

Evaluating New South Wales Diversion Programmes

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In discussing the potential for diversionary procedures from the court process it is important to understand the current pattern of sentence in the courts. It is well known that in Magistrates Courts the most common sentence is a fine. In fact, in N.S.W. in 1977 just 50% of all appearances before the Courts of Petty Sessions attracted a fine. By contrast, just under 6% were sent to prison and that number represents a slight decrease on the percentage sent to prison in both 1976 and 1975. Just under 10% of appearances before the courts of Petty Sessions resulted in a recognizance with or without probation and/or a fine. This non-custodial alternative is more common in the Higher Courts where 38% of distinct persons in 1977 received a recognizance with or without a probation and/or a fine. In the Higher Courts approximately 50% are sent to prison and the use of fines in criminal cases is virtually absent. Approximately 1.8% of distinct persons were sentenced to periodic detention, and this figure scarcely varied during the 3 years of operation of the program.

In view of the fact that just under 74% of those appearing before the Higher Criminal Courts had a previous conviction and 50% of appearances before the Courts of Petty Sessions involved individuals with a prison conviction and 50% of appearances before the Courts of Petty Sessions involved individuals with a prison conviction, it is not surprising that there is considerable dissatisfaction with the range of sentencing options available. Further, with the growing belief that there is a large number of individuals currently sent to prison who should not receive prison sentences and the increasing concern for the security of what are considered dangerous offenders, a comprehensive approach to the problem of alternative non-custodial sentences is required. In the United States diversion usually means pre-court diversion, essentially by law enforcement officers. This occurs, of course, informally in Australian states, by Police Officers, Child Welfare Officers and perhaps by all those who have the responsibility of investigating and enforcing crimes and breaches of regulations. In the juvenile area it is formalised in the process of police cautioning.

In N.S.W. the term diversion has been applied to the magistrate referral to two education and "treatment" programmes, one for drink-drivers with a blood alcohol concentration greater than 1.5 mgm; and the other for narcotics offenders. In both cases, the offenders satisfying the criterion for admission to the program are asked to indicate if they wish to volunteer for it or not. If he or she does, the case is adjourned for approximately eight weeks. The offender appears again before the court, a report from the probation officer indicating the person's progress on the programme is put before the court and sentence given. Most often, although by no means universally, the outcome at the end of the treatment period is somewhat lighter in severity than that which would have occurred if the person had been sentenced initially. In a sense, the programmes are a kind of extension of probation, since they do not require full time attendance.

EVALUATION

That programmes should be evaluated is becoming of

increasing importance as funding levels for social policies become restricted or even reduced. There is the feeling that scarce resources must be used only for the most effective programmes. It is perhaps ironic that a rational cost-effectiveness approach is being applied at a time of cutting-back when it was so rarely taken into account when programmes were set up in the days when there was sufficient money to take an expansionist view. To evaluate the effectiveness of a programme is to take a scientific view. Such a view implies that the effectiveness will be, in some sense, quantitative, or at least, described in an objective fashion and that it would be possible to compare the effectiveness of the programme to what would happen under an alternative arrangement or no programme at all. In such an evaluation the inputs and outputs of the programme must be measured reliably and validly. Comparisons must be made between programmes or treatments so that extraneous variables are controlled. This usually means that the participants in the programme must be matched in characteristics with those who are not in the programme so that a valid comparison can be made free of distortion from outside influences. Such a scientific experiment is extremely difficult to set up. It is perhaps more feasible in those social research programmes which are on the fringe of the natural sciences such as in medical or biological research. Extensive and frequent attempts at the construction of controlled experiments for evaluation have taken place in the field of education. The difficulties are clear. Programmes have been compared on "objective" learning criteria and pupils have been matched according to their intelligence, age, sex and other variables which have been thought to be important, and can be measured. Despite the best matching procedures it is difficult to control for such factors as the personality characteristics of those implementing the programme and the unique set of dynamics that may develop in a particular classroom or group subject to the programme. If it is difficult to conduct such an experiment in the constrained atmosphere of the school where many of the variables are under control, it is little wonder that in community health and justice programmes it should be virtually impossible. Partly our inability to set up adequate controls has led to the consistent lack of positive findings with respect to rehabilitation programmes and the current disillusion with the notion of rehabilitation in the justice system. With court based programmes we have further problems in relation to the legal system. In many jurisdictions, it would be unacceptable to judges and magistrates that individuals might be allocated to particular conditions of a scientific experiment for reasons other than those of justice. Although this constraint is important, I believe it is not clearly as critical as the first that I had mentioned.

In the drink-driver programme data has been collected from people who were subject to the programme and those who were not and some simple matching has been possible. I still have great scepticism about the viability of such a method but we have done it, and are now in the process of analysing results. In the drug diversion programme the

number of narcotic offenders in the pilot courts is too small for adequate marching.

