

**POLICY FRAMEWORK TO CONSOLIDATE AND EXTEND
PROBLEM-SOLVING COURTS AND APPROACHES**

March 2006

Courts and Programs Development Unit

DEPARTMENT
OF JUSTICE

1 Introduction

There has been a growing concern about the over-representation of people from marginalised and disadvantaged backgrounds in the criminal justice system. A key policy question for the Government is to determine which approaches might best address the underlying causes of offending behaviour by people from marginalised and disadvantaged backgrounds. Such policies are needed both to provide a measure of fairness, and to improve the safety of the community by delivering effective outcomes that reduce re-offending. The policies also need to be consistent and coherent across the criminal justice system including, the policing, courts and corrections stages.

It has been suggested that people from marginalised and disadvantaged backgrounds, especially those with multiple and complex needs, have been unnecessarily criminalised, and that it has been the criminal justice system which has "responded" in the absence of more appropriate "treatment" responses (Victoria Law Reform Commission, 2003:26).

Disadvantage and marginalisation may be analysed from a number of perspectives. Intellectual disability, mental illness, acquired brain injury, drug dependency, homelessness, or aboriginality all provide useful points of analysis. These attributes may often overlap, compounding the complexity of the problems that need to be addressed. Some indicators of these problems in Victoria include:

- The Victorian Koori community has experienced endemic disadvantage as a result of dispossession, removal of children from their families and discriminatory attitudes. On almost all socio-economic and health indicators they are significantly below the levels for the general population. In the Victorian criminal justice system, Kooris are 6 times more likely to be arrested than non-Kooris and 13 times more likely to be imprisoned (Diversity and Indigenous Issues Unit, Department of Justice).
- Department of Justice data recently established that approximately two-thirds of new prisoners reported that their offences were related to drug use. This figure increases with second or subsequent sentences, with approximately 80% of men and 90% of women reporting problems with drug use (Victorian Prison Drug Strategy, 2002).
- Research on the prevalence of people with intellectual disabilities and acquired brain injuries in the criminal justice system shows high levels of over-representation. People with those disabilities may be overwhelmed by the nature of court proceedings, and have difficulty in communicating with police, lawyers and the courts (The Attorney-General's Justice Statement, 2004).
- In 2001/02, 9 per cent of those on community-based orders needed a strategy for psychiatric treatment. Mental illness and drug dependency commonly occur together and have a mutually reinforcing, symbiotic relationship characterised by higher re-offending and lower treatment compliance rates (The Attorney-General's Justice Statement, 2004).

A recent report to the Department of Human Services notes that the link between criminal behaviour and the problems that feature prominently in the lives of people with multiple and complex needs - mental illness, substance abuse, homelessness, unemployment et cetera, is well established and thoroughly documented. When offending is occurring because of these underlying causes, the traditional sentencing approach is unlikely to prevent the offender from committing further offences. Imprisonment introduces the offender to a wider circle of offenders but does not address the reasons for offending. Fines are of limited effect if the offender has little or no means to pay them. Suspended sentences only set the offender up for a term of imprisonment if they are not supported by conditions that address the source of

the problem. A more appropriate approach that addresses the underlying causes of offending behaviour is needed (Thomson Goodall Associates, 2001:24).

In addition, the multi-faceted nature of these problems means that any contact with the courts may represent just one part of a person's engagement with government institutions and service providers. An offender may already be in contact with drug dependency agencies, children's welfare services and housing services. All of these agencies will have their own policies and service delivery structures for managing the offender's needs in respect of their specific agency function. In providing for these services, the Government seeks to ensure that they are well coordinated so that the person's overall needs are met.

The challenge for the Government is to find a model that allows the courts to dispense justice while also linking into the health and social service systems to address the underlying causes of offending behaviour. It requires an understanding of the problems to be addressed, the limits of intervention, the effectiveness of different approaches, and the necessary points of difference between human services and justice systems.

The problem solving court is the most common model that has been developed to address increasing rates of recidivism, burgeoning prison populations, and the inability of traditional courts to respond to offenders with specific needs. They evolved in response to particular issues faced by the courts, such as repeat offending caused by drug dependency or mental illness. Problem solving courts attempt to address the underlying causes of criminal behaviour in order to reach an outcome that is beneficial for the offender as well as the community (Freiberg, 2001:8).

In Victoria, a number of problem solving courts and approaches have been introduced to respond to people with specific needs including the Drug Court, Family Violence Court Division, Koori Court, and a range of diversionary and support services in mainstream courts. These problem solving courts and approaches represent a fundamental change in the way courts operate. Problem solving courts and approaches incorporate therapeutic and rehabilitative models that address the underlying causes of offending, thus reducing the risk of continued involvement in the justice system. This has substantial benefits for the offender, their family and the broader community.

The Courts and Programs Development Unit has developed a policy framework to consolidate and extend problem solving courts and approaches in the court system. In developing the framework, effective practices from programs in Victoria and elsewhere were incorporated. As problem solving approaches require appropriate support services, decisions to consolidate or extend them must be based on evidence of success including reduced offending behaviour.

2 Literature Review

The purpose of the literature review is to provide a context from which to consider problem solving courts and approaches. The aim is to provide a brief description of influential theories underpinning problem solving courts, describe their characteristics, and distil good practices from programs initiated in Australia and internationally.

2.1 Problem solving courts: Towards a definition

There is increasing interest in problem solving courts within the criminal justice system. Due to its emergent nature, there is significant diversity regarding definitions, methodologies and models. The wide range of definitions has led to ambiguity of terms and confusion in practice (Berman and Feinblatt, 2001; Frieberg, 2001; Rottman and Casey, 1999).

In commenting on the changing role of courts, Winick and Wexler (2003:3) observe that courts increasingly have to confront a variety of human problems that are responsible for bringing cases to court. Traditional courts have typically functioned as neutral arbiters, adjudicating disputed issues of fact. Newer courts, however, attempt to understand and address the underlying problems or causative factors of the dispute at hand. These newer courts, referred to as "problem solving" courts, are specialised tribunals established to deal with specific problems, often involving individuals who need social, mental health, and / or substance abuse treatment services.

Berman and Feinblatt (2001:126) define problem solving courts as courts that "use their authority to forge new responses to chronic social, human, and legal problems. They seek to broaden the focus of legal proceedings from adjudicating past facts and legal issues to changing the future behaviour of litigants and ensuring the future well-being of communities."

Further, problem solving courts represent an approach to criminal justice that seeks to use the court process to enhance and support the possibilities for the treatment and rehabilitation of offenders (Idermaur and Roberts, 2003:137; Wexler, 1995:220). Similarly, Freiberg (2001:3) describes problem-oriented courts as reflecting a move away from a focus on individuals and their criminal conduct to offenders' problems and their solutions.

Rottman and Casey (1999:13) suggest that despite definitional issues, problem solving courts are predicated on the principles of therapeutic jurisprudence, which explore the role of the law in fostering therapeutic and anti-therapeutic outcomes. In their view, therapeutic jurisprudence attempts to combine a "rights" perspective - focussing on justice, rights, and equality issues - with an "ethic of care" perspective - focussing on care, interdependence and response to need.

Therapeutic jurisprudence describes a body of literature and a movement concerned with mobilising the therapeutic effects of court processes. Other forms of therapeutic jurisprudence, or "problem solving" courts, emerge where an alternative to the traditional criminal justice approach appears to be required. There is also a recognition that substantive rules, legal procedures, and the roles of lawyers and judges can produce either therapeutic or anti-therapeutic consequences for individuals involved in the legal process (Chase and Hora, 2000:12; Winick and Wexler, 2003).

Therapeutic jurisprudence is an interdisciplinary perspective that shifts the focus from the offence to examining the needs of the offender. By identifying the underlying causes of criminal behaviour, it promotes treatment and rehabilitation, to reduce recidivism and contributing to the healing and well-being of offenders. Therapeutic jurisprudence is the

theoretical foundation for problem solving courts and approaches, it draws upon the fields of psychology, psychiatry, clinical behavioural sciences, criminology and social work in order to bring these insights into the legal system (Winick and Wexler, 2003: 14-18; Zammit, 2004:13).

Therapeutic jurisprudence is an interdisciplinary perspective that shifts the focus from the offence to examining the underlying causes of offending behaviour. It is the theoretical foundation for problem solving courts and approaches, which aim to improve outcomes for defendants processed through the courts.

Problem solving courts emphasise traditional due process protections during the adjudication phase of a case and the achievement of tangible, constructive outcomes post-adjudication. In doing so, problem solving courts have sought to balance fairness and effectiveness - the protection of individual rights and the preservation of public order (Feinblatt, Berman and Denckla, 2000:28-34).

According to Belenko (1998:13), a critical element of problem solving courts is the provision of judicially monitored treatment and other services post-adjudication. The goal is state-sponsored treatment not just adjudication. Thus, the orientation underlying therapeutic jurisprudence and problem solving courts directs the judge's attention beyond the specific matter before the court and toward the needs and circumstances of the individuals involved (Rottman and Case, 1999:14).

Examples of problem solving courts include drug courts, mental health courts, domestic violence courts, community courts, juvenile courts, re-entry courts and others.

Governments in a number of countries have adopted problem solving approaches to criminal justice, including Australia, Canada, England, Japan, New Zealand, Norway, Scotland, the United States and European countries (Hughes and Mossman, 2001:85). There are various reasons why the concept of problem solving courts is so politically attractive at the present time. One appealing feature is the implicit assumption of an approach that is both "tough" and "effective" in terms of saving money and reducing crime. Problem solving courts are perceived as targeting the underlying "causes" of crime, linking offenders with appropriate treatment and other services and providing alternatives to imprisonment that are cheaper and perhaps more effective (Indermaur and Roberts, 2003:137).

2.2 Characteristics of problem solving courts

There are a number of common characteristics that distinguish problem solving courts from the way in which cases are typically managed in mainstream courts. Berman and Feinblatt (2001:131-132) summarise these as follows:

- *Case outcomes*

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

- *Systems change*

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

- *Judicial monitoring*

Problem solving courts rely upon the active use of judicial authority to solve problems and to change the behaviour of litigants. Instead of passing off cases - to other judges, to probation departments, to community-based treatment programs - judges at problem solving courts stay involved with each case even after adjudication.

- *Collaboration*

Problem solving courts employ a collaborative approach, relying on both government and nonprofit partners (i.e., criminal justice agencies, social service providers, community groups, and others) to help achieve their goals.

- *Non-traditional roles*

Some problem solving courts have altered the dynamics of the courtroom, including, at times, certain features of the adversarial process. Problem solving courts sometimes engage judges in unfamiliar roles as well, asking them to convene community meetings or broker relationship with social service providers.

Problem solving courts represent a major shift from traditional processes used to dispense justice. The differences between traditional and problem solving processes are summarised in Table 1 below:

Table 1: Summary of the differences between traditional and problem solving courts.

Traditional Process	Transformed process
Dispute resolution	Problem solving dispute avoidance
Legal outcome	Therapeutic outcome
Adversarial process	Collaborative process
Claim or case oriented	People oriented
Rights based	Interest of needs based
Emphasis based on adjudication	Emphasis placed on non-adjudication and alternative dispute resolution
Interpretation and application of law	Interpretation and application of social science
Judge as arbiter	Judge as coach
Backward looking	Forward looking
Precedent-based	Planning-based
Few participants and stakeholders	Wide range of participants and stakeholders
Individualistic	Interdependent
Legalistic	Common-sensical
Formal	Informal
Efficient	Effective

Source: Warren (1998:24-25)

Problem solving courts are not a form of specialised courts (Belenko, 1998:13; Freiberg, 2001:8). Specialised jurisdictions such as Children's Court, Coroner's courts, family, environmental, industrial courts and the like are constantly emerging. A specialised court can be regarded as a court with limited or exclusive jurisdiction in a field of law presided over by a judge with expertise in the field (Freiberg, 2001:8).

Freiberg (2001:8) contends that the distinction between problem solving courts and specialised courts is significant. Though specialised courts may be distinguished by their procedures or the expertise of the presiding officers, unless they adopt the features outlined earlier (see Table 1), they cannot be regarded as problem solving courts. Moreover, specialised courts that only provide expedited case management or accelerated case processing without integrated treatment are not problem solving courts (Belenko, 1998:13).

Problem solving courts represent a major shift from the traditional adversarial model and include elements such as judicial supervision, collaboration between lawyers and agencies, and the utilisation of rewards and sanctions (Freiberg, 2001:12). Problem solving courts utilise a more engaging process where all parties, particularly the defendant, have a say in the proceedings to engender positive changes in the defendant's behaviour with the intention of achieving positive outcomes for the defendant and the community.

A major consideration in assessing the success of problem solving courts and approaches is whether they: (1) reduce recidivism (2) increase participant retention rates, (3) increase participant satisfaction, (4) increase community confidence, and (5) cost less than a mainstream court in monetary and health/social terms (Freiberg, 2005; Jeffries, 2002).

2.3 Criticisms of problem solving courts

There is no single model of problem solving courts. Rigorous, independent evaluations of problem solving courts are only just emerging (Berman and Feinblatt, 2001:132). A problem solving court presupposes a "problem" to be solved. Herman Goldstein (cited in Freiberg, 2001:23), in his work on problem-oriented policing, defined a problem to include a "wide range of behavioural and social problems that arise in a community". Consequently, there is rarely a single "cause" of crime.

Hoffman (2002:2064) cautions against the fallacy that complex human behaviours can be dealt with by court-based systems. "The question asked in these new therapeutic courts is not whether the state has proved that a crime has been committed, or whether the social contract has otherwise been breached in a fashion that requires state intervention, but rather how the state can heal the psyches of criminals, victims, families, dysfunctional civil litigants, and the community" (Hoffman, 2002:2068).

Critics of problem solving courts stress the need to accurately identify the "problem" before crafting a solution. Related to this issue is that of relating the problem to the appropriate jurisdiction. A drug-addicted person may perpetrate a range of criminal offences including property crime, domestic violence and so forth. When the problem is multi-dimensional, which jurisdiction is the appropriate forum?

It has been argued that problem solving courts are resource intensive, requiring a multi-disciplinary team of experts. "It probably is unrealistic to expect that all courts can be provided with the resources necessary to implement a true problem-oriented system" (Freiberg, 2001:24). Rottman (2000:24) observes that specialised courts proliferated in an era of sufficient funding for criminal justice. The usually higher costs associated with specialised courts may be challenged during an economic downturn.

Moreover, the roles of the legal actors are significantly altered. Hoffman (2002:2094-2095) maintains that therapeutic jurisprudence violates the doctrine of the separation of powers by forcing judges, defence and prosecution to cooperate with treatment teams, by demolishing prosecutorial discretion and by interfering with corrections. He also warns against the dangers of paternalism inherent in the concept.

Similarly, Frieberg (2001:25) points out that proactive judging requires the presiding officer to assume a number of roles, which challenges some of the core judicial values such as impartiality, fairness, certainty and the separation of powers between the judiciary and the executive. However, strong advocates for problem solving courts argue that the adversarial system does not serve offenders, victims or the public well in the longer term.

The issue of specialisation, expertise and training raises further problems about the operation of problem solving courts. The merit of encouraging judicial expertise in specialised subject matters remains a controversial issue. On the one hand, the argument has been made that "judges typically are generalists" Specialist judges in this context duplicate the work of social service and treatment providers. On the other hand, decisions by judges with substantive knowledge in a subject area tend to be more highly regarded by litigants and the public (Rottman, 2000:26).

Popovic (2002:21) argues that specialised courts may lead to the fragmentation of the criminal justice system. In addition, specialised courts are susceptible to capture by special interest groups, who tend to make it "their" court to the detriment of the court system as a whole.

The alternative view to the current wave of court specialisation is as a correction to excessive consolidation and centralisation. Specialisation is a response to an over-reliance on large, all purpose, generalist courts. Specialised forums can also be viewed as a reform mechanism itself, permitting experimentation that allows the judiciary to keep step with changing times (Rottman, 2000:25).

A major challenge is the absence of evidence demonstrating the effectiveness of problem solving courts. The investment in problem solving courts must ultimately be justified in terms of their role as agents of change beyond a few courtrooms (Rottman, 2002:26). As the most well established brand of problem solving courts, drug courts have the longest track record. According to evidence, drug courts have achieved solid results in retaining offenders in treatment, reducing drug use and recidivism and saving prison costs (Belenko, 1998; Berman and Feinblatt, 2001; Freeman, 2002; New York State Commission on Drugs and the Courts, 2000; Russell, 1993).

The proponents of problem solving and specialist courts often promote court forums that function as de facto separate courts oriented toward a particular class of service providers, victims or defendants rather than toward an integrated court system (Rottman, 2000:26). This view suggests that a proliferation of problem solving and specialist courts may fragment the court system and diffuse resources. According to Rottman (2000:26), the long term future of problem solving and specialised courts may depend upon their successful incorporation into larger trial court systems.

Problem solving courts are just one example of a growing trend of court reform. Institutionalisation of innovation poses significant challenges. The leadership of and collaboration among entrepreneurial judges, prosecutors, defence counsel and bureaucrats are critical in times of change and reform (Feinblatt, Berman and Fox; 2000:287).

2.4 The Attorney-General's Justice Statement

In 2004, the Government released the Attorney-General's *Justice Statement 2004-2014* to establish directions for reform in areas of priority through (a) modernising justice and (b) protecting rights and addressing disadvantage. The *Justice Statement* recognises that judicial and administrative processes should respond to the needs of individuals with compassion and respect for dignity, and emphasises that they should receive medical, social and psychological assistance. The *Justice Statement* also recognises the need for consistency and coordination between what happens in the court room, and the support services available beyond the court room to assist in continued safety and to overcome trauma.

Some may argue that a court has no concern with the social causes of crime and is only required to impose sanctions from within the sentencing framework that fit the facts of the offence and the circumstances of the defendant. However, an understanding of the causes of offending informs consideration of the prospects for rehabilitation, which has always been an element of the sentencing framework. The sentencing framework also includes the principle of protecting the community from further offending by that defendant.

Problem solving courts are perceived as an alternative to traditional, case processing. They incorporate non-adversarial processes and collaborative teamwork to achieve positive outcomes for those involved. The emphasis is on problem solving and treatment rather than punishment and deterrence. (see Table 1 for a comparison.)

Problem solving courts represent more a process than a state, continually evolving in response to the changing environment. "Problem solving requires a shift in what is valued in the adjudication process: outcomes (rather than outputs); flexibility in decision-making; listening to people's concerns; participation by community organisations; and consideration of what is best for communities as well as for individual defendants and victims" (Rottman, 2000:22).

The focus of problem solving approaches, especially within the Magistrates' Court of Victoria, represents a promising approach to the problem of offenders from backgrounds of acute disadvantage or with complex needs. It is recognised that the approach may have less application in the higher courts where the gravity of the offences being considered will often necessitate imprisonment. However, the evaluation literature suggests that problem solving approaches should target high-risk offenders whose offences attract relatively longer prison sentences than the average period in the Magistrates' Court (ie, longer than 6 months) with the aim of improving retention rates in treatment programs and reducing re-offending in the longer-term. This has implications for the application of problem solving approaches in the higher courts.

The proposed approach is broadly based on humanitarian principles recognising that many offenders come from disadvantaged backgrounds of deprivation and victimisation, and that these must be recognised as explanations for criminal behaviour. Further, it encourages a shift towards a problem solving style of justice, adopting the principles of therapeutic jurisprudence to re-shape the legal process in ways that can improve the psychological functioning and emotional well-being of those affected.

Friberg (2004) identifies two future directions for the development of problem solving approaches: (1) the development of more and diverse specialist courts or (2) mainstreaming problem-solving approaches to generic courts.

In Victoria, there is currently a continuum of problem solving approaches that range from specialist courts, such as the Drug Court, Koori Court, Family Violence Courts and specialist lists, to specialist advisory services, and treatment and support programs attached to courts. Parallel to this expansion of specialist courts, Victoria is also implementing a new service

delivery model that will mainstream principles of Therapeutic Jurisprudence and problem-solving approaches in the courts, the Court Integrated Services Program.

2.5 Good practice guidelines for problem solving courts and approaches

It is evident from the literature that there are well-defined problem solving courts and approaches operating in the US, UK, Australia and elsewhere. However, there is considerable variation in how these courts and approaches operate in different jurisdictions. Bull (2003:90) found that local applications are often shaped by a range of factors including, funding, geography, political and/or community support, the nature of the local population, and the range and philosophy of treatment and support available.

Nevertheless, an international review of drug court practices by the Expert Working Group of the United Nations International Drug Control Program (1999) successfully identified core characteristics that contribute to successful problem solving approaches and which are capable of implementation across the world's major legal systems.

Magd and Curry (2003) contend that there is sufficient evidence of successful programs emerging from both the academic literature and program evaluations. It is now imperative to identify and document proven practices about which there is already much confidence. Similarly, Winick and Wexler (2003:105) advocate transition from description to prescription, and the "codification" of good practices. For example, in its review of collaborative justice courts in California, the Collaborative Justice Courts Advisory Committee (2003:16) recommended the development of a consistent methodology to identify, catalogue and document proven and promising practices that can be shared with other courts.

Another example, the Pathways Mapping Initiative (PMI) in America is a prototype of policy making based on distilling knowledge not only from programs whose success has been proven but also based on evidence of "what works". As Schorr (2003) explains the PMI approach relied primarily on a consensus process, engaging highly knowledgeable, experienced individuals, including researchers and practitioners, to construct a body of empirical evidence of "what works". This body of empirical evidence formed the basis of policy developments.

In reviewing Australian diversion programs, Lawrence and Freeman (cited in Bull, 2003:90) identified core principles and practices for the delivery of effective programs. Similarly, Day, Howells and Rickwood (2003) adopt a "what works" approach in their review of the Victorian Juvenile Justice Rehabilitation initiatives. The review discusses issues relating to rehabilitation services based on the integration of knowledge about "what works" principles. They note that the "what works" approach is increasingly influential in service planning across adult and juvenile services, both in Australia and internationally.

In section 3, we describe the essential components of good practices as distilled from the literature and demonstrated by problem solving courts and approaches in national and international jurisdictions. In doing so, it is acknowledged that a clear set of principles and policies is needed to guide efforts to promote and assist implementation of good practices (Pranis, 2001:1).

The principles of therapeutic jurisprudence represent the foundation for the development and implementation of problem solving courts and approaches. As Pranis observes, "therapeutic justice is not a specific program or set of programs, it is an innovative response to the problem of crime, a set of values that guides decisions on policy, programs and practice".

Similarly, Fritzier and Simon (2000:28) refer to therapeutic justice as an innovative jurisprudential paradigm within which best practices can be developed and implemented. The

notion of "best practice" concerns the development of standards that allow administrators, practitioners and reviewers some basis for ensuring that programs are being maintained and delivered in a manner consistent with the best available knowledge.

Reviews and evaluations of different forms of problem solving courts and approaches have been conducted (for example, Crime Research Centre and the University of Western Australia, 2003; Fritzler and Simon, 2000; Hughes and Mossman, 2001; Johnson, Hubbard and Latessa, 2000; Tsai, 2000) to distil best practices and performance criteria.

A focus on "best practice" principles and empirically-derived practices provides a much needed and useful guide in surfacing important issues in the court system (Miller and Shutt, 2001:91-106). Different jurisdictions have implemented various types of specialised court processes or courts, depending on specific needs and constraints. An integrated systems model for problem solving courts and approaches requires the identification of commonalities as well as differences, and the preparedness to build consensus (Karan, Keilitz and Denaro, 1999).

3 Key Components of Problem Solving Courts and Approaches

In this section, we describe the key components of problem solving courts and approaches as distilled from the literature, including recent evaluations. These components represent good designs, practices and operations of problem solving courts. They may also be used to guide the establishment and ongoing management of future problem solving approaches. A summarised checklist is provided as Appendix A.

Key Component 1: A shared philosophy of therapeutic jurisprudence

Purpose: Therapeutic jurisprudence acknowledges that the law has both therapeutic and anti-therapeutic effects. It uses the tools of the behavioural sciences to provide positive outcomes for people in contact with the criminal justice system.

Therapeutic jurisprudence has the potential to transform aspects of the criminal justice system, the participants and their conflict. It poses a challenge to the conception that the law's function is to provide "rules, procedures and institutions that facilitate just interactions between people", and to achieve justice by "controlling socially inappropriate behaviour that reveals itself in conflict". (Bush and Folger, 1994:84-85).

Therapeutic jurisprudence proposes that judges and lawyers be sensitive to the beneficial or harmful consequences that their actions and decisions have on the parties that come before them. In applying the therapeutic jurisprudence approach, the effectiveness of chosen practices depends upon the legal issues involved and the context in which these issues are presented.

Good practices: Problem solving courts and approaches promote therapeutic outcomes by adopting the following:

- A sound understanding of and commitment to the philosophy of therapeutic jurisprudence. This is particularly relevant in the context of a multi-disciplinary approach where there is the potential for conflicting perspectives, beliefs and goals
- A non-adversarial forum emphasising problem solving and treatment processes. Using a non-adversarial approach, the prosecution and defence lawyers promote public safety while protecting offenders' due process rights
- Judges, lawyers and court staff becoming more sensitive to therapeutic jurisprudence issues and more adept at developing individual and systemic responses to address those issues
- Skill development in applying therapeutic jurisprudence principles may proceed faster because of a common focus and collegial support among judges and lawyers
- Access by the courts to an integrated, professional treatment and social service response

Key Component 2: Enabling legislation to support the objectives of problem solving courts and approaches

Purpose: To provide a legislative framework to enable the full range of tailored and calibrated court actions needed to achieve the objectives of court-directed treatment programs.

Good practices:

- Where possible, state legislation should be consistent with, or at least not contradictory to, the legislation of other states
- Consistency in minimum standards needs to be set out in legislation and/or national guidelines
- Changes in underlying substantive and procedural law, where necessary or appropriate, to embed therapeutic approaches and processes
- A legislative framework to promote the objectives of problem solving courts and encourage systemic change
- Legislated service eligibility requirements and the capacity to provide compulsory treatment and care, where required

Key Component 3: Integrated, professional treatment and social service response

Purpose: To provide an integrated, holistic, multi-disciplinary response to offenders and victims with multiple and complex needs.

The notion of integration requires that agencies agree to act together in delivering an appropriate therapeutic response. As noted by the Domestic Violence and Incest Resource Centre (2004:11), "integration of services is more than coordinated service delivery - it is a whole new service".

Moreover, it requires that agencies collocate at the point of service delivery, articulate common goals, agree on protocols and codes of practice, and realign their services to form a joined-up service delivery model. This is particularly relevant given the unequal power of participant agencies, the lack of trust between agencies and their conflicting interests, and an unwillingness to share information or surrender a degree of autonomy (Hague, 1998:446).

Good practices:

- Coordinated screening and service allocation model ("triage" assessment) to ensure that participants are matched to programs according to their specific needs. Operational and performance standards include:
 - Explicit and agreed on screening procedures; documented procedures for assessment and referral
 - Explicit and agreed on eligibility criteria
 - Explicit and agreed on procedures, regular monitoring and reporting to referral source

- Access to a continuum of treatment and other rehabilitation services including, but not limited to:
 - Counselling; preventive and primary medical care; general health education; medical detoxification; acupuncture for detoxification, for control of craving and to make people more amenable to treatment; domestic violence programs; batterers' treatment; and treatment for the long term effects of childhood physical and sexual abuse
 - Other services may include housing; educational and vocational training; financial management; and other social service needs; anger management; transitional housing; social and athletic activities; and medication or other techniques to promote relaxation and self control
 - Specialised services for participants with co-occurring problems, for example drug dependency and mental health disorders
 - Ongoing case management and post-treatment follow up, including social support necessary to achieve reintegration into the community, family reunification and social linkages
 - Targeted services and a broad range of options, including towards the "hard" end of offenders. If various levels of treatment are available, participants are matched to programs according to their specific needs
- Treatment designs and delivery systems are sensitive and relevant to issues of race, culture, religion, gender, age, ethnicity and sexual orientation
- Services integrated into criminal justice system process. Guidelines to assist integration of services as a legitimate part of the work of police, courts, service providers and all participants to ensure services are perceived as "core business"
- An integrated advocacy function where appropriate
- Collocation of agencies to facilitate the team-based approach to case-manage offenders and victims through the criminal justice system

Key Component 4: Shared leadership and ownership

Purpose: to facilitate reform and encourage institutionalisation of problem solving courts and approaches, the judiciary, lawyers, court staff, social service providers, clinicians, professionals and bureaucrats must demonstrate joint leadership and ownership.

Good practices:

- Leadership by the judiciary and legal practitioners to transition towards new behaviours and practices; transition from practices based on charisma to those based on mutually agreed standards and principles
- High level executive support at agency level is critical
- Program referral and success should not depend on individual personalities
- Role delineation and demarcation:
 - Traditional roles of judge, defence and prosecutor need to be adapted to new processes and practices
 - Roles of each member of the multi-disciplinary team is aware of expectations, requirements and limits; clarity of roles in terms of processes and guidelines to outline responsibilities, accountabilities and reporting lines

- Roles of the agencies involved need to be clear at the outset to ensure consistency in process, systems and practices
- Ethical implications of client confidentiality and professional rules of conduct
- High-level of professionalism and competence, including management skills where appropriate

Key Component 5: Formal partnership arrangements

Purpose: To facilitate collaboration and broad base of support from all participants including the human, health, education and criminal justice sectors. Effective collaboration among courts, law enforcement, public agencies and community-based organisations enhances the objectives of problem solving courts and approaches, increases the availability of services, enhances their effectiveness and generates local support.

Good practices:

- Early involvement of joint venture partners and collaborators to ensure commitment to problem solving courts and approaches
- Partnerships and collaborations to be established with clear goals, expectations and resourcing requirements
- Formalised partnerships (MOUs, SLAs, formal protocols). It is important that all those involved understand their own role and the role of other participants
- Participation of public and private agencies, as well as community-based organisations, is formalised through a steering committee. The steering committee assists in the acquisition and distribution of resources. The "Working Together Strategy" and the "Multi-Service Client Project" provide examples of departmental level initiatives aimed at improved program coordination and intersectoral collaboration (Department of Human Services, 1999)
- Management and operational procedures to facilitate collaboration and communication between all those involved in the service delivery
- Training to be provided to all those involved in service delivery. Training to address the principles underlying the problem solving approaches, to clarify specific functions and tasks, operational requirements and standards

Key Component 6: Planning

Purpose: Planning to articulate objectives, implementation strategies and evaluation is critical to the success of problem solving approaches. The literature is critical of the absence of planning and concludes that program development has been responsive rather than planned (Kathy Wilson Consulting, 2003:5) and piecemeal (Hughes and Mossman, 2001:89).

