

This entry is our account of a study selected by Drug and Alcohol Findings as particularly relevant to improving outcomes from drug or alcohol interventions in the UK. Unless indicated otherwise, permission is given to distribute this entry or incorporate passages in other documents as long as the source is acknowledged including the web address <http://findings.org.uk>. The original study was not published by Findings; click on the [Title](#) to obtain copies. Free reprints may also be available from the authors – click [prepared e-mail](#) to adapt the pre-prepared e-mail message or compose your own message. Links to source documents are in [blue](#). Hover mouse over [orange](#) text for explanatory notes. The Summary is intended to convey the findings and views expressed in the study. Below are some comments from Drug and Alcohol Findings.

**Open home page. Get free e-mail alerts about new studies. Search studies by topic or free text**

### ► **Criminal justice responses to drug related crime in Scotland.**

**Malloch M., McIvor G.**

**International Journal of Drug Policy: 2013, 24, p. 69–77.**

Unable to obtain a copy by clicking title? Try asking the author for a reprint by adapting this [prepared e-mail](#) or by writing to Dr McIvor at [gillian.mcivor@stir.ac.uk](mailto:gillian.mcivor@stir.ac.uk). You could also try this [alternative](#) source.

*In one expert package, the recent history, results, achievements and possible drawbacks of Scotland's concerted attempt to engage drug-driven offenders in treatment at nearly every stage of the criminal justice system. Widening treatment access may have been the main plus, also widening entanglement in the criminal justice system the main minus.*

**Summary** The featured analysis describes and assesses community-based programmes organised by the criminal justice system in Scotland for problem drug users. As elsewhere in the UK, since the 1990s Scotland has aimed to provide opportunities in the criminal justice system to bring in to treatment drug users who may not have had any previous contact with services. Prominent in its [2008 drug strategy](#), access to treatment and support services at all stages of the criminal justice system has continued to be a key component of the Scottish Government's attempt to reduce drug-related crime and re-offending.

Specific interventions for problem drug users have supplemented the general range of alternatives to custody. These programmes require the consent (and subsequent engagement) of the drug user, who must acknowledge that they have a drug 'problem' and be willing to access the available services to address this. In practice the individual is required continually to prove that rather than being a 'career criminal', their offending will stop once their drug use has reduced or stopped. Recurrent concerns are that these programmes extend relatively onerous sentences to offenders who would otherwise not have been subject to this degree of control, and that failure to comply with the programmes could result in penalties which further punish and criminalise – so-called 'net-widening'.

#### **Pre-prosecution initiatives**

Programmes implemented before suspects have been convicted and often before they have been prosecuted or tried must formally rely on voluntary referral to treatment services. However, varying degrees of coercion and control are nonetheless apparent.

Arrest referral was piloted by the Scottish Executive in 2004. Eligible arrestees were offered basic harm-reduction information, those not in contact with drug services were offered referrals, and liaison with the relevant services was arranged for those who were in contact. Arrest referral was a voluntary process that sat alongside rather than replacing arrest; arrestees who agreed to the process would still be charged, prosecuted and, if convicted, sentenced.

Evaluation of arrest referral pilots suggested they successfully reached arrestees with substance misuse problems, who were generally positive about the process. There was some evidence of initial engagement with treatment services; most referred suspects kept at least one appointment. Data was not available on longer term retention in treatment or impacts on drug use and offending. Only just over half the arrestees clearly understood that the process was unrelated to prosecution and sentencing, suggesting others may have agreed to be referred in the mistaken belief that it would mitigate their disposal.

Mandatory drug testing of arrestees aims to identify problem drug users and encourage them to engage with treatment services. In 2007 pilot schemes began in Aberdeen, Edinburgh and Glasgow. Anyone arrested for a 'trigger' offence (drug and theft offences) was to be tested for use of heroin or cocaine. Those testing positive were required to undergo an assessment of whether they were dependent, and those deemed likely to benefit from treatment were introduced to treatment providers. An important feature was the coercion introduced by penalties (including up to three months in prison) for refusing testing or assessment. In the event very few arrestees refused to submit to tests. An evaluation suggested that initial estimates of throughput (15,000 arrestees tested per year) were unrealistic, and that relatively few arrestees not already in contact with services engaged with treatment – around 42 out of 848 arrestees tested in Aberdeen and 68 out of 630 in Glasgow. Per successful referral, arrest referral was it was calculated, much more cost-effective. As a result the Scottish Government discontinued the scheme, though the equivalent continues in England and Wales.

