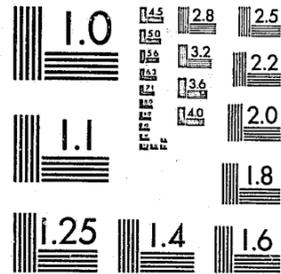


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THE DRUG AND ALCOHOL COURT ASSESSMENT PROGRAMME (DACAP)

PILOT PROJECT: (December, 1979 to December, 1980) FINAL REPORT TO THE N.S.W.
DRUG AND ALCOHOL AUTHORITY

Prepared by Robert J. Williams, Ph.D. (Research Officer, Division of Drug and Alcohol Services).

DIVERSION 3/81

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ACQUISITIONS

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RECOMMENDATIONS

The recommendations of this report are:

1. That the Drug and Alcohol Court Assessment Programme proceed in its development. This procedure has the potential to provide an objective baseline from which to evaluate the varieties of diversion and their eventual impact upon the individual drug/crime careers of those it is invoked to serve. Some concern must be given however to the content of the assessment and the level of professional competence amongst those expected to make important forensic judgements from such information. Scientific assessment should provide the means for matching individual offenders to the most suitable form of diversion/treatment/social control strategy.
2. A legislative review committee should be formed to consider the formal incorporation of Diversion programmes. This is particularly important given the intention to expand the D.A.C.A.P. service into the Western Suburbs of Sydney. The fact that the possibilities for a more creative use of sentencing options exists does not mean that they will be automatically utilised. A variety of responses are needed to combat the problems of drug and drug associated crime and some clear guidelines from the Attorney General's Department would seem a necessary initiative.
3. Diversion strategies supplementary to pre-sentence/post conviction schemes should be investigated empirically. Though this current emphasis is understandable given the nature of the caseload at the Central Court it should be remembered that this population is atypical in state-wide or interstate terms because of the Kings Cross "problem".
4. That some form of diversion scheme for first/early offenders should be a priority.
5. That the policy regarding cannabis offences be reviewed since this remains a neglected topic in the present circumstances.

SUMMARY

Diversion has become a generic term incorporating a range of related but relatively exclusive procedures some of which are seen as potential alternatives to "due process" others as additions to it.

The major possibilities are:

Alternatives

Pre-Arrest Diversion

- Discretionary measures on the part of the police. The establishment of proclaimed places will bring this more into evidence.

Pre-Trial Diversion

- Following which offences are struck out when specified pre-conditions have been satisfied by the offender.

Additions.

Pre-Sentence Diversion

- Essentially a remand for assessment.

Post-Conviction Diversion

- Where offenders are directed to some form of treatment related supervision as a part of their sentence (presumably in lieu of imprisonment).

Prisoners might also be diverted from jail to treatment as a condition of their parole. The additions to due process therefore function as increased sentence options.

The Drug Diversion Programme. (D.D.P.)

The original diversionary programme began in 1977 and continued for a little over two years before grinding to a halt because the Health and the Justice personnel responsible for its management were at considerable odds regards the aims of the programme. This collapse has unfortunately led to the belief that diversion has been tried in N.S.W. and has failed. It would be more correct however, to say that the D.D.P. version failed leaving considerable doubt that diversion procedures have actually been given fair trial.

The Drug and Alcohol Court Assessment Programme (D.A.C.A.P.)

The D.A.C.A.P. superceeded D.D.P. in December 1979 and has two facets:

1. Pre-sentence assessment
2. Referral recommendation to the Court as an aid in sentencing - when applicable. This might involve a treatment dimension as an option where the offender is also in agreement.

The objectives of the programme:

- a. To operationally define the objectives;
- b. To make management more harmonious and therefore more efficient;
- c. To provide a useful assessment process;
- d. To ensure a wider range of treatment alternatives were available; were met. In particular Health and Justice workers presently show a far greater understanding and tolerance of the "other's" point of view than was previously the case. Continued efforts will be necessary, however, to keep the combined purposes of the scheme fresh in the minds of the participants. Greater liaison with the police and police prosecutors seems particularly needed to cement the common purposes of the enterprise.

Target Populations

Throughout the attempts to develop a diversion programme in N.S.W. it has been assumed that two different sub-populations of drug/crime offenders, e.g. (a) Early offenders for whom early intervention would be appropriate, and (b) those offenders most suitable for treatment as an alternative to imprisonment; could automatically be incorporated within the confines of the same scheme. This has not proven to be the case. The referrals to D.D.P. and then D.A.C.A.P. were predominantly middle-range offenders with a predominance of immediate health and welfare needs - how many of these people were definitely facing imprisonment it was impossible to tell. In addition to the size of their previous record those referred were the most likely to be unemployed and to lack social supports. The Court justifiably sees such cases as the priority target for diversion and in so doing has formalised a process which has actually been in existence for some time.

In providing an additional range of sentences pre-sentence/post conviction diversion allows for a more equitable distribution of rational and humane disposal of certain categories of drug/crime offenders appearing before the court. But in the overall context of the problem - marijuana offenders for example were not eligible for the scheme - diversion as it presently operates in N.S.W. is essentially conservative in nature. Though opiate abuse remains the focus of attention only half the drug charges in the study sample (excluding marijuana) involved opiates, almost forty percent of the remainder involved abuse of barbiturates.

The most possible aspect of the present diversion procedure was that it doubled the number of drug offenders associated with some form of treatment though some doubt should be recorded regards the complicated nature of some of the conditions of sentence. Given that "drug addiction" is a chronically relapsing complaint the probability of re-offending, even if only of a technical nature must be increased by such involvements.

Given the present emphasis of the diversionary programme it is not surprising to find that first/early offenders are not referred to the scheme in any significant numbers. Only twenty percent of first offenders were referred to D.A.C.A.P. during the study period. Such offenders are of course the most likely to still be employed and relatively stable socially. Such offenders are also the most likely to receive a fine as their sentence.

With the introduction of the D.D.P. it was established that provision already existed in the statutes to allow for both diversion to treatment etc., (558) and for discharge with no record (556A). In the event 556A discharge was rarely awarded as a sentence in its own right, in fact in less than two percent of the cases during the study period. This figure being similar to that quoted in the study undertaken for Justice Woodward's report (Report of the Royal Commission into Drug Trafficking, 1979). Thus unlike diverting those seen to be in "need" there was no informal tradition of discharging early drug offenders to build upon.

Whither Diversion?

The question, 'Does Diversion work?' is not a sensible one. It is too simplistic to consider drug offenders as a homogenous population and there are several definable sub-populations who would benefit from being considered relatively independently:

- A. First/Early offenders
- B. Multiple offenders but whose records reveal that their pattern of criminal activity could be described essentially as "victimless".
- C. Some middle range of drug associated criminals, where public safety is not at issue (as shown by the granting of bail).

So that the question then becomes, "What kind of diversion works best for what kind of drug/crime offender?"

The lack of sound empirical study of the relationship between use of illicit drugs and other criminal offences is tantamount to a social disaster particularly since almost half the "drug" cases before the court - when we exclude alcohol and marijuana are concerned with illicit use of medically sanctioned substances. Consequently an ill-informed debate surrounds the issue of whether we think we are dealing with "addicts" who commit crimes as a function of their addiction (and who are therefore ill individuals), or with criminals who also involve themselves with drugs as a part of their anti-social lifestyle? The answer must be that we are dealing with both and with each in varying degrees. It is imperative therefore that we escape the either or argument.

The total range of offences should be seen as stretching along a continuum with relatively petty (in terms of quantities, involvement of others etc.) drug only crime at one end and the more serious forms of trafficking and violent crimes by offenders who are also users of illicit drugs on the other. Cases should then be considered individually in terms of degrees of severity, stretching along such a continuum. Appropriate and professional assessment, sometimes at considerable depth, is essential to this enterprise. There was evidence in the simple survey undertaken for this report that those who could be classed as drug only offenders re-offended at a different rate to those described as drug + offenders. The offences associated with the drug + group covered a wide range and several were traffic violations, the drug only group however tended to re-offend in the drug only category.

PURPOSE OF REPORT

On the 1st March 1977, a Drug Diversionary Programme (D.D.P.) was initiated in a number of Sydney Court of Petty Sessions. The programme originated from a proposal by the N.S.W. Attorney General and the N.S.W. Minister for Health for "...the diversion of drug addicts from the penal to the health-care system"(1).

Tomasic (1977) has referred to Diversion (pre-trial intervention at least) as being "seen by many persons deeply involved in observing the criminal justice system as one of the more innovative and progressive developments in the legal system to have evolved in recent years (P.124)."

However, by 1979, Justice Woodward was concluding that "The present diversion scheme is not acceptable to those who are now responsible for its management." (P.1591). The scheme had in fact collapsed.

Subsequently, the D.D.P. Steering Committee set up a working party under the Chairmanship of Professor J. Rankin, Director of Drug and Alcohol Services, Health Commission of New South Wales. Original members of the working party were:---

Mr. R. Baldwin	Team Leader, Bourke Street Drug Advisory Centre
Mr. C. Briese	Chief Stipendiary Magistrate
R. Fryer (Retired June-80) P. Sweeney	Superintendent, Police Prosecution Branch
Mr. B. Stewart	Secretary, Drug and Alcohol Authority (now Chairman of that Authority)
Dr. A.J. Sutton	Director, Bureau Crime Statistics and Research
and later, Messrs. R. Bush and N. White, Probation and Parole Officers. Various Research Officers also attend.	

The working party was concerned principally with the development of an operational procedure more fully acceptable to all parties concerned and thus the "Drug and Alcohol Court Assessment Programme" (D.A.C.A.P. for short) was initiated on the 10th December 1979.

The purpose of this report is to examine the first 12 months' operation of D.A.C.A.P.; to comment, where relevant, on the effect of the change from D.D.P. to D.A.C.A.P. and to discuss and evaluate the present status of the crucial concept of diversion.

Through the N.S.W. Bureau of Crime Statistics and Research (BCSR) (2) is shortly to publish its own report on the D.D.P. of the attempt to establish diversionary programmes in New South Wales, it will be necessary for this paper to cover some of the same ground in order to properly establish the context of the present state of the art.

(1) From "notes for the Attorney General on Diversionary Programmes for the Meeting of Attorneys General on 15 May 1978.

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PART ONE

THE RELATIONSHIP BETWEEN ILLEGAL DRUG USE AND CRIME

Wardlaw (1978) has pointed out that "the view is firmly entrenched that a major proportion of crime is directly linked to the use of illicit drugs. This belief is a foundation for a number of our law enforcement and drug control policies and strategies" (p.1). As a society our media often reveals signs of preoccupation with issues involving illegal drug consumption when, in fact, as we should never tire of reminding ourselves, the legal drugs, alcohol and tobacco, are the largest contributors to the social and economic costs of drug misuse in our society and by a massive margin.

A variety of statistics shows that illicit drug use and other crimes are as often as not linked, but the temporal relationship, much less the casual relationship, between the two kinds of offences is poorly understood. There is little hard research data available so that the degree and significance of the connections between drug use and crime are typically based on conventional wisdom rather than truly empirical evidence.

The prevailing point of view in this area remains that by attacking and reducing the use of illicit drugs we will have a significant impact upon the crime rate overall. But as Shellow (1976) has noted:

To evaluate current policy on drug abuse and crime
and to develop more effective policy in the future,
we need facts, not assumptions or suspicions (p.131).

A major problem for policy makers in this area is the semantic confusion caused by rather glib use of generic terms such as "drug use and crime". When we talk of diversion, what particular crimes and what drugs are we talking about? Wardlaw's classification is a useful one.

- (1) Drug-defined crimes. These are offences such as possession or use of drugs, trafficking, supplying, etc., which are crimes only by virtue of legal actions against prohibited substances. While such crimes may occur with high frequency, they are not of immediate concern in themselves because they are not directly crimes against person or property.
- (2) Crimes in the distribution system. These are offences such as hijacks, assaults, robberies, and bribery which are intended to maintain the physical integrity of a distribution network to ensure an uninterrupted flow of illicit drugs.
- (3) Income-generated crimes, committed against persons or property in order to support expensive drug habits (p.2).

