



# Amendments to the Dangerous Drugs Act relating to Ganja: Impact on the Drug Treatment Court

*The Jamaican perspective*

Stephane Haisley



**AMENDMENTS TO THE DANGEROUS DRUGS ACT  
RELATING TO GANJA:  
IMPACT ON THE DRUG TREATMENT COURT**

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## **Abstract**

Amendments to the Dangerous Drugs Act as it relates to marijuana (ganja) in Jamaica decriminalize the possession of small quantities of the substance for personal use. This has raised concerns that the Jamaican Drug Treatment Court (DTC) will become redundant. Through an examination of the amendments and the history and operation of the DTC, Jamaican Resident Magistrate Stephane Haisley outlines the potential impact of the amendments on the DTC. This includes any changes to eligibility criteria, referral procedures, admissibility, treatment plans, and regulations regarding minors. The author concludes that the objectives of the court will remain the same regardless of the amendments. Indeed, the DTC may become more relevant and effective, as it could focus on treating high-risk individuals rather than individuals who are looking to avoid criminal records for simple possession by participating in the program.

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## **Introduction**

In the year 2001, the Drug Treatment Court (DTC) was established in Jamaica. Since then, it has become a feature of the Jamaican criminal justice system providing an alternative to incarceration for drug-dependent offenders, firstly in the parishes of Kingston and St. Andrew, referred to as the Corporate Area, then in the parish of St. James and now in the parishes of St. Thomas and St Catherine. The DTC thrives on the merging of resources from different government ministries. Professionals from the Ministries of Justice, Security and Health work together with the common aim of treating drug-dependent offenders and assisting them to regain their place as law-abiding citizens who are able to make a positive contribution to the society in which they live. The DTC program in Jamaica is available to individuals who are charged with a wide range of offenses including property offenses, traffic violations, breaches of the public peace, minor offenses involving violence and drug-related offences. The participants in the program undergo treatment whilst under the supervision of a Resident Magistrate. The journey of the Jamaican DTC has been paved with many challenges, and the amendments to the law relating to ganja have been viewed by some as yet another challenge the Jamaican DTC faces.

With the advent of the amendments to the law relating to ganja, concerns have emerged about the impact they will have on the DTC model in Jamaica. Questions posed include whether or not the DTC will become redundant in the face of some of the reforms have been implemented. This paper attempts to address these concerns and to examine the potential impact that these reforms may have on the operations of the DTC. The paper aims to do this by examining the creation of the DTC, providing a brief analysis of the framework of the operations of the DTC and examining the effects, if any, that amendments to the law relating to ganja may have on its operations.

Over a decade ago, Jamaica led the way towards the implementation of the first DTC in the Caribbean and Jamaica has again led the way towards reforming the law relating to ganja. Jamaica, however, is not alone. Other countries in the Western hemisphere have taken on reforms relating to ganja laws. It may help to ascertain whether any lessons or guidance can

be gleaned from the way in which they have embarked on their approach. Two salient examples are Uruguay and the USA. States such as Washington and Colorado in the USA have emerged at the forefront of new and enlightened laws relating to ganja. These countries have taken even further steps along the way than those in Jamaica, encompassing legalizing the production, distribution and use of cannabis and its derivatives. The amendments in Jamaica deal mainly with the decriminalization of possession of small quantities of ganja.

## **Terminology**

Amidst the debate there is some confusion as to the significance of the legal reforms taking place in Jamaica. In order to better understand the amendments an appreciation of the terms being utilized is essential. The terms commonly spoken of are decriminalization, depenalization and legalization. An OAS publication titled “The Drug Problem in the America Study” provides these definitions:

“Decriminalization represents changes in the laws and regulations that ban the production, sale and use of certain substances except under limited circumstances, in the direction of freeing mere users from criminal sanction. The term depenalization refers to a reduction from current levels in the formal penalties of any kind for possession of a drug for personal use... Legalization means that it is possible for a large class of individuals to obtain the drug without penalty and for the drug to be produced and distributed without penalty by some entities.”(Organization of American States, 2013)

According to CICAD drug policy specialist, Bryce Pardo, while depenalization and decriminalization are often used interchangeably, it is essential that a distinction between the two be made. Depenalization means lessening existing criminal sanctions and decriminalization means that an act is no longer a criminal offense, with other forms of sanctions taking the place of penal sanctions (this could include fines or referral to treatment). (Pardo, B. personal communication, 2014, October 15)

Based on the above definitions it does appear that the amendments made in the case of Jamaica can be referred to as decriminalization. The question that will be addressed in the ensuing pages is: how will decriminalization impact the DTC model in Jamaica? Although this paper examines the situation in Jamaica it is hoped that it will serve as a guide to other countries that are considering the creation of DTCs within their justice system.

