**CITIZENS AND CRIMINAL JUSTICE. LECTURE 6: (Part 1). DRUG USE.**

**6.1 Dealing with illegal drug use**

In Week 2 we looked at various causes of crime in Hong Kong including drug use, which is of course a crime in itself. This week we will examine concerns about drug use and ways in which this can be addressed.

**6.2 Methods of combating drug use – General and US perspective**

Systematic drug abuse and intensive devotion of resources to combat it are a relatively new phenomenon in western society, probably only becoming a major social concern in the late 1960s. Nevertheless, as the topic of illegal drug use has become such a massive one since then, it is difficult to cover all of it or even easily identify where to begin. Various methods have been tried to reduce drug usage with varying degrees of effectiveness throughout the world. These provide very useful lessons in how best to deal with illegal drug use. A classic example of a comprehensive campaign to deal with drugs was “The War on Drugs” launched by President George HW Bush in 1989, which followed from the cocaine and crack cocaine epidemic in the USA at that time. The emphasis moved from spending of money on rehabilitation to crime control at various levels including:

* Crop eradication in countries which were the major producers of cocaine.
* Arrest and incarceration of low-level dealers and users in various forms including house arrest and boot camps.
* Seizing the assets of drug dealers.

This campaign tended to be more successful in incarcerating offenders rather than reducing drug use.[[1]](#footnote-1)

Education programs work by providing information to the public and especially youngsters about the danger of drugs. Generally, though, most young people already have such an awareness but choose to ignore such a message by thinking, “It won’t happen to me.” The common tendency among teenagers to challenge authority and engage in risk taking contributes to this problem.

As far as participation in rehabilitation programs is concerned, tragically, there are a proportion of addicts with an intractable problem who cannot be cured. Sadly, the outcome for them will be relapse and an untimely death, either through overdose or health-related problems.[[2]](#footnote-2) Nevertheless, such programs do assist a significant proportion of addicts (around 50%) to overcome their drug addiction.[[3]](#footnote-3)

**6.3 Drug courts and conventional legal systems such as Hong Kong**

**6.3.1 Drug courts in the USA and NSW**

One rather progressive initiative which has occurred in a number of countries including the USA and NSW, Australia, is the creation of drug courts. This has been described as a “broader transition from punitive and retributive punishment to a therapeutic and restorative justice.”[[4]](#footnote-4) A drug court has been defined as, “a specialized court-based program that targets criminal offenders who have alcohol and other drug addiction and dependency problems.”[[5]](#footnote-5) While there may be some variation in the models used among the thousands (in the USA) of current drug courts, a common feature of them is to offer counseling instead of jail, provided users are able to prove they are drug free by participation under a mandatory drug testing regime. Such a system is often coupled by the need to attend judicial review hearings with a drug court judge to ensure offenders are kept on track.[[6]](#footnote-6)

Drug courts adopt a more holistic view of treatment of drugs in that the judges work collectively with the prosecutors, community service and treatment providers and the offenders as part of the court process.[[7]](#footnote-7) As a result, the defence and the prosecution adopts a more collaborative and less adversarial role than that which is usually employed.[[8]](#footnote-8) A further special feature of many drug courts is that they employ case managers who help tailor treatment plans with the assistance of the judge, prosecutor and the defendant’s lawyer.[[9]](#footnote-9)

Drug courts tend to employ two types of procedural models:[[10]](#footnote-10)

* A pre-adjudication or diversionary model. In this model, if the defendant enters and successfully completes a drug rehabilitation program, then charges are dropped against the defendant.
* A post-adjudication model. In this model, the successful completion of a drug rehabilitation program is taken into account during the sentencing process.

The judge’s role is pro-active in a mentoring type role. It is not purely about sentencing.

**6.3.2 Success of drug courts**

**6.3.2.1 USA drug courts**

Where variation does exist between the procedures in and services offered by drug courts, it can have a significant impact on outcomes. In Florida, less successful drug courts were less user-friendly; drug testing was restricted to just one place and there was no residential treatment choice. More successful programs had greater numbers of status hearings to monitor how participants were proceeding, as well as greater interaction with judges (and better opportunity to provide reward and penalties - see further below).[[11]](#footnote-11) This, of itself, provides some confirmation of the efficacy of drug courts.

