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Research Note

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DRUG COURTS

There will be a Scottish National Party debate on Drug Courts on Thursday 2 November 2000. This brief research note gives information on the background to drug courts in the US and looks at the debate on the suitability of such specialised courts for Scotland. The research note also provides some information on the extent of drug offending in Scotland.

Background

Drug treatment courts were developed in the United States in the late 1980s and early 1990s¹ as an alternative to traditional criminal justice prosecutions for drug-related offences. The objective of these courts was to combine the close supervision of the judicial process with the resources and support services typically available through alcohol and drug treatment services. The prospect of a judicial sentence is used as a motivating force to keep the individual in treatment. The two main aims of the drug courts were to reduce the level of drug-related offending and to offer effective and appropriate responses to offenders with drug problems. The intention was to use treatment and rehabilitation to offer a better solution to drug-related crime and to help to reduce the costs of incarcerating non-violent drug addicts.

¹ The first 'modern' drug court i.e. a court concerned with changing the offender's behaviour through treatment rather than simply processing drug offence cases more quickly, was established in Dade County Florida in 1989.

Treatment-oriented US drug courts have proved effective² in these terms and have, as a result, gained wide acceptance in the US. Many American states and other countries such as Canada and Australia now operate specialist drugs courts.

What is a Drug Court?

There are several views on what constitutes a drug court. A fairly typical definition, for example, describes them as:

“Courts specifically designated to administer cases referred for judicially supervised drug treatment and rehabilitation within a jurisdiction or court-enforced drug treatment program.”³

It seems clear, however, that there is no single model of drug court that would suit all jurisdictions. In the US, drug courts take a variety of forms ranging from those which are *“merely administrative expeditors - shuffling individuals through the criminal justice system more efficiently”⁴*, to those which are concerned with rehabilitation and reducing re-offending through diverting drug abusing offenders into treatment as an alternative to incarceration. Because of the diversity of jurisdictions in which drug courts operate, the (US) National Association of Drug Court Professionals’ Drug Court Standards Committee has outlined ten key components for a successful drug court. They are:

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| 1. | Alcohol and other drug treatment services need to be integrated with the justice system case processing. |
| 2. | Prosecution and defence counsel need to work together to promote public safety while safeguarding the participant’s due process rights. |
| 3. | Participants need to be identified early and promptly placed in the treatment program |
| 4. | There needs to be access to a continuum of alcohol, drug and other related treatment and rehabilitation services. |
| 5. | Abstinence should be monitored by frequent drug testing. |
| 6. | Co-ordinated strategy governs drug court responses to participants’ compliance. |
| 7. | Ongoing judicial interaction with each drug court participant is essential. |
| 8. | Monitoring and evaluation to measure the achievement of program goals and assess effectiveness. |
| 9. | Continuing interdisciplinary education promotes effective drug court planning, implementation and operations. |
| 10. | Partnerships between drug courts, public agencies and community based organisations is essential for generating local support and enhancing drug court effectiveness. |

The key concepts for effective action in dealing with drug offenders are, therefore, multi-agency partnership, integration and co-operation, specialist knowledge through interdisciplinary education, early action with offenders, on-going and consistent judicial involvement with offenders, monitoring through regular drug-

² See, for example <http://www.courtinfo.ca.gov/programs/drugcourts/about.htm> which cites significant reductions in recidivism and cost savings among those processed by drug courts.

³ Inciardi, J et al. ‘Drug Control and the Courts’ Sage Publications, Thousand Oaks, 1996.

⁴ Lewis, David C. "Drug courts are popular- Will they be good?" Commentary in DATA: Brown University Digest of Addiction Theory and Application. May, 1999.

testing and effective programme evaluation. At their best, specialist drug courts have the potential to fulfil these requirements.

THE UNITED KINGDOM

In the UK, increasing levels of drug use among offenders⁵ and drug-related offending have led to proposals to introduce US-style drugs courts to this country. The first drug court in the UK was set up in West Yorkshire by the Wakefield Drugs Action Team as part of its STEP (Substance misuse Treatment Enforcement Programme) Project. The Project works from Wakefield and Pontefract Magistrates Courts and links rigorously enforced treatment programmes to court orders. It has been proposed that this model, which also includes: treatment and testing linked to Probation Orders; arrest referral schemes and fast-track drug services for people being released from prison, should be extended across West Yorkshire.