The primary concern both in pre-trial and post-conviction diversion is with summary offences falling within category (1) and occasionally those in (3) and with the relationship between them. Since diversion is a non-custodial procedure, it is clear that diversion programs are meant only for offenders whose liberty is unlikely to endanger public safety.

It is also important to define the word drug. There are many potential ways of classifying drugs, but for the purposes of this Report the drugs of interest include the following because of their known or suspected relationship to crime (this classification is based upon that suggested by the Panel on Drug Use and Criminal Behavior convened by the United States National Institute on Drug Abuse:

- (1) Addictive/expensive drugs. Addictive expensive drugs, and their substitutes. These would include heroin, methadone, and cocaine. Users of these drugs would be the ones most likely to be pressured by economic forces into committing income-producing crimes.
- (2) Dangerous drugs. Relatively inexpensive drugs such as stimulants other than cocaine, depressants, inhalants and hallucinogens.
- (3) Cannabis and its derivatives.

Most diversion programmes do not include cannabis offenders for a variety of reasons, many of which are extremely arbitrary.

Where the terms "addict" or "addiction" are used in this Report they reflect the language of the studies quoted. No attempt is made to define these terms, as their meaning are generally apparent from the contexts in which they appear.

Whether one believes that the courts are dealing primarily with "addicts" who commit crimes as a consequence of their addiction or with criminal types who also commit drug offences will naturally prejudice subsequent opinions as regards the applicability of diversion programmes.

Firm opinions have been expressed concerning both views. Tappan (1960) for example, states that:

...the addict of lower socio-economic class is a criminal primarily because illicit narcotics are costly and because he can secure his daily requirements only committing crimes that will pay for them (pp.165-166).

Other authors, however, view drug-related criminality as part of a generally pre-existing delinquent lifestyle. Thus, Blum (1967) writes:

"There is no evidence that opiates are a cause of crime in the sense [that] they inevitably lead to criminality, but there is no doubt that among addicts with a delinquent life-style drug use is part and parcel of their other activities, crime included (p.57)"

We should not, however, allow ourselves to be rushed into thinking automatically in terms of a dichotomy when considering the relationship between the use of the illicit drugs and other criminal offences. More than one style of response is necessary. It is essential to conceptualise the kinds of offences as stretching along a continuum, stretching from relatively petty (in terms of quantities, etc.) drug only crime along to extremely serious and violent crimes of offenders who are also users of illicit drugs. Drug-related criminal behaviour is multiply determined and is particularly influenced by social and economic factors. Cases should then be considered individually in terms of degrees of severity, stretching along such a continuum.

THE CONCEPTS OF DIVERSION

The official coining of "diversion" as a legal term of reference is traced by Tomasic (1977) to the United States President's Commission on Law Enforcement: Courts, in 1967. It has developed into a generic term describing various procedures for social/therapeutic intervention which can occur at any or all of a number of stages in the judicial process. In the U.S.A. in particular the term has been most usually associated with pre-trial intervention but in this report we are also concerned with intervention at the post-conviction stage.

A. Pre-Trial Diversion

One of the most frequently cited articles on the subject (Nimmer, 1974 p.5) defines diversion as "an interaction that takes place after the criminal process has been initiated, this is, after arrest but before trial and conviction". It involves ".... the disposition of a criminal complaint without conviction, the non-criminal disposition being conditioned on either the performance of specified obligations by the defendant, or his participation in counselling or treatment".

Rovner-Pieszenik (1974, p.3) uses the term to refer to"those formally acknowledged and organised efforts to utilize alternatives to the initial or continued criminal justice processing of alleged offenders, which are undertaken prior to adjudication but after prosecutable action has occurred. Formal prosecution is halted or suspended in favour of processing the defendant by a non-criminal disposition."

Katzenback (1967 a. P.134) has referred to the intention of diversion as being "Formal non-trial disposition together with the deliberate utilization of community resources external to the criminal justice system".

The essential features of pre-trial diversion are thus:

- (1) Diversion takes place at a particular stage of the criminal justice process namely, between arrest and formal prosecution.
- (2) Diversion is a formal, rational exercise of discretion to suspend formal prosecution, where appropriate.
- (3) Diversion involves the referral of the alleged offender to community resources for the "treatment" of the problem which led to the commission of the offence.
- (4) Diversion is therefore an alternative procedure to the traditional court processing of the alleged offender.
- (5) A positive response on the part of the defendant to the stipulations of the intervention leads to a dismissal of the charges

(2) N.S.W. Bureau of Crime Statistics and Research Report. The Sydney Drug Diversion Programme: The First Two Years (in preparation).

It is clear that from any consideration of these features that Pre-trial diversion has never been instituted in New South Wales.

B. Postconviction Diversion

The referral of selected offenders already found guilty of or pleading guilty to drug charges (possess, self-Admin. or supply of any substance other than Marijuana) to treatment/rehabilitation programmes in lieu of or in addition to the traditional criminal penalties (and specially as an alternative to imprisonment) is often referred to as involving diversion. This process is however, more correctly described as an alternative sentencing scheme. The 'alternative' aspect of postconviction diversion lies solely in the creation of additional sentences -- albeit which offer a more humane and rational disposition of drug offenders -- to supplement the already existing range of sentence options ranging up from simple fines to considerable periods of incarceration.

A Crucial Distinction

A clear distinction between pre-trial and postconviction diversion is crucial. The first accepts the possibilities involved in diversion that it could (Governed by appropriate response on the part of the offender) function as a relative but alternative disposition to the present "Due Process". The kind of scheme that developed and still exists in New South Wales on the other hand is a post-conviction, pre-sentence scheme which essentially precludes any alternative.

There is little, however, to prevent the judiciary employing both strategies as happens, for example, in Florida, U.S.A. (Miller, Miller & Schmidt, 1979; Schmidt, 1979). In Florida, 60% of those diverted are pre-trial divertees, 40% are post-conviction offenders. Pre-trial and post-conviction diversion are not necessarily then in ideological opposition to each other. In fact, they are potentially highly compatible in that they would seem to cater best for different sub-populations of drug offenders with pre-trial diversion being ideally suited to first or early offenders.

Why is Diversion Necessary?

The failure of the traditionally punitive judicial approach to either reduce illicit drug use or modify the recidivism rate amongst drug offenders who commit concomitant crimes is causing increasing concern. In Tomasic's (1977, p127) view diversion schemes are essentially the products of attempts to "reduce the scope of the law" which is to say - that they have the potential of reducing the effect of the law in terms of inhibiting the "criminilisation process". This assertion remains to be proven but clearly such schemes intend to amend the general law in the case of individual offenders.

Actually, it should come as no surprise that the rate of recidivism in offences related to illicit drug use is extremely difficult to modify. Drug addiction (however the term is defined) is a chronic relapsing condition. By the very nature of the beast, therefore, such people are likely, once they have entered into conflict with the authorities for law and order, to become more deeply enmeshed in lawbreaking over the passage of time even though the actual offences they commit might well remain relatively "petty" if increasingly numerous. This is because the "logic" of the traditional system then demands increasing severity in sentencing in the face of consistent re-offending with the subsequent increase in punishment doing little to eradicate the original source of the difficulty. There is also usually an increasing incidence of social welfare problems amongst "drug addicts" which, in turn, makes them more visible as "the street" population, membership in which is an increasingly vicious circle which, therefore, presents them as most likely offenders to be re-arrested.

The following justifications of the concept of pre-trial diversion are listed in the Bureau of Crime Statistics and Research (op. cit. p.8) report on the original Drug Diversionary Programme.

1. Processing certain offenders, particularly first offenders, in the traditional way has the undesirable effect of perpetuating the "criminal" problem.
2. Imposing a criminal label lays the ground work for a deviant identity, and a criminal record reduces employment opportunities.
3. Certain offenders, like drug abusers and juveniles, could be dealt with more appropriately in the open community which possessed more effective mechanisms for rehabilitation than did coercive institutional structure like the prison.
4. Diversion prevents discrimination against the socially and economically disadvantaged since its formalisation provides a check against discriminatory exercise of discretion.
5. Diversion represents cost-benefits to the community and is a more humane approach to dealing with certain categories of offenders.

These justifications are of course based on assumptions that can all be challenged in varying degrees. Generally however the justice system strives to balance its twin obligations of protecting society and punishing offenders while also hopefully rehabilitating them. Rinella (1967) has described the "ethical enigma" that inevitably underlies much of the diversion debate. The essential question being, have we or have we not officially decided whether to treat drug/crime offenders mainly as "ill" individuals whose disposition therefore should be governed from a psycho-social health and medical treatment point of view? Workers in this field are and will continue to be faced with a decision that can often be "politically" difficult to arrive at. Are we confronted essentially with what sociologists refer to as a "victimless" crime or with criminal activity that should be punished like any other?. In keeping such offenders out of jail really the most desirable disposition available from the perspective of community protection? In short, what are our fundamental attitudes towards the management of "Drug Offenders"?

Of course there is no all embracing, yet simple, answer to such troublesome questions. One problem for policy makers has been the tendency to consider drug offenders in some kind of one large lump, as a homogeneous population presumably because of the similarities in the charges they face before the court. There are several easily definable sub-populations of offenders, however, and the response to them should be considered relatively independently. One decision making process if it is flexible enough to accommodate the requirements of individual cases being referred to it is all that is required. But such systems of assessment, however efficient, must still be governed by policy which states the options as clearly as possible so as to avoid unnecessary limitations.

There are many drug offences that could be defined as "victimless" crimes but where income generating crimes are involved this description must be inappropriate. Decisions must constantly be arrived at regarding the relationship between illegal drug use and other criminal activity. Failure to make and adhere to recognisable policy decisions can lead, as Rinella has pointed out, to a situation in which the sentencing authority, inadvertently, "undercuts both the offender's right to effective treatment as well as the community's right to effective protection" (p.339)

In section two of this report how health workers and legal personnel participating in the Sydney Diversion Scheme decided upon the illness vs crime dilemma is revealed in their choices of main "objectives" of the scheme.

Arguments Against the Use of Diversion

It has been unfortunate that by-and-large the evaluation of diversion programmes has been rather inadequate by scientific standards. In Roper-Piecznik's (1974) review, for example, she was forced to the conclusion that, although several studies demonstrated a reduction in recidivism during the program period, there was doubt whether such success could be extended to cover any significant post-program period. A finding which fits with the general-rule in the treatment of drug affected persons, that contact with treatment agencies can ameliorate their difficulties to some extent but such changes are usually rather governed by continued contact. Diversion, in other words, goes the way of all rehabilitative efforts in which "some savings" rather than "cures" are the fruits of the therapeutic labour. She also found that many programs had been designed with a concern for feasibility rather than efficacy (p.3-4).

Some schemes, it appears, quickly developed the reputation of becoming "revolving door" situations -- a description borrowed from the rather depressing treatment attempts involving chronic alcoholics.

Many earlier misgivings about diversion warned that the constitutional rights and safeguards of the individual, built into the traditional judicial process, could be inadvertently trampled upon in the zeal of new departures (Perlman, 1974), and it is evident that diversion legislation generally needs to be enacted. In New South Wales, the potential for diversionary strategies were already seen to exist in the statutes, particularly under 556A Discharge/Recognisance and it was therefore considered that a legislative review would not be required. But with the tremendous advantage of hind-sight, it will be seen that 556A discharge/recognisance, was rarely actually utilized and one of the recommendations of this report is that if it be the intention to expand diversionary efforts in New South Wales some form of legislative review committee be formed to clarify use of this sentencing option.

The major difficulty with diversion, however, is as Gorelick (1975) identified, -that without capable assessment procedures and careful sentencing such schemes can inadvertently defeat their own purpose by drawing into the legal (and health) systems, in too comprehensive a way, people whose association with either might otherwise have been relatively fleeting. Procedures in the instance of failure on the part of any participant to satisfy the requirements of diversionary strategies should form an essential deliberation in the initial specifications of such schemes. Any such non-compliance leading to a resumption of traditional "DUE PROCESS" but without any prejudicial increase in penalties being incurred.

Several of the justifications for pre-trial diversion outlined on page ten turn out to have little relevance to pre-sentence diversion. In fact in terms of involvement with the justice system and cost-benefits, there must be an increase involved in pre-sentence diversion rather than the decreases expected in pre-sentence diversion.

And with regard to the justifications for amending the present "Justice" Model for dealing with drug/crime offences it must be noted that there is a dearth of carefully compiled research in this area. While this remains the case arguments be they pro or con must remain in the realm of polemic, however, humane. In naming "the system" as "cause" of ill effects reformers too often gloss over the question of responsibility of the individual involved. The attribution of "blame" and the force of public opinion must be taken into account.

PART TWO

THE ORIGINAL D.D.P., ITS PROCEDURAL DIFFICULTIES
AND MODIFICATION TO D.A.C.A.P.

Investigation of the D.D.P. scheme and its operations (a fuller account of which is to be published in the B.C.S.R. report) was found by Justice Woodward (1979) to have been hampered by the lack of authoritative documents concerning its design and objectives. In the absence of the appropriate documentation, he concludes "it seems likely that appropriate guidelines for the operation of the scheme were not fixed and that both design features and ultimate objections were undetermined. The development of the scheme has been largely on an ad hoc basis". And again, "if the objectives of the drug diversion programme were not clearly determined, the eligibility criteria seems hardly to have been dealt with at all" (P.1557)

Actually the objectives of the D.D.P. scheme at least were clearly stated as the B.C.S.R. Report shows but not in "operational" terms. For example, the first aim of the Drug Diversionary Programme was to reduce the incidence of drug offending. A noble cause indeed but one unlikely to be served effectively or to any significant extent by the introduction of one simple strategy; i.e., remanding drug offenders to attendance at Bourke Street Drug Advisory Clinic for an unspecified number of visits over an eight week period.

Confusing definitions are, of course, much easier to identify in retrospect and an arduous learning process is in fact perceptible internationally as judicial and Government systems make successive adjustments to cope with initial inadequacies in the conception and execution of such potentially revolutionary schemes.

One thing certain, however, was that the New South Wales Drug Diversionary Programme, as it came into being, was never envisaged as a pre-trial diversion. Mr. Justice Woodward uses the term 'diversion' to refer to "... the policy of diverting from the criminal justice system, a person who follows a course of behaviour which is undesirable in the community, and harmful to himself and others. This involves the judicial process, and treatment and rehabilitation within the criminal justice system as an alternative to the more usual concept of fine or imprisonment". (P.1504)

Nevertheless the scheme was clearly intended to provide some alternative response regards sentencing for both offenders who were in the early stages of their potential drug/crime careers in addition to those already deeper into that particular groove. The second and third objectives of the Drug Diversionary Programme illustrate this as follows:

2. To effect early intervention in drug-taking problems of drug offenders
3. To provide offenders with treatment as an alternative to sending them to prison.

Thus the intention to reduce the scope of the criminalisation process appears to have been two pronged. One aspect involving the post-conviction diversion (alternative sentencing) procedure modelled after its precursor the Sydney drink/driver rehabilitation programme (1976) and the other presumably involving a wider use of sentence 556A. The "treatment" being conceptualised as an alternative to incarceration, the discharge/recognizance under 556A presumably being seen as an alternative sentence to a fine or fine and recognizance.

That the Drug Diversionary Programme was modelled on the previously existing N.S.W. drink/driver scheme as can be seen from the description outlined in a paper on sentencing delivered to the Sydney University Institute of Criminology by Mr. Kevin Webb, S.M. (1978)

He stated:

"(Drug Offenders) after entering a plea of guilty (or being found guilty) - and providing they meet certain other criteria - are afforded an opportunity to attend, on a voluntary basis centres where assessment is made of the degrees of the problem, (and) the most effective known way of treating it ... Upon agreeing to enter the problem the charge is adjourned for eight weeks and the defendant required to enter a recognizance conditioned in addition to the usual conditions, that he attend at the assessment centre, undertake any treatment or counselling prescribed and accept supervision from officers of the Parole and Probation Service."

As if stressing the pre-sentence, rather than pre-trial nature of this programme, Mr. Webb also pointed out:

"These schemes are not specifically provided for by any Statute and therefore do not relieve the Magistrate from his responsibility to impose an appropriate sentence in due course ..."

Through the specifics of this scheme might not have been covered by the statutes, the principle certainly was. In New South Wales, it was argued (Notes for the Attorney General on Diversionary Programmes op. cit.) that under sections 68, 69 and 96 of the Justice Act, ample scope for the Magistrates to adjourn any hearing at his discretion and thus permit the defendant to enter into a conditional recognizance and be referred to some community resource already existed. Eventual sentences were likewise covered by the possibilities existing in the 558 prescription for continuing treatment or probation (or some combination of both) following the initial remand period or, given a favourable report, presumably the use of the 556A discharge. Logically speaking, therefore, the New South Wales version of diversion did not appear to require specification from a legislative review.

In practice, however, this opinion was shown to be a mistaken one. At the interpersonal level, the scheme never functioned as smoothly as it might had such specifications been laid down so as to clearly emphasise the endeavour.

As it turned out, the conditions of the remand could legally be satisfied by "simple attendance" at Drug Advisory Centre (quantity unspecified) for assessment and were to be encouraged to continue attendance to accommodate the particular variety of treatment decided upon there. Unfortunately the original and basic problems met with in the initial operation of the scheme which was initiated by committee rather than through development of interpersonal interaction amongst those vitally concerned were never dealt with. It must be remembered however, that management of this scheme was bringing together professional groups with potentially quite fundamentally differing views both on the real nature of the problem and particularly regards the most effective methods of countering it. Had there been better communication between the legal and health systems, the personnel concerned could have developed more insight into, and appreciation of, one another's roles, thereby increasing the level of co-operation and enhancing programme efficiency.

As it was, attendance at the clinic resulted in a level of contact with those referred quite out of keeping with the original intent of the programme. Though 69.9% of those referred continued to attend beyond the requirements of the assessment process and therefore registered some participation in "treatment", 75.7% of the referred actually attended on an average of less than once per week. However, 19.2% of those "in treatment" continued to attend beyond the eight week remand period.

The most obvious disadvantage in the eventual practice of the scheme, however, was its failure to fully employ the 556A sentencing option as expected. This proving the most serious flaw because it was above all the possibilities already inherent in this classification that provided the planning committee with the rationale for avoiding actual review of and possible change in the methods of processing drug offenders. But in practice rather than principle there must now be considerable doubt that 556A can function as the equivalent of the pre-trial diversion concept of dismissal of charges without clear statement to that purpose from the Attorney-General's Department. Such doubt must be intensified by the dual possibilities that 556A incorporates; i.e., 556A discharge and also 556A recognizance which has led to unfortunate confusion there being quite different implications involved regarding the "record of the individual concerned".

In the Drug Diversionary Programme report, the distinction between 556A discharge or 556A recognizance is not even made. In 1977, 3.6% of the total referrals to the scheme received 556A sentences. In 1978, the figure was 4.7% of total cases. The figures in the Woodward Report (P.1567) - based on a sample of the total cases quoted in the Drug Diversionary Programme report - does however differentiate between the discharge and the recognizance options - and this offers us an estimate of the proportion of 556A cases dispensed as discharge. It was used in only 1.31% of the total cases involved. When it is considered that between 15% and 30% of cases apprehended over any given period are first offenders, clearly the 556A discharge option is not being used as an alternative sentence.

556A was used far more frequently as a partial sentence but its use, as a mechanism for reducing the number of less serious charges while concentrating sentence on the most serious ones has little to do with the spirit of diversion.

EARLY CONFLICT OF OPINION BETWEEN HEALTH AND JUSTICE WORKERS

As to the original target populations of:-

- (a) early offenders for whom early intervention would be appropriate, and
- (b) those offenders suitable for treatment as an alternative to imprisonment.

though the intention was obviously to incorporate both sub-populations within the same scheme, this did not eventuate to the expected degree. In practice, it was nearly always the "treatment as an alternative" type of case that was selected for the programme - and for extremely valid and pressing reasons as discussed later. Early offenders never became, therefore, a "priority" group in terms of selection.

The lack of communication and, therefore, sympathy with the other's point of view, between Justice and Health personnel was manifested in this area in the way that views polarised regards kind of offender would benefit most from the scheme. Those in "greatest need" in the eyes of Justice personnel were those considered rather hard-core by the treatment people and the least likely to respond to any short-term treatment strategies that they had not sought out of their own accord. The treatment personnel on the other hand believed that the greatest possibility of success was to be found amongst the early offender/early intervention cases. It followed that they considered that magistrates display little selectivity in their referrals.

Contentious issues regarding eligibility, confidentiality of client/therapist information, the definition of "success" connected with the programme were never resolved. The interpersonal communicatory problems in addition to basic conceptual flaws that hampered the full development of the Drug Diversionary Programme were highlighted in the findings of a "Role Study" questionnaire reported in the Bureau of Crime Statistics and Research report. The opinions about the Drug Diversionary Programme, of the main participants in it, magistrates, probation officers and drug counsellors revealed extensive conflict and confusion in the way the members of each group perceived the intentions of the others, stressing aims which were essentially incompatible.

In particular those from the Justice system, seeking additional sentencing options, described a reluctance on the part of the treatment personnel to accommodate their needs and describing health workers as deliberately distancing themselves from the requirements of "due process". When questioned on the objectives of the Drug Diversionary Programme, not surprisingly, the interviewees quite defensively emphasised only those objectives that had a direct bearing on their own immediate role activities.

The Magistrates emphasised legal objectives while drug counsellors were concerned only with treatment objectives. The probation personnel, as befitted their intermediary function between the courts and the assessment/treatment centres, responded virtually equally to both health and legal objectives.

Each group stressed that the way in which it executed its duties was legitimately within the parameters on its own profession. But inevitably the counsellors felt that the other two groups were interfering with the professional judgement of the treatment system, while the probation officer and magistrates felt that actually it was the counsellors who were interfering with the professional judgement of the criminal justice system. The problem once again here was clearly that of the lack of managerial communication and consensus of opinion.

The interviewee's appraisals of each other is included as Table 1.

In summary then the major stumbling blocks encountered in the attempts to establish a Drug Diversion Programme in New South Wales were not really to do with conceptual mistakes made, which were surely to be expected in such a complex area of interaction between Judicial and Health systems (this being new at least on the comparatively large and formalised scale presently envisaged.) The failure of the scheme and it should be emphasised that it was the scheme that failed rather than Diversion, which remains largely untested, was the direct result of the lack of a process of constructive communications which was inherited from the way the scheme was laid down. The concepts were never operationalised via any kind of pilot-study. The problems came as was only to be expected but the coordination between Justice and Health personnel which would have functioned to sympathetically modify the scheme did not. In 1979 a work-party was formed under the chairmanship of Dr. J. Rankin to salvage the diversion principle and the "Drug and Alcohol Court Assessment Programme" (D.A.C.A.P.) was initiated on the 10 December 1975. It aimed to provide:

1. A more concrete statement of the objectives of the programme and clearer determination of what it sought to achieve;
2. That an effective management framework be established;
3. To develop an assessment process that would provide useful reports to the courts and also serve as the basis for the treatment recommendations;
4. That an appropriately wide range of treatment options be made available both in-patient and out-patient leaving it to the discretion of the client to choose the treatment.

TABLE ONE
Interviewee's Appraisal of Other Groups' Activities in the Program

COMMENTS ON

	MAGISTRATES	PROBATION OFFICERS	DRUG COUNSELLORS
MAGISTRATES		-very co-operative -more realistic about drug problem than counsellors -better understood the need to act more promptly on bail violations -had their reporting task hampered by counsellors	-wrote vague, brief reports -negative attitude towards court proceedings -insufficient urine tests -unduly reticent with information -no attempt to validate information on client
PROBATION OFFICERS	-not sufficiently selective with referrals -easily persuaded by private solicitors -need to be experienced to deal with drug offender		-superficial assessments -vague treatment programs -disregard for court proceedings -unwilling to share information -insufficient feedback to court -not wanting to help addicts who most need help
DRUG COUNSELLORS	-not sufficiently selective with referrals -appear to be confused about program -not sufficiently coercive	-no understanding of confidentiality and the therapeutic relationship -misinterpret information from counsellors in court -too punitive in attitude towards client -important for supervising client during adjournment period	

(This Table appears as Appendix (C) in the B.S.C.R. Report).



Thus D.A.C.A.P. is assessment - oriented and is essentially a diagnostic information service which:

- a. provides the court with information on the offender for formulating appropriate sentences;
- b. provides the offender with information which can assist him in taking an appropriate course of action with his problem.

This diagnostic information being generated through a thorough assessment of persons referred from the courts.

This assessment approach has the following advantages:

- a. It clearly leaves the decision of who needs treatment, in the hands of the appropriate authority which is the health system.
- b. It can effect an adequate matching of the individual to treatment services, thereby ensuring that treatment is relevant to the needs of the individual.
- c. It avoids the dilemma of restrictive vs. broad eligibility criteria for programme entry. Since the offender is diverted for assessment only, minimal criteria are required because the assessment will establish suitability for treatment. The eligibility criteria used in the D.A.C.A.P. are therefore still broad. Those eligible are persons found guilty of or who plead guilty to one or more charges of using; selling; or possessing restricted or illegal substances other than marijuana. These persons must also be suitable for release on bail.
- d. Following from the above point, the assessment-oriented approach broadens the scope of persons who can benefit from treatment resources, thereby increasing the opportunity for early intervention. For those persons who are not chronic drug dependent persons, the assessment can be an educational process informing them about their situation vis a vis drugs. This has been stated in the guiding principles of the program: "...not all persons involved in the non-medical use of drugs are acting in a way that is pathological. However, such use does place a person 'at risk' and persons in such a risk situation should be encouraged to, and given help to, examine their behaviour." (3)
- e. It requires a shorter adjournment period time than the eight weeks in the Drug Diversion Program. The adjournment period in the D.A.C.A.P. has therefore been adjusted to three weeks.

THE PROGRAMME PROCEDURE

A detailed description of the program procedure is given in Appendix (A). A very definite procedure has been established to facilitate the flow of information between the court and the assessment centre, and amongst the personnel involved in the assessment process. This in itself, is an improvement on the Drug Diversion Program in terms of organisation and management.

(3) Report from Working Party to Drug Diversionary Programme Steering Committee on proposed D.A.C.A.P. by Richard Baldwin. (November 1979) pl.

Two of the most important features of the D.A.C.A.P. are the involvement of a primary care worker and the collective post-assessment conference. The primary care worker is the probation and parole officer appointed to:

1. supervise and guide the offender during the adjournment period;
2. monitor the assessment process;
3. arrange the post assessment conference;
4. investigate the offender's social background
5. prepare and submit the pre-sentence report to the court;
6. appear at the court on request;
7. make the arrangements for the offender to attend an outside treatment agency where necessary.

The introduction of the primary care worker to work in the assessment clinic greatly reduce the inconsistencies in the former role of the probation and parole officer. In addition to being responsible for supervising the offender and producing a pre-sentence report as in the Drug Diversion Program, the primary care worker became responsible for co-ordinating the entire assessment procedure. Although the primary care worker would not carry out the actual assessment, there is greater involvement of the primary care worker in the assessment procedure than was the case in the Drug Diversion Program.

The D.A.C.A.P. has also given clarification on the role of the probation and parole officer in relation to the role of the counsellor. The Health Commission personnel are only responsible for conducting the various assessment tests and recommending the appropriate treatment program; and for summarising the post-assessment conference. The primary care worker collates all the relevant information obtained during assessment procedure into a pre-sentence report for the court.

Not only have the roles been structured to remove the strain between these two personnel groups, this restructuring also allows for the two personnel groups to execute the functions within the program which are most closely related to their respective professions.

The post-assessment conference is a major improvement to the Drug Diversion Program. Apart from the benefit it has in involving the offender in the rational selection of a treatment program, it provides the very important opportunity for the primary care worker and assessment personnel to share information, something which was seriously lacking in the Drug Diversion Program.

The issue of what information needs to be supplied to the court, has been given attention in the D.A.C.A.P. The format of the pre-sentence report has been adapted from the format set out by the Probation and Parole Service. Furthermore, the presentence report is accorded the same confidentiality as the presentence report of the Probation and Parole Service. (4)

As for evaluating the D.A.C.A.P. in its first year of operation we would first consider whether it has fulfilled the expectations of the work-party that set it in motion whose aims were, briefly re-stated:

(4) Bureau of Crime Statistics and Research report on D.D.P. (on at) pp 104-105.

- a. To operationally define the objectives
- b. To make management more harmonious and therefore more efficient
- c. To provide a useful assessment process
- d. To ensure a wider range of treatment alternatives were available

A. OBJECTIVES OF D.A.C.A.P.

These were stated as follows:

- 1.1. General objectives: To reduce the general level of non-medical and/or illicit drug use in the community by using the opportunity of court action as an entry point to attempt some intervention in the drug taking career of individuals.
- 1.2. Specific objectives:
 - 1. To provide information to assist the magistrates in their sentencing practice.
 - 2. To introduce individuals identified as using substances into a system that provides them and others with an assessment of their problems (if any) and to recommend some method of handling these problems.
 - 3. By this intervention to identify persons with drug related problems and encourage them to take some action about these problems.
 - 4. By involvement in those interventions to improve the health and social functioning of these persons.
 - 5. To provide information, by collating statistics and conducting research to the courts, health services, Drug and Alcohol Authority, the government and others on the relevant details of the programme, identified trends, identified areas of need, methods that have proved successful and to make recommendations in the area of court intervention schemes.

B. IMPROVEMENT IN MANAGEMENT.

As a test of this improvement a simple questionnaire was designed (a copy of which appears as Appendix B) and administered to the key participants in the management of the scheme. The same list of possible objectives as used in the D.D.P. "Role Study" were employed and though the results reported in the B.C.S.R. report will not allow any quantitative comparison with the present work the general trend reported there was very clear. The Magistrate and the Drug Counsellors only stressed objectives relating directly to their own functions and were therefore polarised by their views while the probation and parole personnel could generally see both sides of the argument and therefore took up the centre ground.

A simple system of scoring was used in the present case, each participant being asked to choose and order the three main objectives of the D.A.C.A.P. These responses were totalled and the following table shows first, second and third choices, the intention being to simply test the level of agreement between the three main groups involved. Twenty people in all were interviewed all by the same research assistant and over 90% of all possible principle interviewees were reached.

Assistance to the Court as an aid in rational and humane sentencing affords a clear and objective central theme which forms a common ground for interaction between Health and Justice Personnel. In Table 2, the objectives "Care and Rehabilitation" (Justice) and "Improve Health" (Health) though taken to be expressions of the same general objective are separated here to allow for the varying opinions inherent in the philosophy of these two systems regarding its best way of achieving such improvements.

	TO EDUCATE	IMPROVE HEALTH	ASSIST ↑ COURTS	CURE AND REHAB.	ALT. TO JAIL	AS Deter- RANT	MINI- MIZE RECID- IVISM
HEALTH AND ASSESS- MENT		<u>EQUAL FIRST</u>	<u>EQUAL FIRST</u>	THIRD CHOICE			FOURTH
PROBATION AND PAROLE		<u>EQUAL FIRST</u>	<u>EQUAL FIRST</u>	<u>EQUAL FIRST</u>			FOURTH
MAGIS- TRATES	EQUAL SECOND		FIRST	EQUAL SECOND		EQUAL FOURTH	
PUBLIC SOLIC- ITORS		EQUAL SECOND	EQUAL SECOND	<u>FIRST</u>			
POLICE PROSEC- UTORS				EQUAL SECOND		FIRST	EQUAL SECOND

TABLE 2. Rank order of main objectives of the D.A.C.A.P. chosen by Professional Groups involved in management of the Scheme.

Had there been total agreement between the groups interviewed then 1st, 2nd and 3rd choices would obviously correspond. This clearly is not the case although "Assistance to the Court" does function in the expected fashion.

The most significant aspect of the present choices of objectives is that in comparison with the opinions revealed in the D.D.P. results they confirm a marked increase in acceptance (tolerance) and development in the understanding of the point of view of others. This shift in attitude is most noticeable in the response of the Health workers as shown in Table 2, who now incorporate Justice aims into their conceptualisation of D.A.C.A.P.

A similar accommodating trend is evident in the response of the Magistrates but to a lesser degree than that exhibited by the Health workers.

A similar accommodating trend is evident in the response of the Magistrates but to a lesser degree than that exhibited by the Health workers.

There was no shift in the responses of the probation and parole workers (including primary-care personnel) who, as before gave equal weight to the objectives of both Health and Justice.

Members from two additional participant groups not sampled in the original D.D.P. study were included in the present work. It is interesting to note that though the response of the public solicitors corresponds reasonably well with those of the main associated groups, the objectives identified by the police prosecutors are somewhat different from all the others, which could indicate that more liaison work is necessary with this group in order to encourage them to closer agreement.

In answer to the question "Are Roles Understood Better in D.A.C.A.P.?" the answer was always in the affirmative. The major qualifying comments centred around the following:

1. The realisation that some degrees of misunderstanding in the individual case (cross-purpose) was rather inevitable between legal and health workers.
2. That the secondment of probation and parole workers to the Bourke Street Clinic had proved invaluable.
3. Efforts to ensure a greater level of feedback were necessary.
4. Steps should be taken to keep the scheme "fresh" in the participants' minds because of constant staff changes.

A summary of comments on the questions relating to the perceived advantages and disadvantages of the programme is not included here since these generally echo the objectives listed in Table 2 but is attached in Appendix C.

C. DEVELOPMENT OF A USEFUL ASSESSMENT PROCESS

The objective was to provide reports on drug offenders to assist the sentencing process. The inclusion of two experienced Probation and Parole officers into the assessment team ensured a quality of report to a standard set for that departments Pre-Sentence Reports.

The relevance and realism of court reports was stressed and in their preparation the following information and guidelines were used:

- Results of Psychological Tests
- Results of Social and Drug History reports
- Any relevant medical and psychiatric information
- Information from home visits and other relevant community contacts where applicable
- Information from court papers
- Information from police
- Information from other voluntary and Government agencies (e.g., P.P.S.)
- The results of the Post Assessment Conference
- Arrangements for any referral to treatment agencies

The Primary Care worker (Probation Officer) organised the results of the assessment under the following headings:

(a) Significant Social Background

This included demographic details, family background, education, employment, additional features (i.e., cultural factors if of ethnic origin).

(b) Drug Situation

- Pattern of drug use
- Relationship between drug use and offence
- Problems resulting from drug use

(c) Medical/Psychiatric Findings

(Where applicable) such findings were expressed in non-therapeutic language.

(d) Assessment and Intervention Options

- likelihood of intervention plan being acceptable to person
- availability of intervention plan
- likely outcome

An assessment report presented a synthesis of the significant findings, not an exhaustive list of all data collected. (5)

In retrospect the main measure of usefulness of the assessment report can be gauged by the number of requests made for the service by the court.

(5) R Bush (op.cit) Tables 7 and 8 and related text also taken from the source.

During D.A.C.A.P.'s first year of operation approximately 10 street drug offenders per month were referred for assessment and report. The rate of referrals remained constant throughout the year which may well be an indicator of general satisfaction and willingness by the courts to use the programme. Particularly since, as discussed in Section Two of this report, the referrals represent the majority of drug offenders with particular types of backgrounds.

It appears that D.A.C.A.P. reports are most often requested by magistrates when offenders can be seen to have few if any community resources at their disposal.

Table 3: The quarterly referral rate of drug offenders for Assessment and court report by Central Petty Sessions.