Good practices:

- Establishment of a formal, cross-agency planning process for the establishment of programs
- Establishment of program development guidelines, checklists, quality standards, processes and systems to "standardise" program initiation, development and implementation
- Evidence-influenced planning. That is, the use of appropriate analytical techniques and research to inform the planning process
- Continuing interdisciplinary education to promote effective planning, implementation and operations of programs and initiatives

- Availability of consistent, quality guidelines and manuals to assist program implementation and management
- Establishment of consistent, effective and efficient systems of data collection for both program management and evaluation
- Establishment of multi-agency processes and systems for policy and planning

Key Component 7: Well planned monitoring and evaluation to measure the achievement of program goals and gauge program effectiveness

Purpose: Performance measures and evaluations provide objective, relevant information on program performance that can be used to support and influence operational and strategic decision making, improve overall performance, and increase accountability for the use of public funds.

Management information systems can provide timely and accurate information about program operations to managers, enabling them to keep a program on course, identify emerging problems, and make appropriate procedural changes.

Common administrative tools and systems across agencies, offices and programs are recommended by the literature (Keene, 2001).

Good practices:

- Program goals should be clearly articulated to facilitate measurement
- Evaluation procedures to be an integral part of the program from first planning stage, and are ongoing. Both process and outcome evaluations are necessary:
 - Process evaluations describe the court/program and its participants (eg, quantity, gender, age etc), while outcome evaluations describe the impact of the court/program in achieving the desired goals
- It is desirable that a professional independent evaluator be selected to develop and conduct the evaluation, and is involved in the design of the program's information management system. The evaluator should be member of the planning and review team (from the planning stage) to be able to intimately follow the program
- Information management systems to be designed to meet both operational and evaluation requirements, with all parties having a clear understanding of its purpose, and the need for accurate and complete data entry. The use of drop-down menus will assist in data quality. Free-text fields should be avoided
- Actual performance against targets to be monitored and reported to management / steering committees regularly
- Performance measures for the program should align with the overall performance measures of the court (eg, clearance rate, case processing times, backlogs) to enable monitoring of program impact on overall performance results
- Comparison groups should be established to facilitate evaluation of the long term effects of the intervention in relation to program participants

Key Component 8: Communication and promotion across disciplines and sectors

Purpose: To facilitate regular communication, information sharing and dissemination of learnings among legal and professional practitioners.

To profile problem solving approaches in the wider community and raise awareness of issues and services.

Good practices:

- Effective and regular communication among all participants. Too little communication between treatment providers and courts can alienate some in the treatment community
- Sustained communication through appropriate media (eg journals, internet, intranet) to raise awareness of services among legal practitioners
- Consistent and professional promotional campaign and PR collateral to raise awareness of the initiatives and programs to the citizenry
- Media outreach activities to educate the community and manage perceptions

Key Component 9: Cultural competency

Purpose: To raise the awareness of and sensitivity to cultural barriers to the criminal justice system and develop appropriate access to services for culturally diverse victims and offenders.

Good practices:

- Consultation with relevant community groups during planning, implementation and reviews
- Community building to reduce the perceptions of cultural alienation
- Leveraging community representatives, mores and practices to encourage offender accountability, promote community based justice (eg indigenous practices of restorative justice and circle sentencing) and facilitate the reintegration of the offender into the community
- Develop culturally relevant and appropriate treatments and interventions. For example, in some cultures, domestic violence is defined as a private, shameful matter not to be brought to the attention of the authorities
- Recruit professional staff who reflect the population serviced
- Overcome structural constraints, such as language barriers, to accessing the criminal justice system and treatment services
- Many courts offer training in cultural competency to the entire team. They have reported that they utilise specific services that focus on the needs of distinct cultural groups as part of their treatment and social service referral systems

Key Component 10: Security of funding

Purpose: Sufficient, sustained and dedicated funding is critical for the success of problem solving approaches and programs. Funding allocations should cover all activities from planning and implementation to review and evaluation.

Good practices:

- Funding for at least 4 years with clear procedures for review. Funding allocations to include specific allocation for data collection and evaluation activities, consistent with the specified aims of the program
- Multi-agency funding. In California, problem solving courts have identified creative methods for sustained program funding that include public agency assistance from all levels and branches of government

4 Development of a Policy Framework

This section describes the principles guiding the development of a policy framework that consolidates and extends problem solving approaches within Victorian Courts. It outlines the policies and priority actions that will enhance service delivery to meet current and future demand for problem solving courts and approaches.

4.1 Policy context

Growing Victoria Together represents the Government's vision, direction and future priorities to guide the public sector and work with stakeholders and community organisations. It frames policy and resource allocation priorities in the context of a balance among economic, social and environmental factors. *Growing Victoria Together* has been described as a means of formalising the Government's commitment to develop a "triple bottom line approach to policy making" (Adams and Wiseman, 2003:13).

The Government has a vision for a safer future for Victorians. *In Growing Victoria Together* the Government has outlined its commitment to safer streets, homes and workplaces. It explicitly states as a priority action the need to tackle the causes of crime and reduce offending and re-offending.

In 2004, the State Government released the *New Directions for the Victorian Justice System 2004-2014*. The Justice Statement establishes directions for reform and areas of priority through (a) modernising justice and (b) protecting rights and addressing disadvantage. The core values and outcomes of the Justice Statement are listed below.

The core values are:

- Equality- all community members should be equal before the law.
- Fairness- the processes of justice should be fair.
- Accessibility- the justice system should provide appropriate access all individuals regardless of their means.
- Effectiveness- the justice system should be responsive.

The following outcomes are sought:

- Safer communities through reduced re-offending and increased community cohesion and efficiency through accessible advice and dispute resolution procedures.
- A community that values diversity and understands its rights and obligations.
- A responsive client and stakeholder focused justice system.
- A community that is engaged with, and supportive of, the justice system.

A Fairer Victoria: Creating Opportunity and Addressing Disadvantage 2005 is a social policy action plan for social sustainability. It outlines a series of actions the Government will take to improve access to vital services, reduce barriers to opportunity, strengthen assistance for disadvantaged groups and ensure that support is available to people at critical times in their lives. Strategy 8 aims to reduce barriers to opportunity by improving access to justice (i.e., breaking the cycle of re-offending).

Joined-up Government

The Government recognises that agencies will need to work cooperatively to tackle the causes of crime and achieve a reduction in offending and re-offending. Moreover, policy coherence and consistency between the agencies in relation to cross-sectoral issues are encouraged to facilitate seamless service delivery.

The Government's policy for addressing the over-representation of people from marginalised and disadvantaged backgrounds and reducing their re-offending is framed within the broader context of joined - up government. Consequently, this policy framework is designed to support and complement other initiatives including, *inter alia*, the Department of Human Services' Complex Care Initiative, Office of the Public Advocate's "Disability and the Courts" Research Report, the Women's Safety Strategy, the Victorian Law Reform Commission's "Sexual Offences: Law and Procedure Final Report", Crime Prevention Victoria's "Crime and Violence Prevention Strategy", Corrections Victoria's Reduce Re-Offending Strategy and the Department of Human Services' juvenile diversion initiatives.

Guiding Principles

The Attorney-General's Justice Statement identifies the following principles to guide the development of a policy framework:

- ***An interdisciplinary approach*** that draws on the expertise of legal and professional practitioners to address disadvantage and reduce re-offending. In dispensing justice, the courts should access the health and social service systems to address the underlying causes of offending behaviour. Dispositions must enhance the prospects for rehabilitation through the use of appropriate advice and support services.
- ***Policy consistency*** across the Justice portfolio in addressing the needs of the target population. For example, the Aboriginal Justice Agreement reflects a comprehensive strategy that has been designed after consultation with stakeholders to address the needs of Kooris. Similarly, the Women's Safety Strategy establishes a coordinated approach to reducing violence against women. Court initiatives must complement and support the overall direction set by the Government in these strategies.
- ***Least recourse principle*** to ensure that the intervention is appropriate to the offence. The criminal justice system operates as a series of filters, with each stage representing a higher level of state intervention in the defendant's life, ultimately resulting in imprisonment. At all stages of the process, the defendant is diverted out of the system, either because guilt cannot be established, or an appropriate intervention has been made. This approach reflects the defendant's rights as a citizen to be subject to the state's intervention to the minimum extent appropriate for the offence. This approach provides a fair and cost-efficient system for the community's protection.
- ***Procedural responsiveness*** that recognises that the process by which a decision is taken may often be as important as the actual decision. This is a key message of therapeutic jurisprudence. Processes that respect the needs and circumstances of the participants are more likely to generate positive outcomes than processes that fail to acknowledge the individuality of the person. Therapeutic jurisprudence affects the interaction between judicial officers and individuals in the court and can influence the design of the court processes and sentencing options.

4.2 Policy Question 1 - What is our objective?

Given the over-representation of people from marginalised and disadvantaged backgrounds in the criminal justice system, the objective is to address the underlying causes of their offending behaviour in order to:

- Reduce re-offending
- Stop further penetration into the criminal justice system and divert from prison
- Minimise the harm that is associated with the underlying causes of offending to defendants and the community

- Establish links to appropriate treatment and support services to assist defendants to transition towards healthy, law-abiding lifestyles
- Enhance the safety of the community by delivering effective responses that reduce re-offending.

Reduce Re-offending

Although Victoria's imprisonment rate is well below the national average, prisoner numbers have continued to grow significantly over the past decade (Commonwealth Productivity Commission, 2004:7.30). Moreover, in 2002/03, Victoria reported that 31.3% of prisoners returned to prison within two years of release and 39.6% returned to corrective services (either prisons or community corrections). Further 21.1% of offenders returned to community corrections and 25.5% returned to corrective services (Commonwealth Productivity Commission, 2004:C.15).

Many defendants churn through the criminal justice system again and again, going through a "revolving door" from street to court to cell and back again, without ever receiving the support and structure they need. It is fair to say that no one wins when this happens - not defendants, not police, not the courts, not the victim and not communities (Denckla and Berman, 2001:4).

Divert from Prison

The criminal justice system operates as a series of filters, with each stage representing a higher level of state intervention in the defendant's life, ultimately resulting in imprisonment. The intention is to divert offenders or alleged offenders out of the system at all stages of the process, either because guilt cannot be established, or an appropriate intervention has been made. Given the increasing complexity of the circumstances and needs of offenders, the system can fail to intervene effectively. Problem solving approaches help to determine the nature of the intervention to ensure that the system operates effectively in diverting offenders. Problem solving approaches focus on preventing the offender's further penetration into the system and diverting offenders from prison.

Harm Minimisation

Harm minimisation is an approach that aims to minimise or reduce the harms associated with behaviours and activities such as, illicit drug use, alcohol misuse and gambling. In the drug and alcohol sector, it is often defined in distinction to abstinence. Harm minimisation acknowledges that abstinence is often difficult for addicts and a strategy of gradual reduction and other options that have positive consequences for the addict and the community can be adopted.