DRUG USE IN SCOTLAND

Illicit drug use in Scotland has increased steadily over the last decade with total recorded drugs offences rising by over 233 per cent in that period. This trend is illustrated in figure 1 below.

Figure 1



Source: Scottish Executive Statistical Bulletin CrJ/2000/2, April 2000

Scottish Crime Survey

Another source for gauging the size of the illegal drugs problem in Scotland is the Scottish Crime Survey (SCS). The SCS is large-scale victimisation survey which reports on the experiences of crime of a representative sample of the

⁵ See, for example, the Home Office report 'Drug Seizure and Offender Statistics, United Kingdom, 1998' at <http://www.homeoffice.gov.uk/rds/publf.htm> The number of drug offenders in the UK increased by 13% to 127,900 in 1998 with 90% being possession cases, mainly of cannabis.

Scottish population. The 1996 Scottish Crime Survey⁶ showed that reported drug misuse in Scotland, particularly among young people, rose between 1992 and 1995. The survey revealed that the proportion of respondents who reported using any drug during the previous 12 months increased from 6.8% in 1992 to 9% in 1995. Statistically significant increases were found in the numbers using cannabis, cocaine, ecstasy and valium within the last 12 months. The proportion of respondents who said they had ever used any drug rose from 8.3 per cent in 1993 to 22.5 per cent in 1996. Cannabis remained the most widely used drug and the use of heroin, methadone and crack cocaine remained rare with fewer than one respondent in 100 having ever used each of these substances.

Drugs and crime

A recent study⁷ to test the feasibility of introducing the US-developed Arrestee Drug Abuse Monitoring (ADAM) methodology within Scotland found that 71% of arrestees in the Glasgow and Fife pilot areas tested positive for drugs. Of these, 52% tested positive for cannabis; 33% for Benzodiazepines; 31% for opiates; 12% for methadone and 3% for cocaine.

Scottish prisons

Between April 1999 and March 2000 almost three-quarters of prisoners (74.5%), tested positive for drugs on entry to prison⁸. Random mandatory drug-testing within prisons in 1999-2000 produced an underlying positive rate of 15% compared to 18% in the previous year and 23% in 1997-98. In March 2000, the Scottish Prison Service announced a revision of their 1994 drugs strategy 'Guidance on the Management of Prisoners who Misuse Drugs'. The revised strategy, 'Partnership and Co-ordination: SPS Action on Drugs' places greater emphasis on assessment and treatment, reducing the supply of illicit drugs in prison and proposes the appointment of a local Drugs Strategy Co-ordinator in every prison.

Drug Seizures

At the UK level, the overall number of drug seizures went up by 8% in 1998 to 149,900 with the vast majority of seizures (76%) involving cannabis⁹. Seizures of cannabis increased by 7% but with a 28% fall in the quantities of cannabis seized. The number of seizures involving heroin rose by 19% while the quantity seized fell by 40%. Both the number and quantity of seizures involving cocaine (including 'crack') rose, by 36% and 25% respectively. Quantities of ecstasy-type drugs seized rose by 9% while the number of seizures fell by 7%.

SENTENCING FOR DRUG OFFENCES IN SCOTLAND

In Scotland, the main disposals available to the courts in dealing with drug offenders are imprisonment, the deferred sentence, probation orders and drug

⁶ Figures for the year 2000 SCS are not yet available.

⁷ McKeganey, N. et al, 'Interviewing and Drug Testing of Arrestees in Scotland: A Pilot of the Arrestee Drug Abuse Monitoring Methodology (ADAM)', Scottish Executive Central Research Unit, 2000.

⁸ Scottish Prison Service Annual Report and Accounts 1999-2000, Appendix 12.