Quarter	Total (N)
Up to 9th March, 1980	32
9th June, 1980	29
9th September, 1980	25
9th December, 1980	31
TOTAL	117

Not all drug offenders complied with the bail undertaking to attend for assessment and in the majority of these cases they also failed to reappear at court for sentence. In 15% of cases, the drug offender did not appear at all and the assessment team were unable to locate them. In these cases, a report was written to the court indicating non-compliance with the bail undertaking. Where some information was available either by knowledge of the drug scene or through other agency reports, this was submitted to the court where it was judged as being useful. For example, that the offender had committed further offences and was now in custody or the offender was seriously ill in hospital and expected discharge could be on such and such a date.

Table 4: Service to Court Assessment Report presented as a factor of the offenders compliance with the bail undertaking (6)

	N	(%)
A Full Assessment with Recommended Interventions	73	(62)
A Partial Assessment (sometimes with Intervention Recommendations)	27	(23)
A Report indicating Non-Compliance with Bail Undertaking	17	(15)
TOTALS	117	100%

(6) R BUSH (op. cit)

The Majority of Drug Offenders (62%) did, however, complete a full assessment and in these cases a report was presented to the court which included a planned course of future action. Usually the courts sentencing practice enabled such an intervention to take place.

The Penetration Rate of D.A.C.A.P. - as indicated by the percentage of the total cases at the court who were referred for assessment - remained similar to the percentage recorded for entry into the old D.D.P. In both scheme it runs between 30 and 40% which on the face of it appears disappointingly low. It should be remembered however that the purpose of assessment is to provide a report upon which to base sentencing and as shown in Table 5 in at least a further one-third of the cases (again similarly for both the D.A.C.A.P. and the D.D.P.) some other form of report, from the probation service, some treatment agency, privately engaged therapists etc, was available to the court at the time of the offenders appearance. In such instances sentence was usually handed down immediately as it infact should be.

Table 5: The type of report on the drug offender presented to the court at the time of sentencing (%).

No report on Court Papers	Other information: Probation, Private Treatment or Agency Reference etc.	D.A.C.A.P. Report.
32%	31%	37%

As will become more apparent in Section Three, most early offenders were not referred to D.A.C.A.P. even though the court papers indicate that they were most likely not to have reports submitted on their behalf.

An additional if indirect-measure of the usefulness of the assessment report involves consideration of the use to which it was put by Magistrates. One available measure of this is the degree of congruence between assessors recommendations and the final sentence as shown in Table 6, in which there are two dimensions. The two central rectangles can be considered as scatter-grams and the relationship of the figures moving from the top left hand corner to the bottom right hand corner therefore indicates the degree of correlation between recommendation and sentence given that is, that the sentences are listed in broad terms of increasing degrees of potential contact/involvement with the legal/health system.

RECOMMENDATIONS FOLLOWING ASSESSMENT

FINAL SENTENCE

FIRST 6 MONTHS

	Open	Fine	Bond/ Recog.	Fine & Bond	Prob. & Fine	Prob. & Bond	Prob. & Bond & Interven- tion	Gaol	Non-Appear at Bourke
NON-APPEAR AT COURT	-						1		5
FINE	3						1		
BOND/RECOG.	2		2				4		1
FINE + BOND	-								
PROB. + FINE	-					1			
PROB. + BOND	3		1			4	1		
PROB. + BOND + INTERVENTION	4					4	7		
GAOL	3								1
SECOND 6 MONTHS									
NON-APPEAR AT COURT	5						1		6
FINE	5	3							1
BOND/RECOG.	4	1	2						1
FINE + BOND	-								
PROB. + FINE	-				1	1			
PROB. + BOND	1					5	2		
PROB. + BOND + INTERVENTION	2					3	7		
GAOL	-								

TABLE 6: RECOMMENDATIONS MADE FOLLOWING ASSESSMENT AT BOURKE STREET, CLINIC COMPARED WITH FINAL SENTENCES HANDED DOWN BY THE MAGISTRATES.

Due to the retrospective nature of this study we do not have a record of the numbers of clients who might have refused the option of entering the scheme or of those who changed their minds during assessment. The "non-appear" at Bourke Street and the "open" figures do give us some estimate however. Certainly the recommendation would have been left open in cases where such a change of mind occurred and also where some form of treatment might have been suggested but it was not the intention that such a suggestion be formalised into the conditions of a bond.

D. THE PROVISION OF A WIDER RANGE OF TREATMENT

There has been an increased in range of community resources in DACAP over DDP and an increase in frequency of referral to other agencies. It would seem, therefore, that an improvement in personalizing the intervention options may have taken place and in addition liaison between the statutory assessment centre (Bourke Street) and other agencies has improved.

Table 7: The major recommended interventions offered to those fully and partially assessed (Multiple recommendations to some drug offenders accounts for excess of recommendation over number of offenders).

	(N)	(%)
1. Probation Supervision	29	(20)
2. Detoxification in a Hospital, Treatment Centre (or Short Methadone Withdrawal)	22	(15)
3. Did not attend for assessment (No recommendation)	17	(12)
4. Individual Counselling at Bourke Street Clinic	16	(11)
5. Long-term Residential programme	15	(10)
6. Other outpatient community service	11	(7)
7. Short-term Residential programme (under six weeks)	10	(6)
8. Assessment Indicated No Intervention recommended	9	(6)
9. Group therapy at Bourke Street Clinic	5	(3)
10. AA or NA Groups (out patient)	4	(3)
11. Hospital Psychiatric Treatment	3	(2)
12. Methadone Maintenance Programme	3	(2)
13. Imprisonment for own safety	2	(2)
14. General Hospital Admission	1	(1)
TOTAL	147	100

All drug offenders completing assessment would through a round-table conference have discussed the following:

1. Extent of the dependence
2. Whether or not the dependence is physical
3. Recommendation on immediate care
4. Assessment of

social	vocational
family	legal
drug	medical
psychological	psychiatric
education	

condition.

- 5. A recommended plan of action
- 6. The recommendations to the Sentencing Magistrate (partially assessed person received varying amounts of the above).

In 20% of cases, the recommendation was for probation supervision. A primary consideration here was length of criminal record. The longer the record the more likely any diversion was to be from a custodial sentence, the more likely probation supervision appeared appropriate.

In 15% of cases, detoxification only was recommended. Here the assessment indicated both a physical dependence and a willingness to reduce that dependence but not to proceed to further treatment in a residential setting.

Residential Programme, which also usually included detoxification, were recommended to 16% of offenders.

DACAP also had access to specialist pathology and psychiatric services which were useful to a small number of persons. Two per cent were found to be in need of residential psychiatric care and one per cent needed hospitalization for serious illnesses.

Outpatient services used in 7% of cases were roughly of two types. Either other community health centres or special programmes such as youth drop-in centres.

Table 8: Comparative Proportions of Interventions offered on DDP (1978) and DACAP (1980)

DDP (1978)	Intervention.	DACAP (1980)
Bourke St. Counselling	.57	Bourke St. Counselling .13
Psychodrama) Group therapy) Psychotherapy) Relaxation classes)	.27	Group therapy at Bourke Street .04
Home Visits	.02	(done in assessment (where applicable)
Methadone Withdrawal	.08	Methadone Withdrawal -
Methadone Maintenance	.03	Methadone Maintenance .02
		Probation .24
		Hospital detoxification .18
		Long-term residential .12
		Short-term residential .07
		Hospital:
		Psychiatric .02
		General .01
		Imprisonment .02
		NA, AA Groups .04
		Outpatients centre .08
Other	.03	Other .03

PART THREE

EVALUATION: PRESENT PROBLEMS AND SOME GUIDELINES FOR FUTURE RESEARCH

Questions regarding the "value" of DACAP must eventually extend beyond concern for the process of the scheme to a more detailed consideration of its purpose in terms of effect upon the drug/crime careers of the individual who's behaviour is after all the reason for its existence.

It is essential that professional care be taken in planning the relevant questions if we expect the answers to be decided empirically as the product of research. Unfortunately the most obvious questions are not necessarily the most appropriate ones or the most easily answered. The obvious question about any scheme is "Does it work?", but it only becomes a valid one when we're sure we understand what the "it" really is. The present climate of opinion regards the outcome of the DDP shows us a classic example of the result of misunderstanding the question. The question being in that case "Does diversion work?", the answer apparently being a loud and clear "No". But it was the DDP that failed as we have seen and not "diversion" per se. In the first place there are many varieties of diversion and in the second, given the problems in management, there would have to be some doubt whether even the mini-version of diversion attempted in DDP programme was really given a fair trial.

The change to DACAP has allowed a valuable distinction to be made between the process of Assessment and that of Referral (-Action which might or might not be taken in the individual case). The simple question "Does DACAP work?" is not appropriate therefore since it is a scheme that must be considered in stages, the initial question, given the recent experience of the fate of the DDP, being - "Do we now have a viable system?" The answer to this question, as already revealed in Section Two, is in the affirmative.

The possibility of a truly empirical evaluation of the interventions (which cover the total range from assessment only to long-term in-patient treatment) is therefore becoming possible for the first time. Of course such evaluation is beyond the scope of this present report since the research problems inherent in the DDP evaluation were carried over completely into the DACAP. Being essentially concerned with the speedy re-establishment of a rather tender social interaction, no research designs were considered and incorporated into this development.

What follows then can only be a retrospective survey for the purpose of analysis of trends in the data and given the nature of the enterprise no sophisticated statistical analysis is warranted. The information presented was gathered from the court records and the first three months of the scheme only were covered to allow some comment to be made regarding the rate of recidivism during the 12 months following the original sentencing of the offenders involved. The amount of information available from court records is of course remarkably varied with about one third of the papers (particularly in the case of those who were fined) offering very little information beyond the most basic demographic details.

With the planned expansion of the "diversion" scheme by the N.S.W. Drug and Alcohol Authority into the Western Suburbs of Sydney, however, it is to be hoped that the opportunity this offers for a properly designed and prospective study of drug/crime and efforts at intervention and modification of it will be fully grasped.

The questions to be answered about diversion not being "Does it work?" but rather "What kinds of diversion work best for what kind of drug/crime offender?"

A BRIEF SURVEY OF DRUG OFFENDERS APPEARING BEFORE THE CENTRAL COURT DURING THE FIRST THREE MONTHS OF DACAP.

No selection criteria were outlined for the DDP and none were incorporated during the change to DACAP. Since the assessment function is conceptually separated from the referral for treatment selection at the court level this presents less a problem than it did previously.

None-the-less a selection procedure must be occurring informally if not formally and the initial topic for investigation is "what kinds of people are referred to DACAP in relation to the total population of drug offenders?"

One hundred and forty-two cases were culled from the court papers dated between 10th December, 1979 and 31st March, 1980.

In twelve of these cases, drug charges formed only part of the total charges brought against these individuals and they were, therefore, not involved in the scheme because of the "serious" nature of these other offences. Five of these cases involved weapons, two stealing, one break, enter and steal and one each of assault, bribery, malicious injury and serious traffic offences.

Interestingly enough though one of the original aims of the "diversion" was to provide an "alternative to imprisonment" the offenders who were most likely to go to jail were automatically selected out of the programme. Though possibly this was due to the inability of the scheme as presently conceived to incorporate offenders refused bail. At the opposite end of the scale, six further cases were dropped from the computation. In three of these no evidence of the charge was eventually offered, one was sentenced to Rising of the Court, one was discharged on 556A and one case dismissed without explanation being recorded.

Ultimately, one hundred and twenty-four cases were surveyed and reported on below.

Since the prime purpose of DACAP is to assist in sentencing, Table 9 shows the relationship between final sentence and whether individuals were referred to DACAP or where already in association (however tentatively) with some form of treatment, or were neither in treatment or referred to the scheme (Non-scheme).

Table 9: Final sentence received by category of offender; i.e., referred to DACAP, already associated with treatment or neither of these (non-scheme).