In the context of illicit drug use, harm minimisation strategies are aimed at *reducing* or containing the direct harms caused by the addict's drug use. These direct harms include the harm drug users cause to themselves and to others under the influence of the drug. In the case of heroin such harms include newborn drug toxicity, road fatalities, suicide, child neglect and medical complications. They include the additional harm generated by addicts who commit crime at a higher rate because of the income need their addiction generates, or who

engage in unsafe injection practices in order to avoid being detected or apprehended by police (Weatherburn and Lind, 2000). A harm minimisation approach aims to reduce addicts' drug use whilst improving their health and well-being over time. The intention is to provide them with the necessary treatment and support in order to reduce their drug use, enhance their social functioning and reduce their criminal behaviour.

Linkages to Services

People from marginalised and disadvantaged backgrounds have a combination of problems. These may include problems with employment, finance, housing, family, health, substance abuse and the criminal justice system. Access to a broad range of treatment and support services is necessary to achieve reduction in crime and social integration. Good follow-up services and aftercare should be available to offenders once the legal obligations are fulfilled.

The complexity of the problems experienced by people from marginalised and disadvantaged backgrounds requires a sustainable, joined-up service response from criminal justice, health and welfare, treatment and education sectors.

Enhance Community Safety

The primary objective of the criminal justice system is to enhance community safety. Although Victoria's crime rates have been well below the national average for the past decade, many in the community are concerned about the possible consequences of becoming a victim of a serious crime. Further, the overall cost of crime to the Victorian community is high at an estimated cost of around \$4 billion per annum (Crime Prevention Victoria, 2002:4). Overwhelming evidence from overseas evaluations (Washington State Institute for Public Policy, 2001; London Home Office, 1998) and Australian evaluations (NSW Bureau of Crime Statistics and Research, 2002) have demonstrated that a modest reduction in recidivism can have an attractive economic bottom line impact. More importantly, a reduction in crime rates will enhance Victorians' confidence in the criminal justice system and their sense of safety.

4.3 Policy Question 2 - Who is the target group?

Underpinning a coordinated, consistent and joined-up service response is the identification of the target group at the point of entry to the court system. Increasingly, offenders are presenting with complex needs, including (1) low educational achievement; (2) poor employment history; (3) significant health problems (including mental illness); and (4) limited family/social linkages. Further, drug and alcohol misuse is compounding these problems and is a major cause of offending. Department of Justice data recently established that approximately two-thirds of new prisoners reported that their offences were related to drug use. This figure increases with second or subsequent sentences, with approximately 80% of men and 90% of women reporting problems with drug use (Victorian Prison Drug Strategy, 2002).

Further, a history of unstable accommodation and homelessness is also a significant problem. Homeless people are disproportionately represented in the criminal justice system and the rate of recidivism amongst homeless offenders is high. Homeless people continue to be particularly vulnerable to police contact, arrest and imprisonment. In New South Wales, approximately 10 per cent of prisoners report being homeless or at risk of homelessness prior to their incarceration. In a study conducted in Melbourne, 29 per cent of a sample of 383 homeless persons reported a history of incarceration (Homeless Persons' Legal Clinic, 2004).

The over-representation of Kooris in the criminal justice system is well documented. In the Victorian criminal justice system, Kooris are 6 times more likely to be arrested than non-Kooris and 13 times more likely to be imprisoned (Diversity and Indigenous Issues Unit, Department of Justice). Concern about systemic bias has been heightened by research

showing that the level of over-representation in the criminal justice system increases as Koori defendants move deeper into it (Gale, Bailey-Harris and Wunderitz, 1990).

The increasingly complex problems experienced by people appearing before courts do not exist independently, but are likely to show strong interactions. For example, mental disorder and drug and alcohol abuse are known to be highly correlated (Mullen, 2001:28). Similarly, indigenous status and social disadvantage are strongly related factors (SCRGSP, 2003). Overlap in these problems is important in the sense that an individual with multiple problems requires a more holistic and coordinated response from agencies. Overlap is also important in that problem solving interventions need to be able to address a combination of problems.

Eligibility Criteria

There are four general sets of conditions that apply to determining whether any individual is appropriate for referral to a problem solving court or intervention. They are:

- *Proportionality and community safety*: The nature of the criminal matters to be determined must be appropriate for a court where the emphasis is on solving problems relating to the causes of offending.
- *Offending-related needs*: The individual must exhibit characteristics or attributes associated with his or her offending that are amenable to a problem solving approach.
- *Risk of re-offending*: The level of risk of re-offending for the individual should be consistent with the nature of the problem solving intervention.
- *Readiness to change*: The individual must be willing and able to engage in a therapeutic, supportive or transformative program directed at the causes of his or her offending.

Proportionality and community safety

The emphasis in problem solving courts and approaches is on determining the causes of a person's offending, and initiating a therapeutic or transformative intervention that addresses these causes. However, the intervention must be consistent with fundamental legal principles of proportionality and community safety. This places upper and lower bounds on the nature of the matters that should fall within the scope of a problem solving approach. At one extreme, the matters to be determined should be generally proportionate with the likely intrusiveness of the appropriate therapeutic intervention. In general, the offences charged should not be trivial unless they take the form of an extended series of such offences that, in aggregate, warrant significant involvement by the court.

Conversely, the offences should not be so serious that the court must give sentencing priority to protection of the community. In general, persons charged with serious violent offences are unlikely to be suitable for problem solving approaches, nor are those charged with serious property or drug-related crimes. Offences involving a high degree of organisation and premeditation are unlikely to be suitable for a problem solving approach.

The intended plea by the defendant may be a consideration. It is not necessary that the defendant plead guilty to all charges, however cases where the defendant intends to defend vigorously all or most charges and where there will be complex evidentiary matters to be resolved are unlikely to be suitable.

Another factor that may bear on the issues of proportionality and community safety is the individual's criminal history. A person with a history of serious offending or of behaviour that poses a serious risk to the community may be unsuitable even if the current offence is within the scope appropriate for a problem solving approach.

Offending-related needs

The idea of “problem solving” can extend to cover a wide range of issues. Only some of these issues are “problems” in the sense of attributes that contribute to offending and that one may wish to change. Drug and alcohol dependency, mental disorder and some forms of social disadvantage (eg. homelessness) fall into this category. However, there are other attributes that frequently get caught in the “problem solving” net that do not fit this definition. For example, Koori Courts may be classed as a problem solving approach, but we need to be clear that the problem in this case is the high rates of drug and alcohol dependency and social disadvantage experience by Koori communities. Similarly, problem solving approaches may be appropriate for people with disabilities, but in this case the problem is the special needs of people with disabilities in relation to effective participation in justice processes.

Problem solving approaches should be concerned with persons who exhibit needs or deficits that contribute to the frequency or severity of their offending. The presence of a need or disability alone is not sufficient basis for referral to a problem solving court. Offence-related needs that may be suitable for referral include:

- Physical or mental disabilities or illnesses
- Drug or alcohol dependency or misuse
- Inadequate social, family or economic support
- A combination of two or more conditions.

In addition, some cultural or other attributes may also be eligibility considerations. For example, indigenous persons may be appropriate for problem solving courts that operate in culturally appropriate settings. However, cultural issues are considerations relating to the way that a problem solving court should operate, not about eligibility per se. The issues to be addressed by the problem solving court should be those listed above.

Any offence-related needs should be systematically assessed. This assessment must consider:

- The relative severity of the need. For example, how severe is the person’s mental disability, or drug dependence? How long has this condition been present? Is it getting worse?
- The relationship between the person’s needs and his or her offending. Does this condition contribute to the frequency or severity of the person’s offending? Will addressing the condition reduce the frequency or severity of offending?
- The relationships between different needs. Are there dependencies between different need areas? For example, is this person homeless because he or she is severely drug dependent?
- Are there any actions already in train to address this need? Does the person have pre-existing arrangements for treatment or support? Will these arrangements be enhanced by a problem solving court, or will court involvement interfere with them?

Risk of re-offending

Most of the therapeutic interventions for problem solving courts and approaches have restricted availability and involve the commitment of significant resources by the court and the service provider. Referral to these intensive interventions is only justified if the future risk of re-offending for the individual is medium or high. Risk of re-offending can be predicted using a variety of actuarially derived assessment tools, and the specific tool to be used should be based on the attributes of the person. For example, the Level of Service Inventory is a general risk prediction instrument, while the HCR-20 is designed specifically to assess future risk of violent offending. Yet other tools focus on drug or alcohol-related offending.

Readiness to change

The person must be willing to engage in a process directed at changing the causes of his or her offending. Acceptance of assistance is not in itself sufficient. A person may be willing to accept housing assistance, but if this is not linked to other changes in his or her life that will reduce the frequency or severity of offending, there is no justification for applying a problem solving approach. Readiness to change is not a general attribute, but may be specific to certain domains of a person's life. For example, a person may be willing to undertake treatment directed at drug dependency, but not willing to address issues of family reconciliation.

Practical Implications

In practice, eligibility criteria are likely to evolve in the light of experience in the operation of problem solving courts. In addition, assessment of eligibility typically involves some flexibility in how these criteria are applied. Thus, these criteria represent variable characteristics against which individuals will be assessed rather than fixed standards that are either met or not met.

To determine eligibility, it is recommended that the screening and assessment of referred defendants be coordinated. This will ensure that the screening and assessment process will be conducted consistently, following consistent standards, procedures and tools. Consistency in standards and procedures will ensure that genuine needs are assessed rather than only "needs-which-can-be-met" by a discrete support service.

In the context of service provision, Smith (1980) argues that the assessment of individual needs typically focuses on only those components of a person's needs that are relevant to the provision of that particular service. In the context of problem solving courts, where defendants present with multiple and complex needs, it is essential that the nature and extent of the "problems" are fully scoped. Centralisation of the screening and assessment process will facilitate a more comprehensive assessment of the defendant (Keene, 2001; Smith, 1980).

In addition, research shows that inconsistent assessment tools and administrative rules have fragmented service responses, rendering them wasteful and ineffective. Keene (2001) notes the difficulties of achieving an agreed assessment criteria among service providers. Some of these difficulties include services operating in silos; poorly defined / developed cross program linkages; limitations of assessment and staff skills levels. Centralisation of the screening and assessment process, with consistent processes, methods and tools would address some of these deficiencies. Further, this would facilitate the provision of a coordinated response to defendant' status and needs. Once a defendant is "triaged", he can be diverted to appropriate services.