Overall, at least 60% of participants tended to successfully complete 12-month drug court programs, as opposed to about 30-50% for other rehabilitation programs.[[12]](#footnote-12) In Florida, one study showed:

* The re-arrest rate for drug court participants versus a control group (similar demographic and offending characteristics but did not participate in a drug court) for general re-offending for felonies (relatively serious crimes) within 24 months post-program period (or the equivalent for non-drug court participants) was 10% versus 16% respectively. So, the re-arrest rate here was significantly lower for the drug court participants.
* The re-arrest rate for drug court participants versus a control group for drug offences was 6% versus 9% respectively. Again, the re-arrest rate here was significantly lower for the drug court participants.[[13]](#footnote-13)

Baltimore, a city in the US, was somewhat notorious for the scope and scale of its drug problems and associated violent crime.[[14]](#footnote-14) The types of drugs abused when the court was set up in 1994, were two very highly addictive ones, being heroin and crack cocaine. The Baltimore Drug Court Program uses a combination of very simple rewards and penalties for success or failure in complying with the program:

* Rewards
* Oral compliments.
* Clapping.
* Rewards or tokens such as ‘step pens’.
* Penalties
* Drafting a reflective assignment.
* Oral rebukes.
* Shock confinements of around 1 week.[[15]](#footnote-15)

Those participating in the Baltimore Drug Program are reportedly three times less likely to engage in reoffending than comparable persons who do not.[[16]](#footnote-16)

A study by the United States Government Accountability Office on 32 adult drug courts found that use of drug courts led to lower rates of recidivism than among comparable persons not participating in drug court programs, and that these rates were found to be statistically significant in 18 of the programs.[[17]](#footnote-17) Similarly, this study noted that one comprehensive study by MADCE,[[18]](#footnote-18) which it reviewed as part of its overall analysis, found that over an 18-month period, 29% of drug court participants, versus 46% of the control group, tested positive for illicit drugs. Involvement in drug court programs also led to cost benefits as compared to the costs of further involvement in the criminal justice system, including incarceration. These projected savings ranged from between $7,108 to $47,852 for each participant.[[19]](#footnote-19)

**6.3.2.2 NSW (Australia) drug courts**

The relative success of drug courts is not simply confined to the US system. In NSW, a drug court system based on the US model was introduced there. A major difference between the US and NSW models is that the NSW model takes in criminals who have committed more serious types of crime than in the USA.[[20]](#footnote-20) Similarly, in relation to the USA, it is successful because of the ‘structure and support’ which it offers,[[21]](#footnote-21) as well offering more flexibility in treatment options.[[22]](#footnote-22)

The Drug Court of NSW (quoting directly from its website) reported it had the following success rate (compared to control groups):[[23]](#footnote-23)

* *37% less likely to be convicted of an offence*
* *65% less likely to be convicted of an offence against a person*
* *35% less likely to be convicted of a property offence*
* *58% less likely to be reconvicted of a drug offence.*

**6.3.3 Comparison with Hong Kong’s justice system’s response to drugs**

Procedurally, in Hong Kong, drug offenders are broadly treated in the same manner as all other offenders until the sentencing process. Generally, then, it is a fairly conventional sentencing model that concentrates on deterrence or a limited form of rehabilitation. Essentially, the court’s role is limited to outsourcing the problem to other entities such as probation officers and custodial facilities to deal with the problem. The role of the judge is a minimalist one. He or she is a somewhat remote and purely disciplinary figure. Interactions between the judge and the defendant are usually restricted to a few words here or there when the sentence is handed down. There is certainly nothing in the way of a comprehensive attempt at ongoing mentoring or giving of rewards by the judiciary in Hong Kong, as happens in the drug courts in overseas jurisdictions. The prosecution and the defence adopt a more adversarial attitude toward each other. There is some degree of interaction between the bench and the probation service, but it is limited to the bench acting on reports from the Probation Service as far as sentencing is concerned, or, as noted below, referral to that body for ongoing supervision. Hong Kong utilizes a more conventional model of sentencing such as custodial sentences or non-custodial sentences such as probation.

However, Hong Kong courts can employ a less-conventional sentencing option than probation or general custodial sentences, being detention orders in Drug Addiction Treatment Centres (‘DATCs’).