	FINAL SENTENCE				
	Jail	558 with Conditions Probation or Treatment or Both	Fine + Recog.	Fine Only	Total
DACAP	1(7.1%)	16(51.6%)	4.(18.2%)	5(8.8%)	26(21%)
In-Treatment (associated with treatment)	1(7.1%)	9(29%)	8.(36.4%)	9(15.8%)	27(21.75%)
Non-Scheme	12(85.8%)	6(19.4%)	10(45.4%)	43(75.4%)	71(57.25%)
Total	14(11.2%)	31(25%)	22(17.8%)	57(46%)	124(100%)

The non-scheme offenders provided 85.8% of those jailed and 5.4% of those who received a fine only. As perceived by the sentencers, the non-scheme offenders must thus form at least two populations, those who are presumably seen as pre-the necessity for referral to DACAP and those who have passed beyond its possibilities.

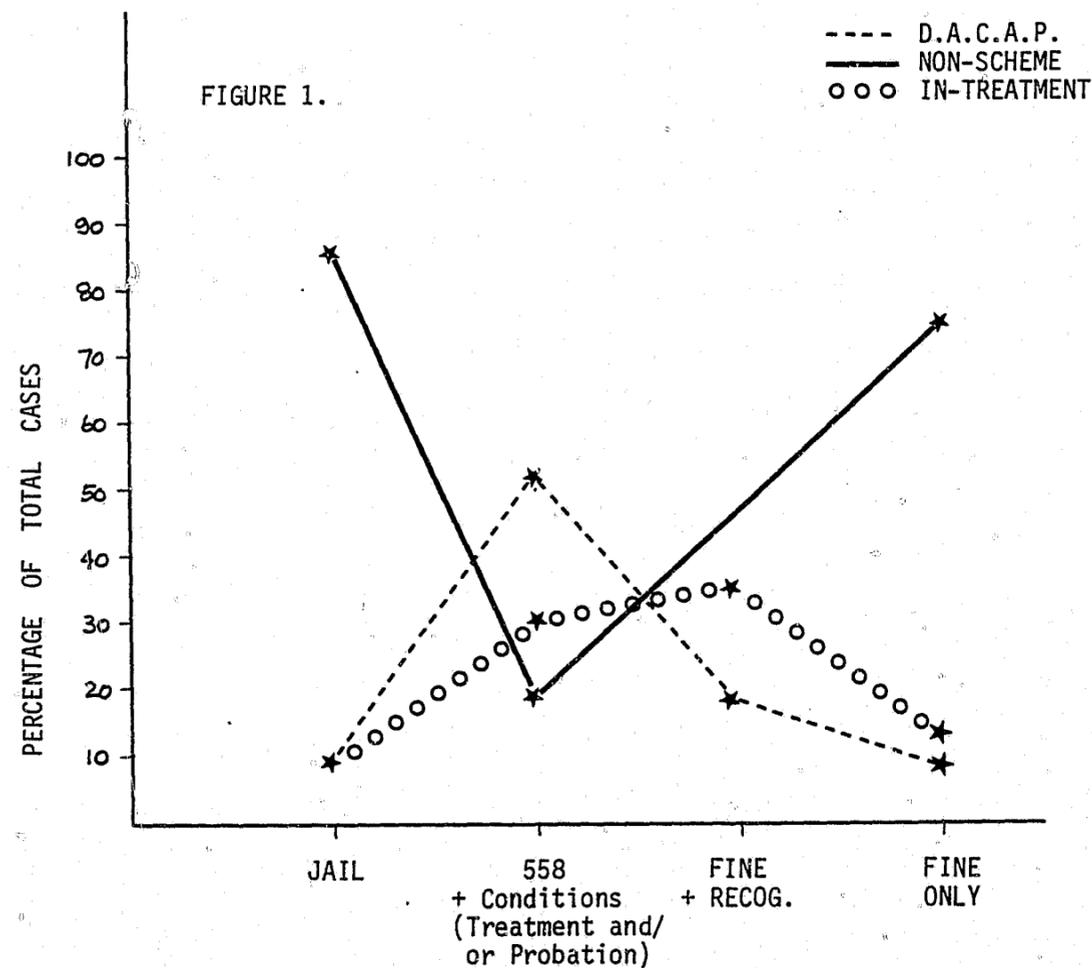
Those referred to DACAP, therefore, must fall into some middle range of "needs", the parameters of which can be objectively specified. To become involved in DACAP is generally speaking to become involved in some form of probation or treatment or probation/treatment combination of sentence as shown in Table 10.

Table 10: Sentences involving probation condition, treatment conditions or both by category of offender.

	FINAL SENTENCE			Total
	Involving Probation Condition Only	Involving Treatment Condition Only	Involving both Probation and Treatment	
DACAP	3	3	10	16
In-Treatment	2	3	4	9
Non-Scheme	4	2	0	6
	9	8	14	31

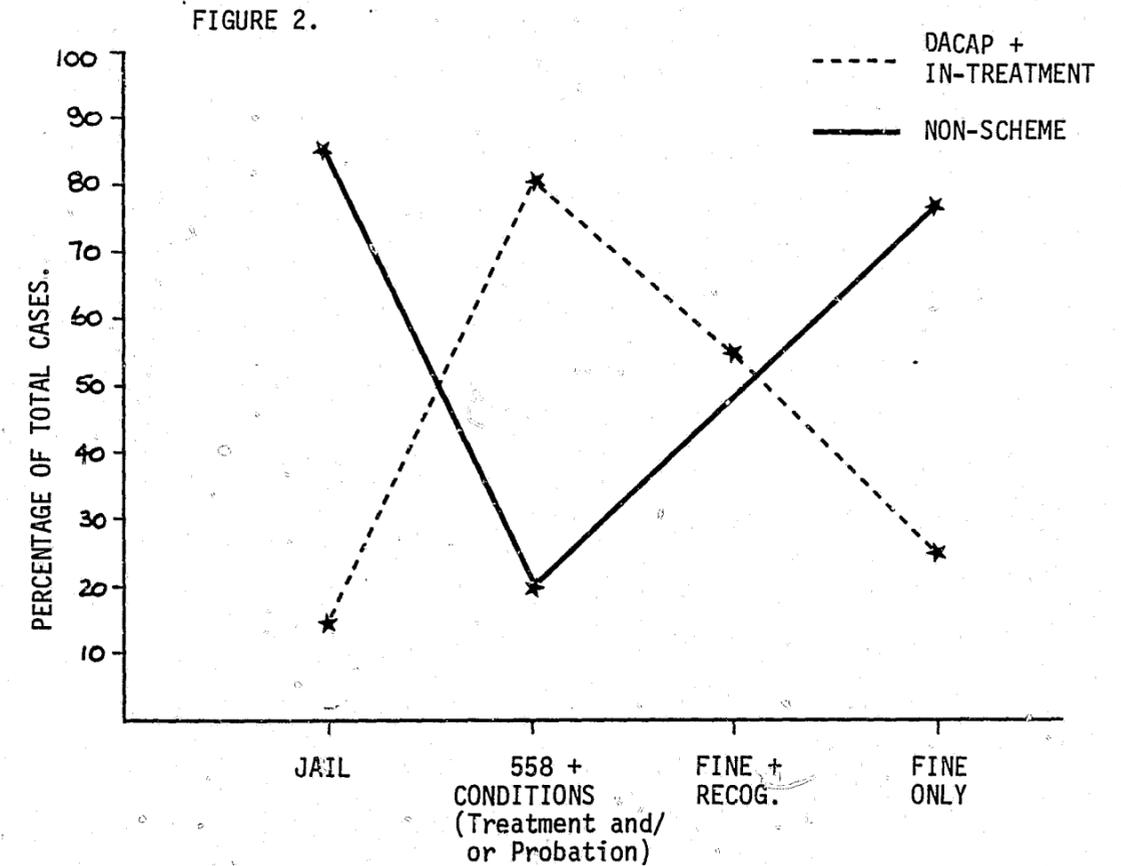
The positive side of its trend is that it doubles the number of drug offenders in some association with some form of treatment. The negative side of it being that the conditions involved in such sentences become increasingly complicated and given the chronic relapsing nature of drug "addiction", this increasing complexity is likely to inadvertently increase the probability of re-offending, if only on legal technicalities.

61.5% of those people referred to DACAP received a 558 + sentence as shown in Table 9, and 17.3% were fined with only a 3.9% going to jail. Compared with these figures, 75.6% of all cases in the "fines only" category were from the non-scheme group and so were 85.8% of those jailed. The distribution of percentages of the total cases across the range of sentences received in each of the categories of offenders is shown in Figure 1.



Percent of total cases by sentence received in each of the categories of offenders (DACAP, IN-TREATMENT or NON-SCHEME).

Figure 2 shows these relationships when the DACAP and In-Treatment categories are combined.



Percent of total cases by sentence received for non-scheme offenders compared with combined DACAP and IN-TREATMENT.

These figures indicate that people on DACAP are very likely to be sent to jail as a result of their referral. It is impossible to say, however, whether or not these offenders would have actually gone to prison had they remained in the non-scheme category. It is tempting to think that this would have been the case and that they were, therefore, "diverted" though in retrospect we have no direct empirical evidence to support this. In fact, at least some of the "referred to DACAP" offenders might have been sentenced to a "Fine only", had they not been so referred. There is clear evidence of a scattering of "hard core" offenders, appearing for some inexplicable reason, amongst the mainly early offender-type cases that were sentenced to "Fines only" (See Table 12, etc.). There is also some evidence of course that the incidence of imprisonment for drug offences has been generally decreasing in recent years. (Torrington 1977). Unfortunately the bureau of crime statistics do not report separate figures for the limited categories of interest to us here.

Where offenders are non-scheme or are DACAP/In-Treatment markedly affects the kinds of sentences handed down. Two major classes of variables must be involved in the selection process:

1. Characteristics of the individual offenders.
2. The court system as a social process.

Selection criteria were never imposed upon the scheme yet the importance of individual characteristics prior to entry into diversion programmes (or indeed intervention/treatment endeavours of any kind) have repeatedly been shown to be very powerful in determining success within and beyond such programmes. Rovner-Piecznik (1974), for example, highlighted the following variables:

1. Little or no previous criminal record.
2. Good employment history.
3. Older - more settled interpersonally and domestically.

Table 11 offers a brief summary of these characteristics as they relate to DACAP clients.

Table 11: A brief summary of the characteristics of DACAP referrals (From Table 6, p.9, Bush, 1981).

CHARACTERISTICS	DACAP REFERRALS (MALE AND FEMALE)
Age Range	16-34 Years
Age (Mean)	22,6 Years
Percentage with Previous Record	74%
Percentage Employed at time of Charge	15%
Percentage of Cases Involving Heroin	62%

He also offers the following profile:

'The drug offender is likely to have adjusted to the street culture of Kings Cross over two to five years and during that time to have been arrested a number of times for drug offences. If male (23 years old), he will be unemployed and either living off the earnings of prostitution or supporting himself through minor criminal activities within the drug scene. If female (22 years), she is likely to be prostituting. Heroin will be the drug of choice but most will have also used Barbiturates and some will use any drug they can to remain "stoned". At the time of arrest, s/he is likely to be using intensively and/or compulsively and, therefore, to be physically dependent, in poor physical health and to one or two treatment centres and not found it a useful experience. His/her major concern will be two-fold, to "sort out my head" and to get the "best deal at court".

'Family ties and resources outside the "street scene" are quite often non-existent in terms of aid to a drug free lifestyle.' (p.8).

Previous Criminal Record

The relationship between previous criminal record and sentence received is shown in Table 12.

Table 12: Details of previous criminal records offenders sentenced during the period 10th December, 1979, to 31st March, 1980.