Coordinate the screening and assessment process of eligible defendants to fully scope the extent of their problems.

4.4 Policy Question 3 - How to determine the intensity of the intervention?

Following the *Guiding Principle of Least Recourse*, the intensity of the intervention should be no more than necessary to achieve the objectives of the intervention. Further, the intervention should have due regard for the potential to facilitate the rehabilitation of the defendant in the context of other sentencing purposes. By extension, the intensity of the intervention should match the level of risk of re-offending that the defendant presents. In other words, there is limited value in intervening with low risk defendants who are unlikely to re-offend, and some evidence exists that intervention with this group can be counter productive (Day et al., 2003:8).

At present, problem solving approaches are available at several stages in the justice process. A series of pilot programs which aim to address the complex problems with which defendants are appearing at court, are currently operating in the Magistrates' Court of Victoria. These approaches provide assistance to defendants to prevent further offending and adopt a collaborative model with support agencies.

Empirical evidence demonstrates that the most effective intervention programs adjust the level of intervention to the needs, circumstances and learning styles of individuals. Effective risk assessment allows for the accurate matching of the target group with the appropriate level of intervention and service response (Andrews and Bonta, 1998).

The adoption of a coordinated assessment process that accurately identifies the risk of re-offending as well as the particular needs of the defendant through the use of an appropriately designed risk/needs assessment tool is recommended. The identification of those factors statistically associated with re-offending is consistent with the policy objectives. Information obtained from the risk/needs assessments should be used to identify levels of risk and need in specific target groups, to triage defendants, and, ultimately, to assist in the design of individual service plans by service providers. The information obtained from the assessment process should be captured and stored in a central, information management system.

Match the level of intervention to the level of risk of recidivism.

Effective Interventions

Effective interventions target offenders at the highest risk of offending and aim to change those individual needs that are directly related to re-offending (Day et al. 2003). These needs are described as criminogenic needs. A meta-analysis by Gendreau, Goggon and Little (cited in Day et al., 2003:22-24) confirmed the correlation between criminogenic needs and recidivism in adult offenders. A list of typical offender criminogenic needs that are related to recidivism is shown in Table 2.

Table 2: Needs of offenders related to recidivism

Criminogenic needs	Non-criminogenic needs
Pro-criminal attitudes	Self-esteem
Criminal associates	Anxiety
Substance abuse	Feelings of alienation
Antisocial personality	Psychological discomfort
Problem solving skills	Group cohesion
Hostility-anger	Neighbourhood improvement

Source: Bonta (in Day et al., 2003)

The delivery and implementation of intervention programs to high-risk offenders throughout the traditional criminal justice process are recommended by researchers. However, the process should not compromise the rights of the offender and should not be more intrusive than warranted by the nature of the offence (Bull, 2003:97; Taplin, 2002:106-108). Targeting high risk offenders also makes sense in that the benefit from reducing their rate of re-offending is relatively greater than for low risk offenders, and hence justifies the investment in greater program resources.

In referring to effective interventions, Hollin (cited in Day et al., 2003:35-36) refers to those characteristics that have been empirically linked to reducing re-offending. Table 3 lists the characteristics of effective interventions.

Table 3: Components of effective interventions

Medium-high risk offenders should be selected and programs should focus on criminogenic targets.

The type of program is important, with strong evidence for structured behavioural and multi-modal approaches than for less-focussed approaches.

Programs should be designed to engage high levels of offender responsibility.

Programs should be conducted in the community. Residential programs should be linked structurally with community-based interventions.

The most effective programs have high treatment integrity in that trained staff conduct the programs

Source: Adapted from Hollin (cited in Day et al., 2003:36)

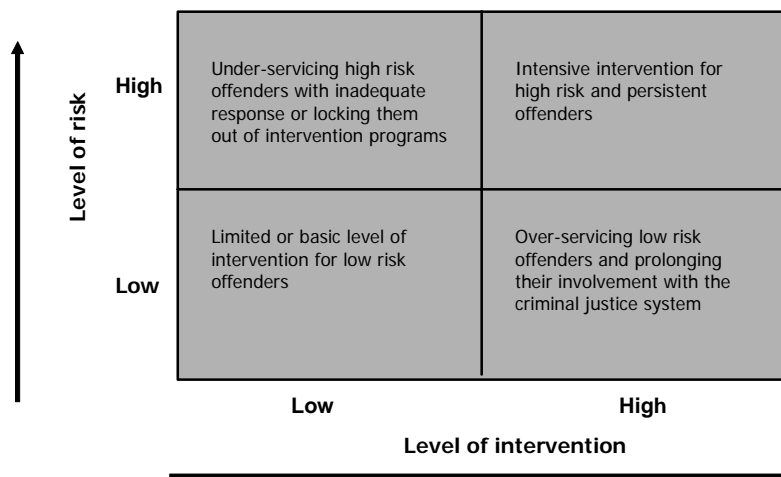
Day et al (2003:81) cite the work of Chapman and Hough who propose three levels of intervention:

- 1 Basic level of intervention addressing issues that might obstruct community reintegration such as employment, accommodation, education and leisure.
- 2 Middle range of shorter programs addressing specific criminogenic factors such as pro-offending attitudes, peers/criminal associates, victim awareness or alcohol or substance misuse.
- 3 Intensive intervention should be linked to cognitive behaviour skills programs for the most persistent offenders divided by age, race and gender.

Figure 2 depicts the interplay between the level of risk and the level of intervention. For low risk defendants, a limited or basic level of intervention is desirable. This may involve the provision of advice regarding suitable local government and community-based programs to assist defendants to make restitution and be reintegrated into the community. For example, first time, low risk defendants may be required to fulfil court-imposed conditions, be diverted to community-based programs and make restitution to the victim or the community (*cf* Criminal Justice Diversion Program).

However, if the intervention is disproportionate to the level of risk presented, then the defendant's involvement with the criminal justice system is prolonged ("net widening"). There is limited value in "over-servicing" defendants who are unlikely to re-offend.

Figure 2: Matching level of intervention to level of risk



Day et al. (2003:8) suggest that levels of intervention should be regarded as cumulative rather than independent of each other. In other words, all defendants should receive limited or basic service response, with medium to higher risk defendants receiving progressively more intensive service responses. Serious and persistent offenders should receive the most intensive service response. In this way, resources are targeted proportionately towards specific offending groups.

Given that the objectives of interventions are likely to have broader responsibility than reducing the risk of re-offending, an initial challenge may be to articulate which needs they are seeking to address, and the extent to which such needs might be considered criminogenic (Day et al., 2003:81).

In determining the appropriate level of intervention, it is necessary to determine the level of risk of recidivism and the particular needs of the defendant. Effective interventions need to target both the risk component and criminogenic needs. With some exceptions, risk assessments are not used currently to inform decisions about level of intervention and treatment services. Judgments about risks are based generally more on clinical than actuarial grounds (Day et al, 2003:7). Consequently, the assessment of risk and needs would assist significantly in matching the level of intervention required to the level of risk presented.

Risk assessment is the process of determining an individual's potential for harmful behaviour. It entails consideration of a broad array of factors related to the person, the situation, and their interaction (Blackburn cited in Ward and Brown, 2004:248).

Andrews and Bonta (1994) have advanced five principles for rehabilitation: risk, need, responsivity, professional discretion and program integrity. The risk principle suggests that medium to high- risk offenders stand to benefit more from rehabilitation programs than low risk offenders; the needs principle suggests that programs should meet individual offender needs; responsivity principle suggests that programs should be responsive to the characteristics of individual offenders; program integrity suggests consistency and quality controls; and professional discretion allows for decision-making on the basis of other characteristics and situations not covered by the other principles (Day and Howells, 2002:40-43).

Actuarial risk assessment measures include items on age, gender, past criminal history, early family factors and criminal associates as predictors of recidivism (Andrews and Bonta, 1994). Each of these factors is static (ie cannot be changed through intervention). While static predictors may be of use in determining the intensity of the intervention, they have limited value in assessing changes in risk or program effectiveness (Day and Howells, 2002:41).

Andrew and Bonta's risk-need model has been challenged by the good-lives/therapeutic jurisprudence model described by Birgden (2002) and Ward and Brown (2004). Ward argues that the main failing of the risk-need model lies in the implication that criminogenic need domains (such as employment, anti-social attitudes and associates) provide an explanation of the nature of the problems faced by the offender.

Further, statistically derived risk factors do not explain why a specific individual will behave in a certain way. Ward maintains that the management of risk is a necessary but insufficient condition for the rehabilitation of offenders. He proposes that "the best way to lower recidivism rates is to equip individuals with the tools to live more fulfilling lives rather than to simply develop increasingly sophisticated risk management measures and strategies" (Ward and Brown, 2004:244).

Moreover, "the construct driving rehabilitation should be good lives or wellbeing, not risk management or relapse prevention" (Ward and Stewart cited in Birgden, 2002:181). Thus, effective intervention "requires articulating a view of well being, albeit in a naturalistic and humanistic manner" (Ward and Stewart cited in Birgden, 2004:179). The "good lives model" assumes that an improved quality of life is a prerequisite to reducing reoffending.

Ward's "good lives" model aims to identify the internal and external obstacles that hinder offenders from leading good lives, and then to equip offenders with the necessary skills, knowledge, and resources to achieve psychological wellbeing. Internal capabilities are psychological characteristics that include skills, beliefs, attitudes and values. External capabilities are environmental factors including social, economic and cultural issues. In other words, assessment and intervention are tailored to each offender, ensuring alignment of the internal and external capabilities required to lead offence-free lives (Birgden, 2002:181). Further, the good lives conception is predicated on the assumption that human goals, strengths and preferences, and internal capabilities will provide motivation.

Despite the debate, the literature is consistent in confirming that offender rehabilitation reduces recidivism (Ogloff and Davis, 2004). As discussed above, offender intervention and rehabilitation must focus on criminogenic needs, at least in the first instance. Self-esteem, anxiety, and psychological discomfort (non-criminogenic needs) are all identifiable foci for further assessment by clinicians. In the context of the court process, the objective is to screen and assess defendants eligible for problem solving approach. As Ogloff and Davis (2004::237) observe, "Whilst acknowledging the importance of a broad range of human needs, we believe that given the scarce resources available in offender rehabilitation, the priority must be on the reduction of criminogenic factors".