## **Law on Prohibition of Ganja Use**

The Law governing ganja in Jamaica is contained in the Dangerous Drugs Act (DDA) which was first passed in 1948. The word “ganja” was then defined in the interpretation section of the DDA to include all parts of the plant known as *cannabis sativa* from which the resin has not been extracted, and includes any resin obtained from that plant, but does not include medicinal preparations made from that plant.

To summarize, the offenses under the DDA relating specifically to ganja are contained mainly in Part IIIA, Sections 7A, 7B, 7C and 7D and section 22(7) of the Act. The offenses then included the export and import of ganja; cultivating, selling, dealing in, and transporting ganja; possession of ganja; permitting one’s premises to be used for the smoking of ganja;

management of any premises known to be used for the smoking of ganja; possession of any pipes or other utensils for use in connection with the smoking of ganja; and smoking or otherwise using ganja. Up until the recent amendments the penalties ranged from a fine of one hundred dollars for possession of an ounce of ganja to a maximum fine of five hundred thousand dollars for the most serious of the offenses and/or a maximum term of five years imprisonment at hard labor. Section 22(7) also relates to possession of ganja and provides that a person, other than a person lawfully authorized, found in possession of more than eight ounces of ganja is deemed to have such drug for the purpose of selling or otherwise dealing in ganja unless that person can prove the contrary.

### **Amendments to the Dangerous Drugs Act**

On February 6, 2015 the Dangerous Drug (Amendment) Act 2015 was passed in the Jamaican Senate. It received the formal assent of the Governor General on March 20, 2015 and is now in effect.

The objectives of these amendments are to provide for, among other things, the modification of penalties for the possession of ganja in specified small quantities and the smoking of ganja in specified circumstances, and for a scheme of licences, permits and other authorizations for medical, therapeutic or scientific purposes.

This paper will focus on the amendments that may impact the DTC in Jamaica.

The possession of two ounces or less of ganja is no longer arrestable, but is a ticketable infraction attracting a fixed monetary penalty payable at any Collector of Taxes and which will not give rise to a criminal record. In the event of failure to pay the fixed monetary penalty within thirty days, the person shall be required to attend the Petty Sessions Court where he shall be liable upon conviction to perform unpaid work of between forty and three hundred and sixty hours. The person shall not be liable to be convicted of an offence if the fixed penalty is paid before the final adjudication of the case.

Where the person found in possession of two ounces or less of ganja is under the age of eighteen years or is over that age but appears to be dependent on ganja, the police officer issuing the ticket shall refer the person to the National Council on Drug Abuse or such other body as the Minister may prescribe.

The smoking or using of ganja, the possession of pipes or utensils for use in connection with the smoking of ganja and permitting premises to be used for smoking or using ganja are no longer offences except that the smoking of ganja is prohibited in public places subject to specified exceptions. Also removed from legal sanction is the possession of ganja for religious or therapeutic purposes or for scientific research.

Under the amendments ganja is redefined to specifically exclude hemp. Hemp is defined as the plant *cannabis sativa*, or any part thereof, with a THC concentration of no more than 1.0% or such other concentration as may be prescribed by the Minister by order published in the Jamaica Gazette.<sup>1</sup>

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<sup>1</sup> The Jamaica Gazette is an issue of the public newspaper. In order for an Act of Parliament to take effect in Jamaica the Governor General's assent to the Bill must first be published in the Gazette

There are other amendments which do not fall within the remit of the DTC, such as the provision of a scheme of licenses, permits and other authorizations which enable the establishment of a lawful regulated, industry for ganja for medical, therapeutic and scientific purposes, and the establishment of a Cannabis Licensing Authority, and so this paper will not be exploring those amendments.

It is also important to note an interesting, development in the way in which ganja cases are brought before the court which took place even before the passage of the amendments. On August 12, 2014 the Jamaican daily newspaper, the Gleaner, reported comments by the Minister of National Security, Peter Bunting, which announced that police officers must serve summonses to persons found in possession of small quantities of ganja instead of arresting them. Minister Bunting announced that after receiving a memorandum from the Attorney General's Chambers and after having had discussions with Acting Police Commissioner Glenmore Hinds, the constabulary will apply the following guidelines:

1. Proceed by way of summons where a justice of the peace is available;
2. If a justice of the peace is not available, or if the offender is unable to provide identification, or is unable to be identified by other means, he/she may be taken to a police station until identification can be verified. Once identification is verified, the person should be granted bail on his/her own surety; and
3. If the offender is being investigated for other serious offences, persons will be given bail with conditions or be remanded in custody. (Serju 2014, August 17)

### **Effects of the Amendments**

The amendments decriminalize the possession of small quantities of ganja for personal use. This means that an individual found in possession of two ounces or less of ganja will be subject to being ticketed for the infraction, so although he will still be sanctioned, it will not be through the court once the fine is paid. The individual will be required to pay a fine, but would have no criminal record resulting from the possession. Failure to pay the ticket could result in the imposition of a community service order. The contraband will, however, still be seized. The previous regime was that most persons found in possession of small quantities of ganja were usually subject to a miniscule fine and not usually incarcerated. Once a guilty plea was entered a conviction was usually recorded although there was a tendency for some Magistrates dealing with matters of simple possession to make an order that the conviction not be recorded. This was entirely discretionary.