Record Previous To Current Charge	FINAL SENTENCE			
	Jail	558 with Conditions Involving Probation And/Or Treatment	Fine + Recog.	Fine Only
Total number previous Charges (Mean)	21.38	12.0	4.2	7.4
Number of Charges as A Juvenile (Mean)	2.5	1.2	0.8	0.5
Total Charges Prior to Any Drug Charge (Mean)	10.7	3.38	0.6	1.75
Jail Sentence Previously Received (Mean Months)	26.8	3.8	0.5	7.6
Period Elapsed Since First Drug Arrest (Mean Months)	Not Avail-able	22.6	14.5	21.4

The strong positive correlation between the size or length of the previous records measured as total previous charges faced, evidence of juvenile offending and number of non-drug offences prior to arrest on drug charges, and the degree of severity of the sentence received during the period under study is only broken by the upturn in the figures recorded under the "Fines only" category.

Since DACAP and In-treatment groups account for the majority of cases sentenced to some variety of conditions under 558, we can safely conclude once again that the DACAP is catering from some "middle range" of offenders before the court.

The upswing in the mean cores in the "Fines only" category can be explained by the presence within this category which is predominantly made up of early offenders of a comparatively small number of "hard-core" offenders. For example, though the mean total previous offences reads 7.4, only 8 of the 57 individuals involved contributed 44.78% of the total offences recorded against this group. Excluding these 8 people, the mean score drops from 7.4 to 4.7, a figure much more compatible with that recorded for the group receiving "Fines + Recognizance" as their sentence. Likewise the mean previous months jail recorded in "Fines only" is second only to that recorded for the "Jailed" group. This because 7 of the group contributed 85.94% of the total number of months. Without these 7, the means of 7.6 months sentenced to jail drops to 1.2 though interestingly only 38 of this group had never been sentenced to jail so that 33.4% of this group had received such a sentence previously.

What the crucial differences were between the hard-core offenders who were jailed and those who were simply fined must remain something of a mystery apart from the differences in the charges faced.

First Offenders

The number of first offenders appearing before the court is shown in Table 13, the percentage appearing during the study period compared with those appearing during the years of the Drug Diversionary Programme, 1977 and 1978.

Table 13: Percentage of offenders who were facing their first charges.

	Total Appearing	SCHEME/NON-SCHEME			
		Percentage of first offenders referred to:			
		DDP or DACAP	In- Treatment	Non- Scheme	
DDP	1977	23.4	29.0	8.7	62.3
	1978	29.2	17.2	18.0	64.8
DACAP	1981	24.1	23.3	20.1	56.6

On Average about 25% of cases appearing before the courts are first offenders. The majority of those cases remain in the non-scheme category. However, the considerable increase of offenders who seek treatment prior to their appearance in court could signify an educational aspect of the continuing efforts of "diversion". As revealed in Table 9, people who show evidence of seeking treatment (however tentatively) are most likely to be sentenced to the Fines and of the sentencing continuum.

Type of Drug cited in the charge was also an important variable controlling the severity of sentencing. In the cases involved during the study the drugs cited were:

Heroin	50% of cases
Barbiturates	38.7% of cases
Polydrug (more than one drug usually heroin + barbiturates)	6.3% of cases
Narcotic/Analgesics	2.9% of cases
LSD	1.5% of cases
Stimulants	0.6% of cases

Heroin and Barbiturates being by far the most important substances involved, the distribution of such cases over category of offender is shown in Table 14.

Table 14: Percentage of cases involving heroin or barbiturates by Category of Drug Offender.

Non-Scheme DACAP + Treatment	TYPE OF DRUG	
	HEROIN	BARBITURATES
	40%	45.6%
	62.2%	28.0%

Table 15 shows this distribution in terms of sentence received.

Table 15: Percentage of cases involving heroin or barbiturates distributed across final sentences received.

	FINAL SENTENCE			
	Jail	558 with Conditions (Probation/ Treatment)	Fine + Recog.	Fine Only
Heroin	50%	51.5%	63.6%	38.6%
Barbiturates	50%	35.5%	18.2%	49.1%

Heroin offences predominate in the 558 categories and Fines with recognizance but Barbiturate offences predominate in the "Fines only" group. Table 15 shows that on the average offences involving heroin were more severely punished than were barbiturate offences though if any time/cost analysis should be considered then prescription-poison offences referred to generally as "dangerous drugs" as opposed to "expensive/narcotic", are almost as great a problem to the systems of both Justice and the Health.

Table 16: The range and mean sentences handed down for offences concerning heroin and barbiturates.

	Jail	FINAL SENTENCE		
		558 with Conditions + Fines	Fine + Recognizance	Fine Only
<u>HEROIN</u>				
Range	3.5 to 15	\$200 + 1 year to \$100 + 3 years	\$100 + 1 year to \$900 + 3 years	\$1 to \$1000
Mean	8.2 (months)	\$382.4 + 1.75 yrs	\$453.6 + 2.14yrs.	\$300
<u>BARBITURATE</u>				
Range	4 to 15	\$200 + 1 year to \$800 + 2 years	\$100 + 1 year to \$300 + 2 years	\$100 to \$650
Mean	7.75 (months)	\$337.5 + 1.5 yrs.	\$212.5 + 1.75 yrs	\$199

Table 17 includes some other important variables evident in this study.

Table 17: Some characteristics of offenders sentenced during the period 10th December, 1979, to 31st March, 1980.

	Jail	558 with Conditions Probation or Treatment or Both	FINAL SENTENCE	
			Fine + Recog.	Fine Only
<u>AGE</u>				
Range	21-32	18-33	18-33	18-40
Mean	26.0	23.00	23.0	24.0
Percentage of Females	35.7	45.16	54.5	33.9
Percentage Employed	7.0	6.25	63.63	42.1
Percentage Identifiable as Domestically Stable	21.0	32.0	45.0	-
Percentage of Cases in Which Reports (from any source) were before the court	35.7	93.55	68.2	23.6

Age and Sex

Thirty-seven per cent of all offenders were under 21 years of age and 67.8% were under 25. Heroin offenders had a mean age of 25.4 years while the Barbiturate offenders mean age was 23.0 years.

Table 18 shows that female offenders were significantly over-represented (in terms of Bureau of Crime Statistics figures) in all categories. Central Court of course deals with people arrested in the Kings Cross/Darlinghurst area which is atypical in terms of drug/crime in New South Wales mainly because of the high incidence of crimes relating to prostitution.

Table 18: Percentage of males and females in each category of offender

	SEX	
	MALE	FEMALE
Non-Scheme	67%	33%
DACAP	50%	50%
In-Treatment	64%	36%

During the period of this study, as many females as males were referred to DACAP.

Employment Status

Whether or not offenders were employed had a profound effect on the sentences received as shown in Table 17. Information on domestic stability was not available in all cases and here means simply living with parents, spouse or in some long-term relationship. The indication, however, is that discounting offenders jailed, those referred to DACAP are the least likely to be either employed or domestically stable.

The hard-core offenders in the "Fines only" category, however, tended to be unemployed so some other reason must be found for their membership.

Table 19 allows a comparison of the sentencing patterns in the Drug Diversionary Programme and DACAP.

Table 19: A comparison of sentences handed down to DDP, DACAP and non-scheme offenders

	Jail	FINAL SENTENCE			
		558 with Conditions (Probation and/or Treatment)	Fine + Recognizance	Fine Only	Recognizance Only
<u>1977</u>					
Percentage of Total Cases	13.6	33.2	0.6	26.5	14.0
Percentage of DDP Cases	7.8	51.6	0.7	11.1	18.3
<u>1978</u>					
Percentage of Total Cases	13.4	29.0	0.7	34.6	10.3
Percentage of DDP Cases	7.9	61.4	0.0	12.3	0.0
<u>1981</u>					
Percentage of Total Cases (Survey Sample)	11.2	25.0	17.6	46.0	0.0
Percentage of DACAP (Survey Sample)	7.1	41.6	18.2	8.8	0.0

From Bush (op. cit. p.11), we find overall that 6.25% of DACAP offenders were sent to jail, that 55% of DACAP clients were involved in some form of 558 with conditions of treatment and/or probation and 16.25% were fined.

There was a marked increase in the numbers, both on-scheme and off, who were fined in the DACAP year compared with those so dealt with during the DDP period. In 1981, the percentage of fines was much closer to that pre- 1977 so there is evidence that the introduction of the Drug Diversionary Programme somewhat inhibited the use of this sentence. This change, granted the similarities in terms of sentence, proportion and type of offenders referred between the Drug Diversionary Programme and DACAP, far outweigh the differences.

The Court as a Social Process of Interaction

Discussion of individual characteristics and the selection of scheme/non-scheme offenders must merge into consideration of the interaction in Court as a social process.

The magistrate must adjudicate upon and sentence the offender according to the information before the court at the time of the charge. This information can come from several of a number of sources:

- The police prosecutors
- The offender
- offenders legal representatives
- Probation and Parole Officers
- Evidence from additional sources such as Treatment Agencies, private psychiatrist or GP or character references
- Expression of willingness or unwillingness to attend DACAP.

Usually where there is a perceived need such as lack of self-maintenance and social support system (other than welfare agencies), the magistrate might refer an offender to that programme particularly for the following reasons:

1. For an assessment report to be prepared to assist in sentencing.
2. To introduce the offender to the drug treatment/management system and sometimes to provide in addition:
3. Immediate health care; i.e., detoxification for withdrawal symptoms.
4. To allow a "Time Out" as a remand period during which the offender has an opportunity to prove his/her "good intentions".

These are the apparant objectives of the programme as it is practised as outlined following discussions with the duty probation officer at the Court and observation of court proceedings in action.

As pointed out in the Drug Diversionary Programme report some form of informal diversion has always existed in the Court process and the inception of the scheme was intended to formalise and encourage this humane response to the perceived and often pressing "needs" of drug affected offenders.

Time time out for assessment while satisfying the formal requirements of the Court provides, albeit in a pseudo-voluntary way, opportunity to the client to settle relatively informally his or her most immediate difficulties; e.g., by seeking methadone withdrawal or some other form of detoxification, settling accommodation problems by going into inpatient treatment, meeting with health workers, etc. In diversion, it is the presentation of this opportunity by the court that is formalised.

There is both formal and informal pressure to attend DACAP, in certain cases at least since, this is an obvious way to show contrition and prove a willingness to at least attempt to reform. Informal pressure not to attend could come from any number of beliefs about the system and how it operates.

Some offenders might well suspect that going to DACAP would result in a sentence with far more complicated conditions and choose, therefore, to take their immediate chances, regarding receipt of a fine or even a short jail sentence. Certainly as Table 17 shows, the more the offenders were reported on, the more likely they were to get some version of 558+.

One of the main problems in the institution of the original attempt at diversion in New South Wales seemed to be that insufficient attention was paid to the informal system that was already functioning and which was already pre-disposed towards diverting offenders to treatment but not towards discharging early offenders in any great number.

SOME NOTES ON DRUG/CRIME AND RECIDIVISM

The intention of this small-scale survey as reported earlier was to offer some insight into the trends, if any, apparent in the data. No kind of sophisticated statistical statement is warranted or intended. However, some very interesting trends are evident in the recidivism figures, given the limited nature of the study.

A distinction was made for the purpose of this work between Drug offenders and Drug + offenders. As the names suggest, Drug offenders were those whose records showed that 75% or more of their previous offences were drug only offences, the Drug + group was, therefore, comprised of offenders who recorded offences ranging from a mixture of drug offences and other crime to those who had mainly offences other than drug charges recorded against them.

Forty-eight per cent of the total sample under study had re-offended within 12 months of the offence recorded during the study period. Which is a figure not dissimilar to the degree of recidivism recorded in the Drug Diversionary Programme report.

In both cases (DD and DACAP), using recidivism as an outcome measure without ever considering the in-put of the scheme - the individual characteristics of those involved - can be a dangerous practice which does not furnish an adequate measure per se of success or failure of any programme. Measured in this way the information is crude and potentially misleading if taken too far but it can still provide essential pointers to vital trends. The Drug Diversionary Programme report did not consider recidivism in terms of sentence categories. The rate of recidivism can vary considerably across this variable (which correlates reasonably well with severity of previous criminal record).