In light of the research, it is recommended that a risk-needs assessment instrument be used to screen and assess defendants and identify those needs that are directly related to re-offending. The risk-needs assessment instrument will allow the maximum use of limited resources by identifying medium- and high-risk defendants for appropriate intervention.

Utilise an assessment tool that identifies the risk of offending as well as person-specific needs to determine the type of intervention required.

To determine the type of intervention required, a risk-needs assessment instrument should be used to:

- Assess recidivism risk based on defendant characteristics and offence details.
- Identify individual criminogenic needs and how severe those needs are and how motivated (or not) and able the defendant is to address them. In so doing, the criminogenic assessment should inform prioritising of intervention and sentence/order planning.
- Monitor progress in addressing needs through intervention.
- Inform court advice and strengthen diversion through evidence-based practice.
- Inform order and sentence planning so that interventions are matched to the level of risk and need.
- Form part of an integrated and computerised assessment process, which centralises data collection.
- Provide aggregate data on the defendants from marginalised and disadvantaged backgrounds presenting at court, and who are amenable to problem solving interventions.

A consortium led by the Centre for Criminological Research and Evaluation, Department of Criminology, University of Melbourne, developed an actuarial based and validated risk-needs

assessment tool for use by Corrections Victoria. The tool, called the Victorian Correctional Assessment Schedule (Tier 1), was designed to:

- Predict the likelihood of re-offending in line with international benchmarks for different types of offences, for example, violent, sexual, property, substance abuse, driving etc.
- Be sensitive to gender, cultural and youth issues.
- Indicate the likelihood of imprisonment as a result of that offence.
- Assess the offending related intervention needs of the individual, their level of severity and how motivated and able the offender is to address them.
- Integrate the assessment process in Victoria's prisons and Community Correctional Services.

A modified version of the Victorian Correctional Assessment Schedule provides a potential assessment instrument for utilisation by court-based teams to determine eligibility of defendants for problem solving approaches and interventions. It is acknowledged that this tool detects risk factors as a first step in the rehabilitation process. The next step will require a more comprehensive assessment based on the 'good lives model' and the construction of strategies consistent with this model of rehabilitation. The use of a single, risk-needs assessment tool across the criminal justice system is recommended to ensure consistency in rationale, process and data collection.

4.5 Policy Question 4 - How do problem solving approaches apply?

Many people who appear before the courts experience problems or disadvantages that are important contributing factors in their offending. These include drug and alcohol abuse, mental disorder, and social and economic disadvantage in the form of homelessness, poverty and isolation. If we want the justice system to prevent crime rather than just punish offenders, then we need to be able to provide services and supports that address these problems and disadvantages.

Problem solving approaches aim to address the underlying causes of offending. Whilst offenders must be accountable for their conduct, the legal process must respect the needs and circumstances of defendants. This is the key message of the therapeutic jurisprudence movement. By adopting problem solving approaches, the courts can influence positive outcomes for offenders whose offending may be the result of complex issues, problems and disadvantage.

The success of therapeutic jurisprudence as applied in court settings may owe as much to the process that is used as it owes to the content of specific therapeutic interventions. The perception of procedural fairness is more important than the favourability of court outcomes. A sense of procedural fairness is more likely when litigants believe that they are treated with respect . . . and had an opportunity to tell their side of the story (Rottman, 2000:26).

Role of Judicial Officers

Therapeutic jurisprudence implies the use of processes to promote the positive involvement of participants in the court process and thereby promote respect between judicial officers and participants. Problem solving judicial officers can use techniques to encourage individuals to confront and solve their problems, to comply with rehabilitative programs, to develop law abiding coping skills, and the like.

Judicial monitoring is an integral component of problem solving courts. Where required, there should be the flexibility to allow judicial monitoring of the defendant's progress at different stages of the court process.

The qualities required of judicial officers practising therapeutic jurisprudence are different from those of more traditional judicial officers. Problem solving judicial officers can interact with defendants in ways that will induce hope, for example, and will motivate them to consider participating in treatment programs. Problem solving judicial officers can use techniques to encourage individuals to confront and solve their problems, to comply with rehabilitative programs, to develop law abiding coping skills, and the like. Problem solving judicial officers functioning in these ways need to develop "enhanced interpersonal skills, to understand the psychology of procedural justice, to learn how to serve as effective risk managers and to learn about the other approaches that therapeutic jurisprudence entails" (Winick and Wexler, 2003:16).

The problem solving judge should be a good judge – someone who is open to other people's ideas; who listens; who is informed; who is impartial. What we are looking for is a proactive judge, someone who can preserve the core values of the judiciary, but still be a risk taker (Berman, 2000:11).

A Different Mindset

In the broadest sense, problem solving courts apply different procedures from those used in traditional courts. Problem solving courts embody an enhanced model of adjudication, one that is focussed on solving problems as well as deciding cases. Problem solving courts require a different mindset from that of traditional courts. The "team" approach, which requires cooperation and collaboration among legal and non-legal practitioners, challenges the traditional notions of the adversarial system.

As a result, a different culture typically prevails, requiring the reappraisal of the roles of legal practitioners. For example, prosecutors in drug courts are willing to allow charges to be reduced or dismissed upon successful treatment because of the recognition that treatment can be more effective than incarceration in reducing crime.

References

- Adams, D. and Wiseman, J. (2003) "Navigating the Future: A Case Study of Growing Victoria Together", *Australian Journal of Public Administration*, 62(2):11-23
- Andrews, D. A. and Bonta, J. (1998) *The Psychology of Criminal Conduct*, Cincinnati: Anderson
- Belenko, S. (1998) "Research on Drug Courts: A Critical Review", *National Drug Court Institute Review* 1(1):1-42
- Berman, G. (2000) "What is a Traditional Judge Anyway? Problem solving in the state courts", *Judicature* 84(2):78-85
- Berman, G. and Feinblatt, J. (2001) "Problem solving Courts: A Primer", *Law & Policy*, 23(2):125-140
- Birgden, A. (2004) "Therapeutic Jurisprudence: The Role of Forensic Psychology" in Sarre, R. and Tamaino, J. (eds) *Key Issues in Criminal Justice*, Unley: Australian Humanities Press
- Birgden, A. and McLachlan, C. (2002) "Reducing re-offending framework: Setting the scene", Office of the Correctional Services Commissioner, Victoria, January
- Braithwaite, J. (2002) "Restorative Justice and Therapeutic Jurisprudence", *Criminal Law Bulletin*, 38:244-262
- Brown, M. (2003) "Risk and Need Assessment in Corrections: A Review of the Literature" Report prepared for Corrections Victoria
- Bull, M. (2003) "A review of international programs for the diversion of drug related offenders from the criminal justice system", Report prepared for the Department of the Premier and Cabinet, Queensland, June 2003
- Bush, R. A. B. and Folger, J. P. (1994) *The Promise of Mediation: Responding to Conflict through Empowerment and Recognition*, San Francisco: Jossey-Bass Publishers
- Carson, D. (2003) "Therapeutic Jurisprudence and Adversarial Injustice: Questioning Limits", *Western Criminology Review*, 4(2):124-133
- Case, P. M. and Rottman, D. B. (2003) "Problem solving Courts: Models and Trends", Paper presented at the Psychology and Law Interdisciplinary Conference, Edinburgh
- Chase, D. J. and Hora, P. F. (2000) "The Implications of Therapeutic Jurisprudence for Judicial Satisfaction", *Court Review*, 12-19
- Collaborative Justice Courts Advisory Committee (2003) *Annual Progress Report February 7 2003*, San Francisco
- Corrections Victoria (2000) *Reducing Offending: A Comprehensive Coordination Strategy for Victoria*, Department of Justice
- Cottle, C. C., Kee, R. J. and Heilbrun, K. (2001) "The prediction of criminal recidivism in juveniles: A meta-analysis", *Criminal Justice and Behaviour*, 28:367-394

Crime Research Centre and University of Western Australia (2003) *Evaluation of the Perth Drug Court Pilot Project*, Final Report, May

Commonwealth Productivity Commission (2004) *Report of Government Services*, January

Day, A., Howells, K. and Rickwood, D. (2003) *The Victorian Juvenile Justice Rehabilitation Review for the Department of Human Services*, Melbourne

Day, A. and Howells, K. (2002) "Psychological Treatments for Rehabilitating Offenders: Evidence-based Practice Comes of Age", *Australian Psychologists*, 37(1):39-47

Denckla, D. and Berman, G. (2001) "Rethinking the Revolving Door: A Look at Mental Illness in the Courts", [Online], available: <http://www.courtinnovation.org> Accessed 17 May 2004

Domestic Violence and Incest Resource Centre (2004) *Developing and Integrated Response to Family Violence in Victoria - Issues and Directions*, January

Dreyfuss, R. (1989) "The federal circuit: A case study in specialised courts", *New York University Law Review*, (64)1-2.

Feinblatt, J., Berman, G. and Denckla, D. (2000) "Judicial Innovation at the Crossroads: The Future of Problem solving Courts", *Court Manager*, 15(3):28-34

Feinblatt, J., Berman, G. and Fox, A. (2000) "Institutionalising Innovation: The New York Drug Court Story", *Fordham Urban Law Journal*, 28: 277-292

Finegan, M. W. and Carey, S. M. (2002) *Analysis of 26 Drug Courts: Lessons Learned, Final Report by NPC Research, Portland Oregon to the National Institute of Justice*. Washington D.C.: National Institute of Justice.

Fox, R. G. (1991) *The compulsion of voluntary treatment in sentencing*. Paper presented at the 7th Annual Conference of the Australian and New Zealand Society for Criminology, Melbourne, 2-4 October 1991.

Freiberg, A. (2005) "Problem-oriented courts: An update", *Journal of Judicial Administration*, 14, 178-219,

Frieberg, A. (2004) "Innovations In The Court System" Australian Institute Of Criminology, Crime In Australia, 30 November 2004,

Fritzler, R. and Simon, L. M. J. (2000) "Creating a Domestic Violence Court: Combat in the Trenches", *Court Review*, 28-39

Gale, F., Bailey-Harris, R. and Wunderitz, J. (1990) *Aboriginal Youth and the Criminal Justice System*, Sydney: Cambridge University Press

Gray, I "The Peoples Court: Into the Future", AIJA Oration, September 2002. [Online] available: <http://www.aija.org.au/onlinepub.htm> Accessed 14 July 2004

Hague, G. (1998) "Interagency work and domestic violence in the UK", *Women's Studies International Forum*, 21(4):441-449

Hall, W. (1997) "The role of legal coercion in the treatment of offenders with alcohol and heroin problems", *Australian and New Zealand Journal of Criminology*, (30) 103-120.