Section 4 of the Drug Addiction Treatment Centers Ordinance (Cap.244) states:

1. *Where a person is found guilty of a* [*relevant offence*](http://www.hklii.hk/eng/hk/legis/ord/244/s2.html#relevant_offence) *and the court is satisfied that in the circumstances of the case and having regard to his character and previous conduct it is in his interest and the public interest that he should undergo a period of cure and rehabilitation in an* [*addiction treatment centre*](http://www.hklii.hk/eng/hk/legis/ord/244/s2.html#addiction_treatment_centre)*, the court may, in lieu of imposing any other sentence, order that such person be detained in an* [*addiction treatment centre*](http://www.hklii.hk/eng/hk/legis/ord/244/s2.html#addiction_treatment_centre)*.  
   (2) A person in respect of whom a* [*detention order*](http://www.hklii.hk/eng/hk/legis/ord/244/s2.html#detention_order) *is made shall be detained in an* [*addiction treatment centre*](http://www.hklii.hk/eng/hk/legis/ord/244/s2.html#addiction_treatment_centre) *for such period, not less than 2 months and not more than 12 months from the date of such order, as the* [*Commissioner*](http://www.hklii.hk/eng/hk/legis/ord/244/s2.html#commissioner) *may determine, having regard to the health and progress made by such person and the likelihood of his remaining free from addiction to any* [*dangerous drug*](http://www.hklii.hk/eng/hk/legis/ord/244/s2.html#dangerous_drug) *on his release, and shall then be released.   
   (3) Before a* [*detention order*](http://www.hklii.hk/eng/hk/legis/ord/244/s2.html#detention_order) *is made in respect of any person, the court shall consider a report of the* [*Commissioner*](http://www.hklii.hk/eng/hk/legis/ord/244/s2.html#commissioner) *on the suitability of such person for cure and rehabilitation and on the availability of places at* [*addiction treatment centres*](http://www.hklii.hk/eng/hk/legis/ord/244/s2.html#addiction_treatment_centre)*, and if the court has not received such a report it shall, after such person has been found guilty, remand him in the custody of the* [*Commissioner*](http://www.hklii.hk/eng/hk/legis/ord/244/s2.html#commissioner) *for such period, not exceeding 3 weeks, as the court thinks necessary to enable such a report to be made.  
   (4) When a court makes a* [*detention order*](http://www.hklii.hk/eng/hk/legis/ord/244/s2.html#detention_order)*, no conviction shall be recorded against the person in respect of whom the order is made unless, in the opinion of the court, the circumstances of the offence so warrant and the court orders accordingly.*   
   *(5) The* [*Commissioner*](http://www.hklii.hk/eng/hk/legis/ord/244/s2.html#commissioner) *shall, in his report under subsection (3), inform the court whether or not a* [*detention order*](http://www.hklii.hk/eng/hk/legis/ord/244/s2.html#detention_order) *has previously been made in respect of the person to whom the report relates.*

Those released from DATCs may be subject to a supervision order for up to 12 months. The supervision orders may include medical supervision and residing at a particular address: s.5 Drug Addiction Treatment Centers Ordinance. Breach of a supervision order may lead to a recall order, leading to the arrest of the person affected and his placement in a DATC for a period of up to 12 months from the date of the initial order or 4 months from the date of the recall order: s.6 Drug Addiction Treatment Centers Ordinance.

Detention orders in DATCs are regarded as compulsory treatment. Here, the person confined has no choice as to whether or not he or she wishes to participate in the DATC ‘program’. This is to be contrasted with drug courts, which are usually described as ‘quasi- compulsory’ treatment’.[[24]](#footnote-24)

**6.3.4** **Reasons not to introduce drug courts**

Views vary on the desirability of introducing drug courts, at least as a ‘one size fits all’ remedy. It has been argued that they may draw people into expensive, time consuming treatment who do not have serious drug problems but do not include those who do and who may benefit most. Once in such a program, breaking the rules may lead to prison time.[[25]](#footnote-25) Some people, such as addicts who have been struggling with their problem and want to get over it, are more responsive to quasi-compulsory drug treatment than others.[[26]](#footnote-26) It tends not to work as effectively with younger offenders who have not hit ‘rock bottom’ or with psychiatrically ill offenders.[[27]](#footnote-27)