In response to information from the police about a suspected offender, Scottish procurators fiscal have wide discretionary powers over whether to prosecute or offer an alternative disposal. Among these 'diversion' alternatives may be treatment or education programmes for substance misusers. An evaluation of pilot diversion schemes found that 91 of 514 accused people were referred to these programmes, and the subsequent national roll-out featured problem drug and/or alcohol users as one of four priority groups. There has, however, been a marked reduction in these cases, from a high of around 211 in 2003/2004 to around 60 in 2006/2007. It is possible that prosecutors became less inclined to offer diversion to offenders with drug problems if they believed they had already had an opportunity – via arrest referral – to access treatment.

#### **Post conviction disposals**

Scottish courts can defer sentence for a time – typically three, six or 12 months – during which the offender is expected to be of good behaviour and perhaps to voluntarily engage with treatment or other interventions. Afterwards a sentence will be imposed which reflects not just the original circumstances of the offence, but also the offender's behaviour during deferral.

In 2005 'structured' deferred sentence pilots were started in three areas and in 2008 were extended to two others. Over three or six months of focused supervision, they aimed to tackle criminogenic problems of the offender which might be addressed through social work interventions, including alcohol and drug misuse. Two of the pilots identified offenders with substance misuse problems as priorities while the third targeted 'low tariff' offenders with alcohol problems. By the end of the deferral periods court reports indicated that between half and four fifths of offenders had reduced their alcohol and/or drug use. Since 2005–2006 both the number of deferred sentences and the proportion they represented of all sentences have decreased steadily, particularly in respect of male offenders. Women have formed a rising proportion of all offenders given deferred sentences, possibly because these sentences' focus on 'needs' rather than 'deeds' seems particularly suited to women.

Probation and community payback orders are court orders which involve offenders being subject to supervision by local authority social work departments, which undertake the probation role in Scotland. Since February 2011 probation orders have been replaced by community payback orders. Both can include specific requirements, including treatment for drug or alcohol problems. Probably due to the advent of drug treatment and testing orders, the number of drug treatment requirements fell from 631 in 2002/2003 to 506 in 2009/2010, while the number of alcohol requirements increased steadily.

Aimed at offenders facing imprisonment and with an established pattern of drug-related crime, drug treatment and testing orders (DTTOs) were introduced in Scotland (as in England and Wales) under the Crime and Disorder Act 1998. Over six months to up to three years, they combine drug treatment, regular drug testing, case management by the supervising social worker, and regular judicial reviews of progress. Unlike probation orders, they are not intended to address offenders' wider problems. From 1999 they were piloted in Glasgow and Fife. As elsewhere in the UK, evaluations found they were associated with reductions in drug use and drug-related offending, particularly when offenders stayed in treatment and completed their orders.

Following successful piloting, national roll-out of DTTOs began in 2001/2002, making them available to the high court and all sheriff courts. Numbers rose from 412 in 2003/2004 to 739 in 2009/2010. DTTOs are **no longer** a distinct sentencing option in England and Wales but continue to be available in Scotland.

Scotland's national guidelines allow courts discretion over terminating ('revoking') DTTOs and emphasise keeping offenders in treatment, leading to much better completion rates than elsewhere in the UK. When offenders fail to comply with an order (a 'breach'), courts often allow the order to continue. As a result, only 29% of breach applications in 2010–2011 led to immediate imprisonment. Breach rates, were initially very high (40% of terminations in 2003/2004) but have gradually fallen to 23% of terminations in 2009/2010. Each year since their introduction breach rates have been higher among women than men, reflecting the difficulties experienced by women in meeting the requirements of community sentences.