Harrell, A. and Goodman, A. (1999) "Review of specialised family drug courts: Key issues handling child abuse and neglect cases", *Report 179281 by the Urban Institute to the National Institute of Justice*. Washington D.C.: National Institute of Justice.

Health Outcomes International (2004) *Court Diversion Program Evaluation Volume One: Process Evaluation and Policy and Legislative Review*, January, Prepared for Department of Justice, Victoria

Hoffman, M. B. (2002) "Therapeutic Jurisprudence, Neo-Rehabilitationism, and Judicial Collectivism: The Least Dangerous Branch Becomes Most Dangerous", *Fordham Urban Law Journal*, 29:2063-2088

Hollin, C. R. (1999) "Treatment Programs for Offenders", *International Journal of Law and Psychiatry*, 22:361-372

Homeless Persons' Legal Clinic (2004) "A Homeless persons' Court for Victoria", Discussion paper provided to Court Services, Department of Justice, Victoria

Home Office Research and Statistics Directorate (1998) *Reducing offending: an assessment of research evidence on ways of dealing with offending behaviour*, Report 187, London

Hughes, P and Mosman, M. J. (2001) *Re-thinking Access to Criminal Justice in Canada: A Critical Review of Needs, Responses and Restorative Justice Initiatives*, Research and Statistics Division, Department of Justice, Canada

Indermaur, D. and Roberts, L. (2003) "Drug Courts in Australia: The First Generation", *Current Issues in Criminal Justice*, 15(2):136-154

Johnson, S., Hubbard, D J. and Latessa, E. J. (2000) "Drug courts and treatment: Lessons to be learned from the 'what works' literature", *Corrections Management Quarterly* 4(4):70-75

Karan, A., Keilitz, S. and Denaro, S. (1999) "Domestic Violence Courts: What are they and how should we manage them?" *Juvenile and Family Court Journal*, Spring

Kathy Wilson Consulting (2003) *Mental Health Court Liaison Program Review*, September 2003

Keene, J. (2001) *Clients with Complex Need: Interprofessional Practice*, UK: Blackwell Science Ltd

Magd, H. and Curry, A. (2003) "Benchmarking: achieving best value in public-sector organisations", *Benchmarking: An International Journal*, 10(3):261-286

Mendes, P. (2004) "Zero tolerance v harm minimisation for drug policy: there is another way", [Online], available: <http://www.onlineopinion.com.au/view.asp?article=2026> Accessed 18 March 2004

Miller, J. M. and Shutt, J. E. (2001) "Considering the need for empirically grounded drug court screening mechanisms", *Journal of Drug Issues*, 31(1):91-106

Mullen, P. (2001) "A Review of the Relationships between Mental Disorders and Offending Behaviours and on the Management of Mentally Abnormal Offenders in the Health and Criminal Justice Services", Report prepared for the Criminology Research Council, August

New York State Commission on Drugs and the Courts (2000) "Confronting the Cycle of Addiction and Recidivism", A report to Chief Judge Judith S Kaye, [Online], available: <http://www.nycourts.gov/reports/addictionrecidivism.html> Accessed 14 November 2003

Ogloff, J. R. P. and Davis, R. (2004) "Advances in Offender Rehabilitation", in Sarre, R. and Tamaino, J. (eds) *Key Issues in Criminal Justice*, Unley: Australian Humanities Press

Petrila, J. (2003) "An introduction to special jurisdiction courts", *International Journal of Law and Psychiatry*, 26(3-12)

Popovic, J. (2002) "Sentencing: Evolution or Revolution?", Paper presented to the Second Australasian Conference on Drug Strategy, Perth, 7-9 May, 2002

Pranis, K. (2001) "Building Community Support for Restorative Justice Principles and Strategies", [Online], available: <http://members.aol.com/fcadp/archives/Community.html> Accessed 15 March 2004

Rottman, D. B. (2000) "Does Effective Therapeutic Jurisprudence Require Specialised Courts (and Do Specialised Courts Imply Specialist Judges)?", *Court Review*, 22-27

Rottman, D. and Casey, P. (1999) "Therapeutic Jurisprudence and the Emergence of Problem solving Courts", *National Institute of Justice Journal*, 13-18

Schorr, J. C. (2003) "Determining 'what works' in Social Programs and Social Policies: Towards a More Inclusive Knowledge Base", Brookings Institution, [Online] available: <http://209.238.39.93/index.html> Accessed 23 April 2004

Sullivan, L. (1999) "Performance Indicators of Harm Minimisation", *Bioethics Research Notes*, [Online], available: http://www.bio-ethics.com/op_harmmin.html Accessed 18 March 2004

Smith, G. (1980) *Social Need: Policy, Practice and Research*, London: Routledge, Kegan & Paul

Steering Committee for the Review of Government Service Provision (SCRGSP) 2003, *Overcoming Indigenous Disadvantage: Key Indicators 2003*, Productivity Commission, Canberra

Taplin, S. (2002) The New South Wales Drug Court Evaluation: A Process Evaluation, *New South Wales Drug Court Evaluation: Cost-Effectiveness*, NSW Bureau of Crime Statistics and Research, Attorney General's Department, Sydney

Thomson Goodall Associates Pty Ltd (2001) *Literature Review to Inform a (Victorian) Department of Human Services Project on Responding to People with High and Complex Needs*, 8 September 2001

Victoria Law Reform Commission (2003) *People with Intellectual Disabilities at Risk: A Legal Framework for Compulsory Care Report*, September 2003, [Online], available: [http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Intellectual_Disability/\\$file/Final_Report.pdf](http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Intellectual_Disability/$file/Final_Report.pdf) Accessed 15 March 2004

Victoria's Mental Health Services [Online], available: <http://health.vic.gov.au/mentalhealth/> Accessed 20 May 2004

Ward, T. and Brown, M. (2004) "The Good Lives Model and Conceptual Issues in Offender Rehabilitation", *Psychology, Crime & Law*, 10(3):243-257

Washington State Institute for Public Policy (2001) *The Comparative Costs and Benefits of Programs to Reduce Crime*, {Online}, available: <http://WWW.wa.gov/wsipp> Accessed 6 August 2004

Weatherburn, D., Fitzgerald, J. and Hua, J. (2003) "Reducing Aboriginal Over-representation in Prison", *Australian Journal of Public Administration*, 62(3):65-73, September

Weatherburn, D. and Lind, B. (2000) "Heroin Harm Minimisation: Do we really have to choose between law enforcement and treatment?" [Online], available: <http://www.lawlink.nsw.gov.au> Accessed 19 May 2004

Wexler, D. B. (1995) "Reflections on the Scope of Therapeutic Jurisprudence", *Psychology, Public Policy and the Law*, 1:220-236

Wexler, D. B. (2001) "Robes and Rehabilitation: How Judges Can Help Offenders Make Good", *Court Review*, 18-23

Winick, B. J. and Wexler, D.B. (2003) *Judging in a Therapeutic Key: Therapeutic Jurisprudence and the Courts*, Durham: Carolina Academic Press

Zammit, A. (2004) *An Analysis of Problem Solving Courts and Existing Dispositional Options: The search for improved methods of processing defendants with a mental impairment through the criminal courts*, Paper prepared for The Office of the Public Advocate Victoria, February

Appendix A: Key components of problem solving courts and approaches - A checklist

Shared philosophy of therapeutic jurisprudence	<ul style="list-style-type: none"> • Policies and strategies designed to incorporate a shared philosophy of therapeutic jurisprudence
Enabling legislation	<ul style="list-style-type: none"> • A legislative framework to support initiatives with sufficient flexibility to enable programs to evolve • Least recourse principles and proportionality • Legislation to specify eligibility criteria • Changes in underlying substantive and procedural law if necessary or appropriate
Shared leadership and ownership	<ul style="list-style-type: none"> • Leadership by the judiciary to influence program uptake and advocate change • Leadership by legal practitioners to transition towards new behaviours and practices • Leadership by the Department to support court services to institutionalise initiatives • Team leadership not individual personalities • Role delineation and boundaries • Clarity of roles: processes and guidelines to outline responsibilities, accountabilities and reporting lines • Ethical implications of client confidentiality and professional rules of conduct • High-level of professionalism and competence, including management skills • Continuing interdisciplinary education
Continuum of services	<ul style="list-style-type: none"> • Coordinated service allocation model ("triage" approach) • Pragmatic interventions based on least recourse principles and proportionality • Early intervention in the court process • Provide access to a continuum of services, including treatment, rehabilitation, accommodation and health services • Targeted services and broad range of options, especially towards the "hard" end of offenders • Provision of post-treatment care and infrastructure • Provision for following up on clients after a determined period • Services integrated into court services and viewed as core business
Partnerships	<ul style="list-style-type: none"> • Create collaborations with clear goals • Formalised partnerships (MOUs and formal protocols) • Early involvement of joint venture partners <p>Effective collaboration among courts, law enforcement, public agencies and community-based organisations increases the availability of services, enhances the program's effectiveness and generates local support</p>

Appendix A: Key components of problem solving courts and approaches - A checklist (continued)

<p>Planning</p>	<ul style="list-style-type: none"> • Programs should be established following an issues-based planning process, with clearly articulated objectives and targets • Establishment of clear goals, expectations and criteria for program outcomes prior to implementation. These criteria can be modified, if necessary, on the basis of program experience • Consistent eligibility criteria and realistic goals
<p>Evaluation</p>	<ul style="list-style-type: none"> • Establishment of processes, systems and data collection methods to evaluate program effectiveness and outcomes integral to program planning and development • Relevant and meaningful performance criteria and metrics • Ongoing monitoring of progress against agreed targets • Independent, regular evaluation
<p>Communication</p>	<ul style="list-style-type: none"> • Effective and regular communication among all participants. Too little communication between treatment providers and courts can alienate some in the treatment community • Promotional campaign and PR collateral • Media outreach activities to educate the community
<p>Cultural competency</p>	<ul style="list-style-type: none"> • Develop culturally relevant and appropriate treatments and interventions • Many courts offer training in cultural competency to the entire team. They have reported that they utilise specific services that focus on the needs of distinct cultural groups as part of their treatment and social service referral systems
<p>Security of funding</p>	<ul style="list-style-type: none"> • Funding for at least 4 years with clear procedures for review. Funding allocations to include specific allocation for data collection and evaluation activities, consistent with the specified aims of the programs • In California, problem solving courts have identified creative methods for sustained program funding that include community support, private and public agency assistance, and public assistance from all levels and branches of government