It has been suggested that drug court judges impose their own views on what type of treatment should be offered, rather than those of medical professionals which can lead to adverse health outcomes. For instance, fostering unrealistic goals such as total abstinence; as, when this fails, it can lead to overdoses. In this regard, low level offenders in Seattle are simply directed to health professionals instead, a program which has shown initial success.[[28]](#footnote-28)

A meta-analysis by Mitchell et al found that drug courts specializing in treatment of juvenile offenders were not particularly successful in reducing drug related recidivism.[[29]](#footnote-29) In fact, the authors found that there was no statistically significant variation in levels of recidivism between those juvenile offenders who received treatment under juvenile drug court programs and those who did not (for instance those receiving standard probation).[[30]](#footnote-30)

**6.3.5** **Reasons to introduce drug courts**

In contrast to their findings about juveniles, Mitchel et al found that adult drug courts are effective in reducing drug related recidivism. In this regard, they discovered that non-participant drug court groups reoffend at a rate of about 50%; the adult drug court group reoffends at a rate of about 37.6% and the juvenile drug court group at about 42.2%. The authors surmised that the reasons for the lower success rate for juvenile drug court participants may be due to differences (as compared to the adult drug courts) in the way these are run; higher risk offenders are included, the period of the program is not as long, and the interaction between the offender and the court is less. These suppositions are logical, but not, as the authors concede, strongly evidence-based.[[31]](#footnote-31)

Also, it is believed that drug users with anti-social behavioral disorders or those with higher levels of addictions tend to benefit more from this stricter supervision. Those with anti-social behavioral disorders comprise only 3-4% of the populace, but one study has found that they comprise 40-50% of drug abusers. Although research in this area is still in its relative infancy, there is some evidence to suggest that the reinforcement aspects of court mandated treatment may influence those with anti-social personality disorders in staying longer in treatment (and thus increase their likelihood of success). In this regard, such persons tend to have low motivational levels and a high tendency toward frustration.[[32]](#footnote-32) Whatever the reasons, those with anti-social personality disorders more successfully complete drug court programs if there is increased judicial intervention.[[33]](#footnote-33)

DATCs have high rates of recidivism compared to other types of custodial facilities. The DATC’s rate of recidivism (non-conviction and arrest free within 12 months of discharge) was 53.4% in 2017. This can be compared with non-conviction rates for the following institutions for 2017:[[34]](#footnote-34)

* Detention Centres – 94.1%
* Rehabilitation Centres - 94.2%
* Training Centres – 77.8%.

The view was expressed by the Audit Commission of the Government of the HKSAR that the follow up counselling after release from DATCs needed to be improved.[[35]](#footnote-35) Of course, intense monitoring is a signature feature of drug courts.

Therefore, the success of DATCs in preventing recidivism is open to question. Certainly, there is certainly nothing like the integrated system of drugs courts and the more detailed menu of orders which they have at their disposal.

The statistics shown above demonstrate relatively conclusively that drug courts in NSW and the USA in general (at least amongst adults), including the specific studies referred to above in Baltimore and Florida, appear to:

* Reduce crime.
* Provides better treatment outcomes.
* Produce better cost benefits overall.

It also appears that existing procedures in drug courts can be improved to increase success rates. For instance, implementing greater judicial supervision.[[36]](#footnote-36)

**6.4 Hong Kong – drug seizures**

Annual major drug seizures of some commonly used drugs by both the Hong Kong Police Force and the Customs and Excise Department have been recorded from 2011 to 2021 as follows.[[37]](#footnote-37)

2011 2021

Ice (kg) 39 1794

Ketamine (kg) 276 3296

Cannabis (kg) 46 2088

Heroin (kg) 169 554

Cocaine (kg) 776 2895

It can be seen from these figures that seizures of these drugs have increased significantly over this period. It is not known if these changes in patterns of seizures are reflective of differences in the level of importation associated with differing levels of demand, rather than overall changes in the effectiveness of policing. The rate of serious reported drug offences rose from 1149 in 2020 to 1570 in 2021.[[38]](#footnote-38) The overall crime rate also rose from 63,232 in 2020 to 64,428 in 2021.[[39]](#footnote-39)

Use of some drugs by newly reported drug abusers under 21 in HK between 2019 and 2020 (latest full figures available - although the figures are based on those reported to the Central Registry of Drug Abuse) were:[[40]](#footnote-40)

2019 2020

Ketamine 37 68

Ice 53 28

Heroin 10 less than 6 reported

Cocaine 150 129

Cannabis 196 209

These figures provide one form of indication that, with the exception of ketamine and cannabis, drug use across a number of major drug categories was on a downward trajectory.

