issues of concern and engage in rehabilitation programs.[45]

Both the court and the respondent's lawyer should be mindful of the possible anti-therapeutic effects of a finding at a preliminary hearing that there are reasonable grounds upon which the court might find that the respondent is a serious danger to the community. In delivering reasons for decision, the judge could emphasise that this is a preliminary finding only, that the respondent will be able to present evidence and submissions in support of his case at the final hearing and that by his actions between the preliminary hearing and the final hearing he can provide evidence that he is not a danger to the community. The judge could point to positive aspects of the respondent's situation and attitude and encourage positive action by the respondent in the interim. The lawyer could also encourage the client along these lines and facilitate the client's formulation of a plan.

In *DPP (WA) v Allen* [2006] WASC 160 the court permitted a respondent to remain in the community subject to his undertaking to the court. The undertaking set out conditions as to where the respondent would live,

[43] Winick and Wexler, n 23; King n 5
[44] King MS, "Therapeutic Jurisprudence and Criminal Law Practice: A Judicial Perspective" (2007) 31 Crim LJ 12
[45] Wexler n 11; King, n 5

limitations on his movements so as to avoid contact with children, reporting requirements to a community corrections officer and the police and an agreement to participate in counselling and testing and take medication as required. Such conditions give a respondent the opportunity of further strengthening his case at final hearing for either dismissal of the application or release on a supervision order by reason of the positive steps he is taking with respect to his rehabilitation.

The setting of goals and strategies involves offenders in formulating conditions of release into the community. It is a process that promotes self-determination for offenders rather than subjecting them to coercion or paternalism. It stimulates internal commitment to following the conditions, thereby promoting their motivation to rehabilitate – more so than when the court simply imposes conditions on the respondent.

The respondent should be invited to set goals in the different areas of his life relating to addressing underlying issues and promoting his ability to lead a constructive, happy and law-abiding life in the community. At a preliminary hearing it offers a respondent an opportunity of presenting a detailed plan to the court to justify the respondent living in the community pending the determination of the application should the court make a finding under section 14 and should the circumstances permit. It also gives the judge the chance to praise the respondent for positive aspects of the plan and to reinforce the respondent's ability to implement the plan (or aspects thereof as appropriate) and to raise any issues of concern so as to give the respondent the chance to address them. Incorporating the goals and strategies into an undertaking to the court is a form of behavioural contracting that has potentially therapeutic effects.

There may only be a gap of several months between the preliminary hearing and the determination of the application – which does not give a respondent much time to demonstrate significant behavioural change. Still, there is the possibility of the respondent demonstrating that he can apply strategies to achieve short term goals and to build for the future. Certainly the possibilities in terms of goals and strategies for a person in custody will be more restricted than for a respondent in the community – with access to greater resources – but even for a respondent in custody there is still the opportunity to take important steps towards rehabilitation.

Therapeutic Legal Practice under the Act

A lawyer seeking to promote a process and outcome that best promotes the respondent client's wellbeing can prepare the client in relation to what to expect at the hearings and advise and support the client in the formulation of goals and strategies into a rehabilitation plan. Here the emphasis is on empowering the client by facilitating the client formulating the goals and strategies rather than the lawyer simply preparing a draft plan for the client's approval, an approach that may be regarded as paternalistic.

Naturally a lawyer would advise the client about conditions that have been included in previous orders under the Act (where applicable), particularly where respondents have remained in the community between the preliminary hearing and the hearing of the application or been subject to a supervision order. Such conditions commonly specify contact details, reporting to police, supervision by a community corrections officer and limitations concerning associating with children where the offending has related to children.

Further, a lawyer should inform the client about matters that the court will consider in determining the application, including factors that have led a court to order that a respondent remain in custody. For example, the lack of an adequate plan for accommodation and support in the community has contributed to courts ordering an offender's detention order rather than his release on supervision: *Attorney General (NSW) v Gallagher* [2006] NSWSC 340; *Attorney-General for Queensland v Robinson* [2006] QSC 328; *The State of Western Australia v Latimer* [2006] WASC 235. These cases emphasise the need for proper planning and detail in the preparation of rehabilitation plan goals and strategies.