In 2008 the Scottish Government funded a pilot 'low tariff' DTTO scheme ('DTTO II') in the Lothian and Border Community Justice Authority area. These make DTTOs available to offenders earlier in their criminal careers and facing less severe sentences, and can be imposed by justice of the peace courts dealing with the least serious offences as well as by sheriff courts. In particular they were intended to make a DTTO-type sentence available to women whose offences were not serious enough for them to qualify for a DTTO, and in the event half of all the new orders were given to women. The orders were intended to be shorter (normally up to 12 months) than DTTOs and to require less frequent judicial reviews (every six to eight weeks instead of monthly). An initial evaluation reported that offenders subject to the new order averaged 27 years of age and that while on the order their drug use and offending fell. Completion rates were relatively high. Offenders said they had experienced improved health and some positive changes in their lives and prospects. However, these were low-tariff offenders and there was no comparison group, so it is not possible to conclusively attribute these outcomes to the new order.

Drug courts aim to reduce crime by addressing drug use and drug-related offending by adults who have committed serious and/or frequent offences. They were intended to bolster the effectiveness of existing sentences such as DTTOs by providing additional treatment resources and intensified and specialist judicial supervision, which aimed to be therapeutic rather than punitive. In the early 2000s pilots were established in Glasgow and Fife sheriff courts. Evaluations found that most offenders dealt with by drug courts had an extensive criminal history. They were sentenced to DTTOs and/or probation orders and required to submit to urinalysis and regular (at least monthly) review by the presiding sheriffs. Pre-court reviews were seen as crucial in establishing and monitoring achievable goals for offenders, while problem-solving dialogue between sheriffs and offenders and continuity of sentencers over successive reviews were considered significant motivators of compliance. Workers and offenders felt the courts did reduce drug use and drug-related crime, and many offenders also felt the orders had more generally improved their lives. At both courts, the longer they had been on an order, the less likely offenders were to test positive for opiates or benzodiazepines. However, the proportions reconvicted over the next two years were similar to those found for DTTOs imposed by other courts.

### Throughcare after prison

Follow-on care after release from prison has been recognised as critical but also challenging to implement. In Scotland, only prisoners serving sentences of at least four years are eligible for post-release support on a statutory basis. Transitional care was a national initiative introduced in 2001 to provide post-release support to substance misusers after shorter sentences and to engage them in community services. Prisoners were assessed in prison and linked to subcontracted staff based in the community, who they were expected to meet up to three times over the 12 weeks after their release. However, fewer than a third attended an appointment. Unless staff proactively reached out to clients, they tended not to take up the offer of transitional care. Seven months after release, ex-prisoners who had received transitional care were no less likely to have unmet needs than those who had not, and there were no differences in health, substance use, injecting, housing, employability or crime. Workers felt three appointments were insufficient. The experience highlighted that without coercion, take-up of services is low, and that the effectiveness of such initiatives depends on the availability of resources to released prisoners.

In 2005 the transitional care initiative was replaced by the Throughcare Addiction Service. Delivered by criminal justice social work services, this aims to provide continuity of care for prisoners treated in prison while (for adult men) serving sentences of more than 31 days, a limitation not applied to women or young offenders. In the six weeks before release a community integration plan is negotiated with the prisoner, detailing how any addictions-related work undertaken in prison will be taken forward in the community. Over the six weeks after release the service works with the former prisoner to link them to appropriate community services. The service has yet to be evaluated. In 2006/2007 (its first complete year) it dealt with 1509 offenders, falling by 2009/2010 to 1414. A government review reported that only 41% of former prisoners kept their initial appointments (an improvement on transitional care) and only 15% attended all six scheduled appointments. It remains unclear how effectively those who did keep appointments engaged with services.

### The authors' conclusions

In line with Scottish Government policy, referrals to treatment through the criminal justice system have increased in number, and there is some evidence of reduced drug use and associated offending, especially among those who complete an order or intervention. Despite underlying philosophical differences, experience in Scotland – especially of DTTOs and drug courts – is that different professions can effectively work together. However, there is insufficient evidence to assess the effectiveness of diversion from prosecution, arrest referral, prison throughcare and low-tariff DTTOs (DTTO II). While engagement with treatment, and readiness to engage with treatment, tend to predict success, there is limited (and mixed) evidence of what constitutes the most effective interventions for specific groups.

Addressing in the community the needs of offenders involved in drug-related crime rather than in prison offers advantages, including a wider range of more effective services and avoiding the negative impact of imprisonment. Community interventions are more likely to result in lower rates of reoffending and offer better value for money. Given how many offences dependent drug users commonly commit, criminal justice interventions in Scotland may cover their costs in terms of immediate savings to the criminal justice system. However, problems of measuring the costs and assessing the outcomes limit conclusions regarding cost-effectiveness or value for money.

Concerns include the wide variations in the scale and scope of some interventions and of treatment services across the country. Post-prison support and aftercare is crucial, but managing the transition between prison and the community remains a significant challenge. Most prisoners released after short sentences (or custodial remand) are not subject to statutory aftercare. Initial data from the Throughcare Addiction Service suggests it may be more successful than its predecessor, but still it seems that most eligible offenders do not engage with the service in prison or on release, and the nature and effectiveness of any engagement remains unknown. Support from the service remains unavailable for adult male prisoners serving sentences of less than 31 days or offenders on remand.

'Coerced' treatment aims to enable drug-dependent individuals to reduce or end offending and illicit drug use. Evidence suggests these objectives are plausible and, in the case of DTTOs and drug courts, in many cases achievable. But this ambition also raises the thorny issue of the potential diversion of resources from voluntarily entered community-based services, eroding the potential to intervene before the criminal justice system becomes involved.

The initial emphasis on high-tariff repeat offenders at risk of imprisonment has extended to less serious offenders intervened with at different points in the criminal justice process to prevent mainly acquisitive crime related to drug use. This can be welcomed as an attempt to avoid

drawing offenders into unnecessarily intrusive (and costly) interventions, and also to avoid sanctions for not complying with these interventions. But it can also be argued that these developments represent a further widening and deepening of the net of social control through options which, even if ostensibly voluntary, by accident or design entail varying degrees of coercion, and which may draw offenders further into the criminal justice process than would otherwise have occurred.

Of particular concern is the lack of data on the intended and unintended impacts of the interventions. The potential benefits and consequences of purportedly benevolent interventions in the Scottish criminal justice system demand greater scrutiny. Perhaps originally oriented more to treatment and support than punishment, expansion of treatment provision through the criminal justice system has extended the reach of more punitive responses, despite limited evidence for their efficacy.

**FINDINGS** One of the authors of the featured article has also authored a [report](#) covering the same and other issues related to the treatment of drug and alcohol users in the Scottish criminal justice system. For other Findings analyses of work undertaken by and/or in the Scottish criminal justice system, run [this search](#) on the Findings database.

Last revised 23 August 2013. First uploaded 20 August 2013

- ▶ [Comment on this entry](#)
- ▶ [Give us your feedback on the site \(one-minute survey\)](#)
- ▶ [Open home page](#) and [enter e-mail address](#) to be alerted to new studies

---

### Top 10 most closely related documents on this site. For more try a [subject](#) or [free text search](#)

- [Scoping study of interventions for offenders with alcohol problems in community justice settings](#) STUDY 2011
- [Review of the Glasgow & Fife drug courts](#) STUDY 2009
- [Drug Strategy 2010. Reducing Demand, Restricting Supply, Building Recovery: Supporting People to Live a Drug Free Life](#) DOCUMENT 2010
- [Managing drug involved probationers with swift and certain sanctions: evaluating Hawaii's HOPE](#) STUDY 2009
- [The Drug Treatment Outcomes Research Study \(DTORS\): final outcomes report](#) STUDY 2009
- [Testing children pointless but arrest referral offers early intervention opportunities](#) STUDY 2008
- [Summary of findings from two evaluations of Home Office alcohol arrest referral pilot schemes](#) STUDY 2012
- [Treatment and testing orders should make a substantial dent in drug-related social costs](#) STUDY 2001
- [First test for the DTTO](#) STUDY 2001
- [Adaptive programming improves outcomes in drug court: an experimental trial](#) STUDY 2012