More males than females consume drugs according to statistics relating to all reported persons of all ages for drug abuse.[[41]](#footnote-41)

2019 2020

Female 1170 1158

Male 4602 4411

**6.5 Hong Kong – special features**

Hong Kong is in some ways rather fortunate geographically in terms of its ability to combat crime. Although it is an island, it has a relatively small coastline, aiding efforts to prevent drugs entering its borders.

One potential trigger of drug abuse is the profound social change that is occurring in the HKSAR. Traditional notions of Confucianism, at least in the broader media, are being replaced by a more materialistic, individualistic and hedonistic (pleasure seeking) paradigm, all hallmarks of a more permissive society.

Another related study examined the effect of the concept of life satisfaction, positive youth development and various types of problem behavior including drug abuse.[[42]](#footnote-42) The subjects consisted of 7,975 Secondary One from 48 schools in Hong Kong who were interviewed to ascertain their responses to a questionnaire measuring positive youth development. Fifteen criteria were measured here including bonding which, in relation to close relationships with adults in early life, has previously shown to be correlated both positively and negatively to life satisfaction. Lack of life satisfaction has further in turn shown to be associated negatively with illegal drug abuse. The Hong Kong study came up with similar findings that poor or good life satisfaction, with one of the major factors including healthy and close relationships with adults, operated as a major precursor or inhibitor respectively to drug use.[[43]](#footnote-43) A similar relatively recent study on similar criteria on 3328 HK Secondary 1 students found a correlation between substance (including drug) abuse and whether students lived in intact or non-intact families.[[44]](#footnote-44)

**6.6 Current and future strategies to combat drug use in Hong Kong**

**6.6.1 Crime control model**

Hong Kong imposes heavy sentences for those seeking to import large quantities of dangerous drugs into the country by using a general deterrence approach: *Mark Anthony Seabrook* v *HKSAR.*[[45]](#footnote-45) For example, importation of very large quantities of drugs such as heroin may lead to sentences of 25 years.

**6.6.2 Education**

The HKSAR, through its various organs in conjunction with interested NGOs delivers a comprehensive campaign to deter young offenders from drug use.

However, better targeted campaigns to involve parents in the drug education process may be worthwhile as more than 30% of respondents in a survey regarded parental influence as an important factor in prevention of drug abuse, yet 60% said that they had never discussed drug use with their parents.[[46]](#footnote-46)

**6.6.3 Redressing poverty**

This issue has been canvassed at length in the earlier sections of the course and readers may wish to draw their own conclusions as to what further might be done here.

**6.6.4 Greater interaction with families**

According to Sim and Wong,[[47]](#footnote-47) there are insufficient resources in working with offenders and their families to stop drug abuse as there is potential for good results here.

**6.6.5 DATCs**

See 6.3.3 and 6.3.5 in relation to DATCs.

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3. James A Inciardi, *The War on Drugs IV. The Continuing Saga of the Mysteries and Miseries of Intoxication, Addiction, Crime and Public Policy* (Fourth Edition Hong Kong: Pearson 2008) 273. [↑](#footnote-ref-3)
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13. NPC Research (n 7). [↑](#footnote-ref-13)
14. Robert F Chew, “Close to the Wire on the Mean Streets of Baltimore” *Independent* (20 July 2008), available at www.independent.co.uk › Travel › Americas. [↑](#footnote-ref-14)
15. Home Office (n 10) 26. [↑](#footnote-ref-15)
16. Ibid. [↑](#footnote-ref-16)
17. United States Government Accountability Office (n 5) 19. [↑](#footnote-ref-17)
18. National Institute of Justice, *Multi-site Drug Evaluation: The Impact of Drug* *Courts* (December 2011), available at https://www.ncjrs.gov/pdffiles1/nij/grants/237112.pdf. [↑](#footnote-ref-18)
19. Ibid 23-25. [↑](#footnote-ref-19)
20. Stephanie Taplin, *The New South Wales Drug Court Evaluation: A Process Evaluation. New South Wales Bureau of Crime Statistics and Research* (February 2002) 3. [↑](#footnote-ref-20)
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