The respondent's formulation of a detailed plan will also provide the basis for a lawyer to negotiate with the applicant's counsel concerning the outcome. Thus, a detailed plan acceptable to the applicant may lead to the applicant's consent to the respondent remaining in the community pending the hearing of the application and/or to the making of a supervision order.

In between the preliminary hearing and the hearing of the application and whether the client remains in the community or in custody, the lawyer should keep in touch with the client to assess the plan's implementation and work with the client in relation to any fine tuning of the plan leading up to the hearing of the application. The lawyer could suggest that the client – if comfortable with the suggestion – speaks to his plan at the final hearing. The lawyer should assemble any evidence supporting the respondent's progress toward rehabilitation for presentation at the hearing. The lawyer should also prepare the respondent client for any possible interaction with the judge along the lines discussed above.

Some respondents will have actively been involved in treatment, educational and vocational training programs and engaged with prisoner support groups and/or family in preparation for their release. From this work they will have the basis for the formulation of their goals and strategies including proposals for accommodation and support. However, for those who have spent a long time in custody, perhaps over several terms of imprisonment, there may be few social or family supports left. These respondents may have burnt their bridges with family and friends who had previously provided support. Here the lawyer's role will be to help motivate the respondent to seek the assistance of prisoner support groups and other community agencies in obtaining the necessary accommodation and support services.[46]

[46] Outcare is one such agency in Western Australia: http://members.iinet.com.au/~outcare/home.html, viewed 3 January 2007

There will also be respondents who have not engaged in rehabilitation programs or have done so by simply "going through the motions" and not addressing underlying problems because they do not acknowledge they have a problem. As Winick observes: "Many sex offenders are in denial concerning the reality of their actions, the extent to which their victims consented to or desired their actions, and the degree of their responsibility for them".[47] This attitude presents an obstacle to avoiding a finding that a respondent is a serious danger to the community and to the making of a supervision order.

These respondents present a particular challenge to their lawyers who are trained in techniques of persuasion in court but not in motivating clients to change behaviour. Court room techniques of persuasion may have questionable value in motivating a client to change. Further, as has been noted, a coercive or overly assertive approach to the situation is unlikely to produce the desired result. Birgden suggests strategies for lawyers dealing with clients resistant to change based upon a psychological model as to how people change their behaviour and the stages of change.[48] Thus, in changing behaviour, people progress from not acknowledging they have a problem, to seeing there is one and thinking about doing something about it, to preparing for change, to actively implementing change strategies, to endeavouring to maintain the change – which may be punctuated by episodes of relapse – until new behaviour has been substituted.

Birgden proposes that lawyers use motivational interviewing techniques to help motivate the client to move beyond thinking there is no problem to recognising there is one and taking steps to change. She gives an example of how the strategy can be used in the case of a sex offender who does not acknowledge there is a problem with his behaviour – albeit the case is at the pre-trial stage.

The lawyer is not acting as a counsellor. The lawyer is simply seeking to present the best possible case on the client's behalf. The client's attitude may be a barrier to the best case being presented. The use of techniques proposed by Birgden may be useful in removing the barrier. However, it should be acknowledged that the respondent client has already been through the court and correctional systems and these techniques may have already been tried and not been successful in motivating the client to change. A lawyer in such a situation will no doubt be soliciting psychological and psychiatric reports on behalf of the client in order to present in evidence at the hearing of the application. Reluctance to acknowledge the problem and/or engage in treatment should be explored by these professionals.

[47] Winick, n 39 at 540

[48] Birgden A, "Dealing with the Resistant Criminal Client: A Psychologically-Minded Strategy for More Effective Legal Counselling" (2002) 38 Crim L Bull 225

The Hearing of the Application

The general principles of self-determination, judicial interaction and problem solving that underlie a therapeutic, problem solving court approach can also be applied in hearing an application or at an annual review hearing. As with the preliminary hearing, the judge has the opportunity of engaging with the respondent, hearing and acknowledging his concerns and proposals and showing that they have been taken into account in reaching a decision.