The amendments include removing the smoking of ganja and the possession of pipes and other utensils for use in connection with the smoking or other use of ganja as offenses under the DDA. Smoking ganja is only prohibited if done in a public place.

Although the amendments refer to both adults and minors, where the person found in possession of ganja is a minor the police officer should refer him to the National Council on Drug Abuse. This referral should also be done for adults who appear to be dependent on ganja. There may be some challenges in ensuring that the individual actually follows up on the referral, as he is no longer mandated to appear before a Magistrate or be subject to a bench warrant being issued, which would land him in custody.



## **Background to the Drug Court (Treatment and Rehabilitation of Offenders) Act**

Before assessing the impact of the amendments on the DTC, it is necessary to understand the background of the law that governs the DTC and its operations. It is useful to look at the climate in Jamaica at the time the DTC was first conceptualized, how the DTC was first touted in Jamaica and the background to the passage of the legislation.

Jamaica's proximity to both North and South America makes it a popular spot for the passage of drugs, especially ganja and cocaine, which spills over into local consumption. The two most commonly abused drugs in Jamaica are ganja and crack cocaine. Many youths in Jamaica have issues regarding a dependency or addiction to what is colloquially referred to as "seasoned spliff" and "crack." This causes many of them to resort to crime to sustain their addiction or dependence consequently resulting in an increase in criminal cases in Jamaican courts. One response has been to incarcerate the addicts, sometimes for indefinite periods; this however, has largely proven unsuccessful. Another response has been to detain them to give them a chance to "cool off," but that too has failed. Invariably, since the majority of these drug offenders were guilty of no more than petty crimes, they generally emerged from incarceration sooner rather than later, only to continue on the path of crime.

Jamaican lawmakers have therefore sought guidance from other countries for a solution to the problem. By 1999, the United States, Canada and Australia had drug courts as a feature of their criminal justice systems, an approach that seemed to be making inroads into the problem of the massive number of drug related cases facing the courts. The idea is to tackle the backlog of such cases not by having a more expeditious trial process but rather, by addressing the root cause which is drug dependency.

The DTC was first touted as a response to dealing with the vast number of drug offenses in the courts, offering to persons charged with such offenses treatment and rehabilitation through the DTC, providing they are drug dependent and consent to such treatment and rehabilitation.

The following extract from a Gleaner newspaper report on the 2<sup>nd</sup> day of December 1999 gives an idea of how the DTC was first touted in Jamaica:

"THE DRUG Court (Treatment and Rehabilitation of Offenders) Act, which replaces imprisonment for possession of prescribed amounts of illegal drugs with rehabilitation, has been passed by the House of Representatives. Under the Act, cases involving persons held by the police with up to half a pound of ganja, an ounce of opium or one-tenth of an ounce of cocaine, heroin or morphine are to be referred to the proposed Drug Court, where they will be subjected to rehabilitative efforts. 'Once you are found with that amount, automatically the Drug Court has jurisdiction,' Minister of National Security and Justice, Mr. K.D. Knight, told the House during the debate on Tuesday. He said that persons found in possession of pipes or other utensils for use in connection with the smoking of opium or ganja, or any utensil used in connection with the preparation of opium for smoking, or persons caught smoking or otherwise using ganja or prepared opium, as well as those found frequenting any place used for smoking opium, are also included. The Minister said that although alcohol was not listed, it was included among the items defined as drugs with which the court would also deal...." (Jamaica Gleaner, 1999)

On August 8, 2001, around the time of the Act coming into force then Prime Minister of Jamaica, the Rt. Hon. P.J. Patterson, Q.C., M.P., made the following statement at the opening ceremony of the Inter-American Drug Abuse Control Commission's Expert Group Meeting on Demand Reduction, Montego Bay: "In 1999 the Drug Court Treatment and Rehabilitation Act was passed by our Parliament. This law gives persons found in possession of small quantities of drugs and persons suffering from drug abuse disorders or who have committed non-violent drug related crimes e.g. shoplifting, an opportunity by the Courts to choose to undergo treatment and rehabilitation instead of being incarcerated." (Patterson, 2001)

The legislation that was enacted was one of the first of its kind in the Western Hemisphere, as other jurisdictions that established DTCs did so without legislation. The passage of legislation to create DTCs in Jamaica demonstrated the commitment of the Jamaican government to confront the drug problem from all angles. Although the Jamaican DTC is based on the Canadian model and also borrows from the American concept, the difference in Jamaica is that its DTC is based on actual legislation. It is formalized and thus a part of Jamaican law.

The Jamaican Drug Court (Treatment and Rehabilitation of Offenders) Act (DCA) was first formulated in 1999. This was followed in 2000 by the Drug Court (Treatment and Rehabilitation of Offenders) