



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

GUIDELINE FOR FEDERAL PROSECUTORS

November 8, 2012

DRUG TREATMENT COURTS

Purpose

[1] The purpose of this guideline is to advise federal Crown counsel of the procedure to follow when dealing with *Controlled Drugs and Substances Act* (CDSA) charges against an accused whose sentencing is being delayed to allow for participation in a Drug Treatment Court (DTC) program.

[2] The new sections 10(4) and 10(5) of the CDSA, which came into force on **November 6, 2012**, allow a court to delay sentencing while an addicted offender either participates in a DTC program approved by the Attorney General, or attends a treatment program approved by the province under the supervision of the court as outlined in section 720(2) of the *Criminal Code*.¹ If the person successfully completes the treatment program, the court is not required to impose the Mandatory Minimum Penalty (MMP) for the offence.

¹ See Bill C-10, cl. 43(2), which provides for the amendment to s. 10(2) and the new ss. 10(4) and 10(5) of the CDSA.

Background

Drug Treatment Court Defined

[3] DTCs focus on facilitating treatment for drug-motivated offenders who meet specified criteria. They provide an alternative to incarceration by offering an opportunity to complete a drug treatment program. DTCs take a comprehensive approach intended to reduce the number of crimes committed to support drug dependence through judicial supervision, comprehensive substance abuse treatment, random and frequent drug testing, incentives and sanctions, clinical case management, and social services support. They are aimed at reducing the harm people cause to themselves and to others through their drug use, as well as reducing the risk that these individuals will continue to use drugs and thereby come into conflict with the law.

[4] The following is a list of internationally recognized DTC principles that have been adopted by the Canadian Association of Drug Treatment Court Professionals.²

- Integrated justice system case processing and addiction treatment services;
- A non-adversarial approach to case problem solving by the judge, prosecutor and defence counsel;
- Eligible participants are identified early and placed in the Drug Treatment Court program as promptly as possible;
- Drug Treatment Courts provide access to a broad continuum of treatment and rehabilitative services;
- Objective monitoring of participants' compliance by frequent substance abuse testing;
- Coordinated strategic response to program compliance and non-compliance by all disciplines involved (including police, probation, prosecutor, treatment, social workers and court);
- Swift, certain and consistent sanctions or rewards for non-compliance or compliance;
- Ongoing direct judicial interaction with participants;
- Monitoring and evaluation processes for the achievement of program goals and to gauge effectiveness;
- Continuing interdisciplinary education of the entire Drug Treatment Court team;
- Forge partnerships among courts, treatment and rehabilitation programs, public agencies and community based organizations to increase program effectiveness and generate local support for the program;
- Ongoing case management including social re-integration support; and
- Adjustable program content, including incentives and sanctions, for groups with special needs, e.g. women, minority ethnic groups and persons with mental disorders.

² <http://www.cadtc.org/DTCProgram.aspx>

Approval of a Drug Treatment Court Program

[5] Under section 10(4)(a) of the CDSA, a DTC program must be approved by the Attorney General. In order to be approved by the Attorney General, the program should comply with the above internationally recognized principles. Provided the DTC program complies with the above principles, the Chief Federal Prosecutor (CFP) in the appropriate province, territory or region can approve the DTC program in that region on behalf of the Attorney General. The attached form must be signed by the CFP to signify that the program has been approved by the Attorney General.

Eligibility for Drug Treatment Court

[6] Accused persons charged with offences that were motivated by addiction are encouraged to apply for admission to a DTC program. The DTCs will generally accept adult offenders who are actively addicted to a hard drug such as cocaine, crack cocaine, heroin and other opiates, and methamphetamines. The accused and defence counsel must also have received sufficient disclosure to determine that the accused is able to plead guilty to the applicable Information(s).

[7] The inter-disciplinary teams associated with each DTC establish the eligibility criteria for that particular DTC. These criteria may vary among DTCs; however federal Crown counsel is a member of the DTC team, and thus the eligibility criteria must be acceptable to the federal Crown counsel.

[8] Ordinary rules of sentencing recognize the pre-eminent role of general deterrence, as well as specific deterrence and rehabilitation, in the imposition of a fit sentence. The DTC model is an exception based upon such factors as an assessment of the risk posed by an offender and the ability of the DTC program to address the criminal conduct caused by drug addiction. As it is an exception, the offender must address concerns that ordinarily would militate against consideration for the DTC program.

[9] Certain criminality is of such a severity that the risk assessment will not generally favour the DTC program approach over ordinary sentencing principles. These include factors that commonly put public safety at risk, such as the following:

- The person has been charged with a significant crime of violence;
- The drug offence was committed in circumstances that raise concerns about drug-impaired driving;
- The person has a recent and/or significant history of violence; or
- The person used or threatened to use a weapon during the commission of the offence.

[10] Persons who commit offences in circumstances which strongly suggest that the offence was not directly connected to an addiction, but rather to other causes not ordinarily amenable to a DTC program, will generally not be admissible to a DTC unless there is reliable support for their assertion that (a) the offence was predominantly motivated by the person's drug addiction, and (b) that addressing that addiction will also address the other causes underlying or motivating the

criminal activity. While the following factors would generally render an accused ineligible for admission into the DTC program, the assessment should reflect consideration of the criteria indicated above in (a) and (b):

- The person has been charged with trafficking for commercial gain;
- The drug offence involved risk to a young person; or
- The person is an associate or member of a gang or criminal organization.

[11] Finally, the DTC relies upon the willingness and ability of the candidate to overcome an addiction that has contributed to the commission of the offence. Persons whose past conduct indicates an inability to comply with a previous court order, or to benefit from admission into a DTC program, will not generally be admissible. Persons who are currently serving a conditional or intermittent sentence at the time of their application to the DTC will generally not be admissible as these sentences are generally incompatible with an intensive DTC program. Persons who have previously participated in a DTC program and either been expelled or withdrawn, as well as those who have graduated from a DTC program in the previous year,³ are generally not admissible to the DTC program. In such cases, the onus is on the applicant to persuade the DTC team that they should be given another opportunity. A candidate should generally be considered only in light of convincing evidence of changed circumstances and a willingness and ability to commit to treatment.

[12] An indication that the resort to the DTC program is being used solely to avoid punishment rather than to address an addiction that contributed to the criminality in question should militate against admission to the DTC program.

Successful Completion of Drug Treatment Court program

[13] The standard for what it means to have successfully completed a DTC program is to be determined by the DTCs. The successful completion criteria should take into account the fact that the individual has met the general completion requirements of the individual DTC. Some suggested criteria include: a substantial period of abstinence from hard drugs such as cocaine, opiates and methamphetamine; a substantial period of time having passed without further criminal convictions; and social stability indicators such as having obtained stable housing, ongoing attendance at community support programs, and being employed, attending school or participating in significant community volunteer work.

[14] A person who meets the individual DTC program's successful completion criteria, and consequently graduates from a DTC program, is eligible to receive, upon sentencing, a reduced sentence, such as a suspended sentence along with a period of probation to be recommended by the DTC team.

³ Previous year means within the previous 365 days.

Conclusion

[15] Crown counsel must be mindful of the procedures to follow when an accused seeks to have his/her sentencing delayed in order to participate in a DTC program. Crown counsel must be diligent to ensure that only qualified individuals are referred to the DTC.

Annex A: Attorney General's Approval Form