There are also important issues concerning reasons for decision and their potential impact upon a respondent. If the court decides that a respondent is a serious danger to the community and that he should be kept in custody, the decision has the potential to be devastating for the respondent and his attitude towards rehabilitation. But the court can still provide hope for the future, help motivate the respondent and encourage rehabilitation. For example, the court could refer the respondent orally to factors in his favour and then point out the court's concerns that stopped it from making a supervision order. The court could advise the respondent that the respondent's future has not been finally determined as the court must review the order annually. The court could invite the respondent to prepare for the review hearing and to formulate goals and strategies for the preparation period. The judge could provide feedback concerning the goals and strategies and reinforce the respondent's ability to implement them, particularly by reference to any evidence of past achievements before the court. Here the lawyer and correctional authorities also have a role in encouraging and supporting the respondent to formulate and implement a plan.[49]

If the court decides to make a supervision order then it can use several measures that help promote rehabilitation. As far as is possible, the court should include implementing the respondent's rehabilitation plan as a condition of the order. The supervision order then consists of goals and strategies "owned" by rather than simply imposed upon the respondent. Consequently, there is a greater prospect of a respondent having an internal commitment to following the terms of the order. If there are matters the court feels should be amended or additional provisions added, the court could raise the issue with the respondent and ask if the respondent has any suggestions. If the respondent does not have a suggestion or the court feels another alternative is appropriate, the court could raise the matter with the respondent for his input. The court should also reinforce the respondent's ability to implement the plan.

The court should be mindful about the possible effects of a supervision order's length. In some Queensland cases, the court has imposed supervision orders for 10 or 20 years: *Attorney General v Hansen* [2006] QSC 35; *Attorney General (Qld) v O'Rourke* [2006] 196. While the court may have considered such orders to be necessary for community protection, the court must also be mindful of rehabilitation. After all, the community will be protected if the

[49] Birgden A, "Therapeutic Jurisprudence and "Good Lives": A Rehabilitation Framework for Corrections" (2002) 37 Aust Psychol 180

respondent is rehabilitated. In making an order of 10 or 20 years duration, the court effectively says to the respondent: "the court doesn't think that you will be rehabilitated before that time". The implications of supervision for a lengthy period could demoralise the respondent. Consequently, his motivation to do other than "go through the motions" may be small. The order effectively becomes more an order for the control of the respondent than one for his rehabilitation.

It would be preferable for the court to make orders of a duration that provides greater incentive for the respondent to engage in rehabilitation programs. Such orders do not interfere with the duty of the court to promote community protection in that it is preferable that respondents are rehabilitated rather than simply doing the bare minimum. In any event, if the order is not complied with, then contravention proceedings may be commenced and a continuing detention order made.

The court should consider setting regular review hearings to assess a respondent's progress using its broad power to determine the conditions of a supervision order. For review hearings to be effective, particular care needs to be paid to their content and processes. While earlier research supported the effectiveness of judicial monitoring in promoting reduced recidivism in domestic violence cases, a study of the Bronx Misdemeanor Domestic Violence Court found that judicial monitoring did not have a significant effect in reducing recidivism.[50] However the authors of the study suggested that the result could be explained by the lack of judicial interaction at review hearings and the court's infrequent use of compliance mechanisms. The study suggests that judicial monitoring should be more than a simple "check in". Thus the judge should speak directly with respondent about progress made and any issues that have arisen. A report from the respondent's community corrections officer would be a useful way of gaining information as to the respondent's progress and issues.

It is important for a judge taking this approach to acknowledge and praise the respondent for progress made. Further, rather than simply taking a coercive approach and ordering the respondent to carry out certain actions to rectify any problems, the judge could engage in a creative problem solving exercise with the respondent. The judge could raise each problem area with the respondent in turn, ask whether he has anything to say about it, respond in a way as to show the respondent the judge understands and ask the respondent to suggest solutions. The judge and lawyers can also make suggestions. If necessary, the goals and strategies could be modified. The judge should also reinforce the respondent's self-efficacy – the ability to implement the strategy – and could refer to the respondent's achievements thus far as evidence of that ability. In case the respondent becomes despondent by placing undue focus on problem areas and forgets he has also made progress, it is suggested that the judge, in addressing the respondent,

[50] Berman and Feinblatt, n 6, pp 160-163; Labriola M, Rempel M and Davis RC, *Testing the Effectiveness of Batterer Programs and Judicial Monitoring* (Center for Court Innovation, 1995), http://www.courtinnovation.org/_uploads/documents/battererprogramseffectiveness.pdf, viewed 3 January 2007.

places any problem areas in the context of the whole case: the respondent is doing well in some areas and has devised a plan to address the problems in other areas.

Essentially the proposal is that supervision orders operate similarly to pre-sentence orders under Part 3A of the *Sentencing Act* – adjournment of a matter subject to conditions, offender participation in rehabilitation programs, a community corrections officer's supervision of the respondent, regular progress reports to the court and regular court review – with the addition of therapeutic jurisprudence based judicial interaction and legal practice as used in problem solving courts. Ideally, the community corrections officer should use therapeutic jurisprudence, not only "risk managing" the respondent but also supporting the respondent in implementing his plan.[51]

Conclusion

The Act aims to protect the community from sex offenders released from prison who are assessed to have not been rehabilitated and to have the propensity for further offending of a similar nature.[52] Its objects and processes involve a mixture of coercion and paternalism. The literature suggests that coercive and paternalistic approaches may frustrate rather than further rehabilitation initiatives. Indeed, it suggests that where offenders are internally rather than externally motivated they have a commitment to rehabilitation and engage more comprehensively in the process.

It is now accepted that the ethos of problem solving courts is therapeutic jurisprudence.[53] These courts use processes based on findings as to "what works" in offender rehabilitation. They use processes that respect participants, actively involve them in determining suggested outcomes and processes for their rehabilitation and encourage and support participants through the process. Judicial case management and regular court reviews have the added benefit of keeping participants accountable for implementing their rehabilitation plan and complying with the law. This accountability mechanism is more efficient and speedier than the processes involved in enforcing community based orders under the *Sentencing Act*.

Problem solving court programs promote the rehabilitation of offenders with chronic offending related problems such as substance abuse and domestic violence. For example, over the last few years the focus of the Perth Drug Court has moved to medium to serious offenders, some of whom have had substance abuse issues for 15-20 years. A problem solving approach is used in US reentry courts to rehabilitate offenders and reintegrate them into the community. While the results to date are not conclusive, they show enough promise as to warrant a pilot project in Australia.

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[51] Birgden, n 49

[52] McGinty, n 1

[53] Hora P, Schma W and Rosenthal J, "Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America" (1999) 74 Notre Dame L Rev 439

While the Act has not set up a reentry court, the Supreme Court still has the opportunity of taking a problem solving approach. This approach could help minimise negative effects from the paternalistic and coercive aspects of the Act and encourage and support respondents in their rehabilitation. By this mechanism, the court could take steps to reintegrate respondents back into the community, completing the loop that began when a court removed them from the community by imprisoning them for a criminal offence.

Certainly a problem solving approach to judging is significantly different from conventional judging. For one thing, the judicial officer is more active and involved than in conventional judging and must exercise particular interpersonal judicial skills.[54] In Western Australia, it has been largely confined to magistrates' courts and the Children's Court. Some have thought that it is a perversion of the judicial role.[55] However, as King and Wager point out:

> judicial case management can be carried out in a way that does not compromise traditional values of judging;…the judicial role needs to adapt to social change and to the discovery of new knowledge concerning the human psyche, human behaviour and social need;…courts are already using technology based on the development of knowledge to improve delivery of services and…therapeutic jurisprudence can similarly be regarded as a development of our understanding as to how legal processes can be better used; and…the evidence suggests that, when properly conducted, judicial case management in a problem solving context contributes significantly to the rehabilitation of offenders and to other justice system goals.
>
> In any event, despite objections, recent trends suggest an expansion of the problem-solving court approach and as a result judicial officers need to adapt to the change.[56]

[54] King, n 13
[55] Hoffman M, "The Drug Court Scandal" (2000) 78 NCL Rev 1437 at 1523-1533; Freiberg A, "Problem-Oriented Courts: Innovative Solutions to Intractable Problems" (2001) 11 JJA 8
[56] King and Wager n 13 at 29