<u>Final Sentence</u>	<u>Percentage who Re-offended</u>
Jail	76.9%
558+	39.4%
Fine and Recog.	13.3%)
Fine Only	29.9%) 21.1%

These results are completely opposite to what we would expect if we put our faith in increasingly severe sentencing as a deterrent. Though the DDP report shows no difference between scheme and non-scheme recidivism, the method of analysis employed leaves much to be desired. Considering the group sentenced under 558+ above we find once again the rate of recidivism varies across categories as follows:

D.A.C.A.P.	36.0%
In-Treat	44.6%
Non-Scheme	49.8%

So within the context of its own predominant sentencing category (as opposed to the context of total offenders as used in D.D.P.) those referred from D.A.C.A.P. to some form of treatment/probation in this study were doing somewhat better than non-scheme in terms of re-offending.

Though 48% of all those studied re-offended within the year, the drug and the drug + groups contributed differentially to this total. The rate for offenders with previous records of only or mostly drug-defined charges (75% or more of the total charges recorded falling into this category) was 38.7%. For the drug + group it was 57.5%.

The kind of crimes involved in the re-offences were also markedly different as shown in Table 20.

Table 20: Percentage of Re-Offences which were Drug only or were both. By Offenders with Drug or Drug + Criminal Records.

Previous Record	RE-OFFENCES				
	Percentage Drug Only	Mean Time to Re-Offence	Percentage Non-Drug Only	Mean Time to Re-Offence	Percent Involving Both Drug and Non-Drug
DRUG	78	7.3 (Months)	0.83	6.1 (Months)	16.7
DRUG	34.8	5.0 (Months)	56.5	4.1 (Months)	0.87

There was a marked tendency to generally repeat previous patterns of offences. Only one case of the total re-offences (for assault) involved crimes against the person while 50% of the misdemeanours in this category involved crimes against property (Stealing and Break enter and Steal). A surprisingly large proportion of misdemeanours in this study were for driving/motor vehicle offences, 22%, and the overall list of re-offences shows that the crime + category is far from crime specific.

More of the drug + group re-offended then and on the average re-offended sooner.

Those whose criminal history was drug specific on the other hand repeated drug only offences in the majority of cases.

Results which indicated that some re-definition of the problem is necessary. We should not be asking whether "drug addicts" should be diverted or not but rather - What kind of drug addicts can best be diverted and to what degree? The behaviour of some drug/crime offenders will continue to present a problem in terms of public safety and their management must therefore, remain firmly within the justice department responsibility. On the other end of the continuum, however, are to be found offenders who could probably be completely diverted to community treatment/welfare facilities. In between fall the middle-range cases where some combination of Justice and Health endeavours seem most appropriate.

At the Central Court the pre-sentence programme has developed and caters in the main for the middle group. The strong relationship being between being referred to the scheme and receiving a 558 + sentence is hardly surprising since the probation + (and/or treatment or some combination of the two) provides the most logical compromise to the ethical dilemma which Rinella (1979) has referred to as confronting society's agents in this area of concern. Probation and parole + are forms of sentences, which allow the court to retain some supervision of an offender-at-large by requiring that restrictive conditions be complied with, thus combining elements of punishment and rehabilitation. For this middle range of offenders the contribution of the health workers is essentially supplementary to the Justice strategy, rather than any kind of true alternative to it. The Probation and parole Service can be seen as heavily involved in pre-sentence diversion as part of their day-to-day function.

As the trends in referral outlined in Section Three reveal, the use of DACAP at Central Court fulfills a need apparant in the court process to be able to respond with an additional range of sentence which incorporates some form of treatment. This is a logical and humane endeavour yet essentially a conservative one when the total possibilities of diversion are considered.

With regard to any expansion of the DACAP to other courts it should be remembered that the population of offenders at Central Court is rather atypical since it incorporates the floating Kings Cross/Darlinghurst "street" people. It is doubtful that such a high proportion of drug offenders in other areas will fall into the 558 + category and some conceptual expansion of notions about the clients in other regions most suitable for referral to assessment would seem to be necessary in order to make the effort worthwhile.

The original Drug Diversionary Programme attempted to establish one model of diversion that most offenders would fit into but fortunately the DACAP can accommodate whatever range of options are made available to it.

Being essentially an assessment procedure it can offer a solid baseline from which decisions regarding drug specific crime vs drug + crime can be made. A different response to these classes of offence is not only possible but advisable. Different types of offenders must be matched to different styles of intervention/treatment. Criminal behaviour and drug use are undoubtedly highly complex phenomena and their interrelationship is hardly susceptible to simplistic analysis. A state of affairs which is somewhat belied as Wardlaw (1980) has pointed out "by the current level of the debate regarding drug issues which prevents rational analysis and clearly reasoned policy (p. 28).

Considering that the area of drug/crime incorporates crucial questions and issues relating to individual freedoms and state responsibilities regarding social control, the dearth of professionally competent research available to provide empirically-based guidelines is depressing indeed. Some combined effort from the Bureau of Crime Statistics and Research, the research unit of the Department of Corrective Services, and the Drug and Alcohol Authority would be a considerable step in the appropriate direction.

The development of DACAP provides an ideal vehicle for studying not only the variety of possibilities that cluster under the generic title of "Diversion" but their eventual effects upon the drug/crime careers of those it was set up to accommodate.

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APPENDIX (A)

STAGES OF THE ASSESSMENT PROCESS (D.A.C.A.P.)

The First Hearing.

The first hearing in this context refers to the first court appearance at which the accused has pleaded guilty or has been found guilty of the sale, possession and/or use of illegal substance (excluding marijuana) and at which the process of sentencing can begin. At this time a duty probation officer can advise the magistrate on D.A.C.A.P. If the magistrate feels that treatment intervention could be valuable, he may refer the individual back to the duty probation officer who can then explain to the accused the role of D.A.C.A.P. and perform an initial assessment of the accused's suitability for the programme.

If D.A.C.A.P. is deemed appropriate and the accused is in agreement, the magistrate will place the offender on a BAIL RECOGNIZANCE conditional on attending the assessment programme for a period of three weeks. At the Clerk of Petty Sessions office the offender enters into the recognizance and recognizance, facts of the offence, charge sheet and other relevant papers are collated and sent by Government Courier to the D.A.C.A.P. centre.

The Assessment

On arrival at the centre, the client will be seen by a duty counsellor for an intake interview, and allocated a PRIMARY CARE WORKER. The primary care worker will lead the client through all phases of the assessment programme, co-ordinating activities, ensuring a consistent contact for the client and consolidating a report on his/her progress.

At the INTAKE (INTERVIEW) the client will be given information on all aspects of D.A.C.A.P. Consent forms will be explained and clients will be asked to sign forms for the release of information to the courts, participation in the Naloxene challenge test, etc. A urine specimen is collected and a decision is made regarding inpatient or outpatient assessment. (This will depend largely on the health of the individual).

The ASSESSMENT involves both psychological testing, a medical examination, an interview with the assessment worker and in certain cases, the Naloxone challenge test (used to confirm or deny freedom from physiological addiction).

The POST-ASSESSMENT CONFERENCE must consist of the primary care worker and the assessment worker and may include the medical officer and others (i.e. researcher). The person assessed is involved at the end of the conference and if further meetings are indicated, another time is arranged. From this meeting a rational choice of intervention alternatives are suggested.

An ASSESSMENT REPORT is then prepared synthesizing all of the significant findings of the assessment process. The standard of presentation, verification of information and general style follow closely the guidelines set out in the Probation and Parole Guidelines for pre-sentence reports (No. 8/79(5)). The assessment is organised under the following headings:

SIGNIFICANT SOCIAL BACKGROUND, including, where applicable, demographic details, family background, education, employment, cultural factors, etc.,

DRUG SITUATION, including patterns of drug use, relationship between drug use and offence and resulting problems,

MEDICAL/PSYCHIATRIC FINDINGS, written in non-behavioural language where applicable,

ASSESSMENT AND INTERVENTION OPTIONS, including the likelihood of the intervention plan being acceptable to the client, its availability and likely outcome.

The Second Hearing

Prior to the second hearing, two copies of the assessment report are sent to the court. One is attached to the court papers and the other is directed to the client's legal representative. If the police, magistrates or the legal representatives desire the primary care worker to appear at court, arrangements can be made prior to the hearing.

APPENDIX (B)

D.A.C.A.P.

DRUG AND ALCOHOL COURT ASSESSMENT PROGRAM

Interview Schedule

The following questions relate to the DACAP scheme and Drug and Drinking Diversion programmes in general.

The aim of this interview is to find out your views and those of other legal, educational and health care professionals who deal with drug and drink offenders.

Such information is very important in order to improve and effectively manage Drug and Drink Diversion programmes.

THIS INFORMATION WILL REMAIN CONFIDENTIAL

Date:.....

Professional Role:.....

1. Here is a list of possible DACAP (or Diversion) objectives. Could you pick out the 3 most important statements which you think best describe the purpose of DACAP? (Rank them 1 to 3)
2. Comments: Any other purposes not listed?
3. What do you see the main advantages of DACAP (or Diversion)?
4. What do you see are the main disadvantages of DACAP (or Diversion)?
5. Which drug offenders in your view are most suitable for being remanded to DACAP?

6. Which drug offenders in your view are most unsuitable for being remanded to DACAP?
7. As you may know, one of the shortcomings of the old Drug Diversion Program was the problem of each professional group not understanding each other's roles and functions. Do you think this is the case with the current DACAP project?
Yes/No Comments.....
8. Any other comments?

POSSIBLE OBJECTIVES OF DIVERSION PROGRAMS

- Alternative to imprisonment.
- Educate offender about drugs.
- Improve health and social functioning of offenders.
- Step toward legalisation/decriminalisation of responsible recreational drug use.
- Cure/rehabilitate offenders with drug problems.
- Assist Court in sentencing procedure.
- Reduce costs to the Criminal Justice System by minimising recidivism.
- Deterrent to illegal drug use.
- Provide research evidence to help plan future social policy.
- Other.

APPENDIX (C)

Some Examples of Comment from Workers
Involved in the D.A.C.A.P. Scheme

- PCW. Fair understanding now.
Will always be misunderstandings between PCW and magistrates -- hard to resolve.
Between PCW and assessment workers -- reasonably easy to resolve.
- PCW. Secondment of P & P to Bourke St. is invaluable.
Still some uncertainty with magistrate/public solicitor re role of health professionals.
PCW and assessment workers -- no problems.
- P & P. Secondment of P & P has really changed situation.
Some magistrates still see things the way they want to -- opinions cannot be changed.
- P & P. Still some misunderstandings due to "different sides of fence" -- much less than it was.
Court vs. Bourke St.
(legal process) (client/individuals).
P & P and assessment staff work very well together.
- P & P. Still some problems in individual cases.
Much better situation now -- PCWs bridged gap.
- P & P. Efforts have been made to overcome previous problem Rehabilitation is becoming better understood by community.
- Police Prosecutor. Don't know enough about it -- only has basic idea of how it works.
Perhaps may be a good idea to see how it operates. Doesn't feel qualified to comment.
- Public Solicitor. At Central everyone seems to understand, including most magistrates.
- Public Solicitor. But a greater effort is needed to teach private and public solicitors (? via social workers).
Need update on what is available.
Need liaison approach from health point of view as to what is best approach to drug problem.
- Magistrate. Is much better, though.
Still not enough discussion and knowledge of program by magistrate, police and duty P & P.
Some magistrates lack interest in D.A.C.A.P. -- reflects lack of interest in innovations in general.
Lack of feedback on what is going on at clinical end.

Magistrate. Has been great improvement -- still room for improvement e.g., all DJS agents (courts, police, prosecutors) need to be confident that process is being done to assist individuals.

Magistrate. Scheme has been going for some time and is well understood down at Central. Everyone has gained knowledge of each other's function.

Assessment Worker. Not sure that magistrates understand assessment.

Assessment Worker. An important process but must sell it. Need more feedback about communication between different groups involved. Publicity has helped but need more. Do magistrates really understand?

Assessment Worker No. Need more information for magistrates and public solicitors as staff changes occur. Clarification of roles would help. System has potential for role integration.

END