In the drug diversion programme we have undertaken what it is called by some "process evaluation". There are several aspects of this work. Firstly, we are monitoring the progress of the programme: counting the number of people that go through, measuring their characteristics and looking at the more obvious outcomes, especially reconviction. We are, I suppose, undertaking a small scientific study in that we are comparing the reconviction rate of those who went through the programme with the other narcotics offenders in the courts which offer the pilot programme. However, the emphasis is largely in describing what happens and in establishing a system of ongoing data collection to permit continuous re-evaluation for management purposes. Our second approach is to look at the objectives of the programme. There were a set of formal objectives established at its foundation. These are perceived in different ways by different individuals who are involved with the management of different parts of the programme and we are interviewing them to establish what they feel about each particular objective. In doing so a number of implicit objectives have come out and it is part of the evaluation process to report back to the management team on these implicit objectives so that the practical aims for the programme can be defined. A third aspect of the "process evaluation" is to look at the actual procedures undertaken in the educational and treatment components of the programme and see in what way they relate to the objectives, either explicit or implicit. From this analysis a better fit can be obtained between objectives and actual programme actions. Fourthly, we are looking at the roles of individuals and how they fit together. In a programme like this, which bridges the health and justice system it is necessary to have considerable co-operation and consensus between different roles on the objectives. One approach which has been very effective in the industrial area is to interview individuals participating in and managing the programme concerning their expectation of others and what others expect of them and to compare these expectations looking for role conflict. Through a process of interviewing, reporting back and discussion we can work towards resolution of these conflicts and hence improve the efficiency of the programme.

It can be seen that such a "process" evaluation does not simply lead to a single consultants' report. We are now involved like inspectors, measuring and counting and coming out with a final judgement. Rather, the whole process of evaluation is continuous and at the end of the process the programme may be rather different from what it was at the beginning.

Policy decisions about drug diversion cannot be taken in isolation. The programme is simply a small attempt to deal with the problem in a particular way, and it must be considered in relation to overall drug control policies. For instance, decriminalisation of drug usage either by changes in the law or through the reduction of enforcement is obviously one of the major means by which policy may be changed in this area. If marijuana smoking were decriminalised then the drug scene in relationship to heroin would change and the pattern of people coming through the programme would probably be different. Similarly if we were to introduce a system of registration of heroin addicts, hence providing them with, as in the British system, a sure supply under medical supervision then the goals of any diversion programmes would be greatly different. If, as a further example, we were to increase penalties for usage of heroin or alter somewhat the criteria by which a person is charged for pushing rather than using we would affect the programme

much more than many minor changes of the educational process. Similarly, if we were to give increased powers of surveillance to the police and they were to use them extensively, similar changes would occur. Other relevant aspects of the drug control question include the listing of dangerous drugs, control of illegal imports, the handling of seizures and the proper checking and destruction of seized drugs, the nature of the market and the relationship between the market for soft drugs and hard drugs. All these things have been dealt with extensively in the many reports produced in this country and overseas. It is important to recognise that even we may not be directly considering these issues that they are probably more fundamental than minor changes in a health and education diversion programme.

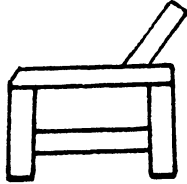
Rather than give particular numerical results in respect to reconviction and the like I am going to concentrate on the key issues which arose from the evaluation and mention the results in the process. These views here have been expressed to the Management Committee and are being actively considered. They are however my own and offered here in the spirit of discussion rather than final conclusion. Firstly the selection of people to the programme turned out to be one which meant a number of people with very extensive previous conviction records went on the programme, in fact there was little difference between those who are on the programme and those who are not, there was no attempt made to select the most suitable cases. I think this is unfortunate because of the difficulty of getting people to succeed in such an educational programme is sufficiently great already without making it more difficult by not putting the most suitable people into it.

It is believed that the adjournment period of the assessment centre was too long for simple assessment and too short for treatment. There was a higher percentage of unemployed persons on the programme than amongst narcotics offenders. It may be that the programme may to a certain degree provide an opportunity for people who were not involved perhaps so heavily in the drug scene to become involved in it. This is a common finding when people go to a particular centre for drug treatment of various kinds, and one of the criticisms of the original distribution of methadone at other clinics in Sydney in an earlier system. It would appear that treatment programme should be separated very severely from the assessment programme and that any group atmosphere should be avoided. It is now thought that the client should return to the court immediately after a short assessment period before being allocated to treatment. Then it would appear desirable although this is by no means certain at this point and should be perhaps the subject of further trial that the treatment process be the subject of some sort of bond by the court. This would further obviate the original legal difficulties or uncertainties about the adjournment procedure which was used to enable an eight week period to occur between the time of first appearance and the time of sentencing. A third issue is that since previous convictions were the most effective predictor of a subsequent drug conviction whether the offender was on the programme or not that the opportunities for rehabilitation should perhaps be maximized by confining the programme to first offenders. A fourth set of issues relates to the role of individuals taking part in the programme, there needs to be a clarification of role between the counsellors and the probation officers and of what information needs to be supplied from the assessment and treatment process. The probation officer supply to the court a form of pre-sentence report. These procedures are being clarified so that there is no stress between what the counsellors see as a

responsibility to the client and the probation officers see as their responsibility to the court. Similarly the magistrate's role should be clarified; he should have a more active concern for the appropriateness of the programme to which he is recommending the person. Possibly the element of voluntarism at least for treatment should be reduced so that some form of sanction is available to the court if the person doesn't carry through the treatment programme. Perhaps the initial assessment could be voluntary and then the treatment

programme could follow connected with some form of recognisance.

It is still too early to say how far this programme should be developed, it should certainly be continued with these amendments and further evaluated. It would never be more than one element in an armory to deal with the drug problem but it is an important one, especially if understood in the context of the issues that I have sketched earlier as being the significant ones in drug control policy.



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