⁹ 'Drug Seizure and Offender Statistics, United Kingdom 1998', Home Office, 2000

treatment and testing orders (DTTOs). The latter disposal was introduced by the *Crime and Disorder Act 1998*¹⁰ and can be imposed where the offender is over 16, is a drug abuser and consents to be made the subject of an order. DTTOs were introduced on a pilot basis in Glasgow sheriff courts in December 1998 and extended to the High Court, in respect of offenders from Glasgow, in December 1999. Their use was further extended to Fife in July 2000. To-date, although many assessments have been made in relation to DTTOs, only 37 such orders have been made with the courts, in many cases, preferring to make probation orders with conditions of treatment attached.

While DTTOs are likely to prove a valuable addition to a court's sentencing powers in relation to drug offenders they are seen by many as falling far short of the sort of consistent and flexible approach potentially offered by specialised drug courts.

DRUG COURTS FOR SCOTLAND?

There is an on-going debate in Scotland as to whether drug courts would best meet Scottish needs or whether the existing court system and current sentencing disposals can be adapted to meet the challenge of the growing drugs problem. In a recent fact-finding visit to the US¹¹, for example, the then Deputy Minister for Justice, Angus MacKay, visited several projects designed to address the issue of drugs and crime in America, including a drug court in New York. While applauding the success of such courts in reducing drug-related crime, Mr MacKay suggested that differences between the US and Scottish judicial systems militated against wholesale 'importation' of US-style drug courts but said that, "...we need to consider how the best elements could fit into the Scottish legal system."¹²

The Convention of Scottish Local Authorities (CoSLA) chairs a cross-agency group which is looking at alternatives for dealing with drug offenders. This group, which has representation from the police, voluntary sector and the legal profession, has considered the issue of introducing drug courts in Scotland. In December 1999, this group produced a short report outlining new ways in which Scottish courts could deal with drug offenders. The report emphasised the need for a more treatment-based approach, pointing to recent British research which suggested that for every £1 spent on treatment, £3 is saved on criminal justice expenditure with further savings on health care.¹³

The report identified ten key 'features' that would enable lessons learned from successful drug courts abroad to be incorporated into the Scottish criminal justice system. These are:

¹⁰ Provisions for DTTOs are now contained in s234B of the *Criminal Procedure (Scotland) Act 1995*.

¹¹ April 2000.

¹² [Scottish Executive Press Release, 17 April 2000](#).

¹³ 'Alternatives for Dealing with Drug Offenders' CoSLA, 1999.

1. A small specialising Bench with expertise in, and knowledge of, drugs and drug misuse and the full range of treatments and options available to deal with those brought before it.
2. Regular direct oversight by the Bench of the offender's progress. In open court, with the offender present.
3. Consistency in the member of the Bench involved in each case, as regards making an order and holding reviews throughout an order.
4. A direct relationship between the Bench and the offender.
5. A different role - perhaps more restricted as part of a wider team – of the supervision officer.
6. The treatment provider being determined by the court (albeit with specialist advice) frequently being different from the supervision authority.
7. The ability of the Bench to act as both motivator (possibly through the development of incentives or a reward system) and sanctioner (so that where there is non-compliance, the court can dispense a range of instant relevant punishments).
8. Following from (g), the severity of sanction available for non-compliance.
9. Drug testing as an integral part of a Court order; and
10. Immediate access to any necessary drug treatment.

The Group believes that the courts in Scotland already possess many of these features and powers. However, action would be required to create a specialist Bench, even if, as the Group suggests, only a part time Bench would be needed in Scotland. The agreement and co-operation of the judiciary would be necessary to such a development. Other actions required would be to create a 'fast-track' court procedure for those who fail to comply with the court decision (key feature 8) and to earmark more resources for mandatory testing of participants (key feature 9) and for treatment (key feature 10).

On a cautionary note, it is perhaps important to reiterate a point made by an American commentator¹⁴. That is to emphasise that developments in handling drug-addicted offenders within criminal justice systems need to be pursued alongside non-judicial interventions. In other words, important as it is to provide the courts with powers and resources to deal effectively with drug offenders, it is equally important to ensure that the criminal courts do not become the primary entry point for the treatment of drug addicts.

Research Notes are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

¹⁴ Lewis, David C Op Cit.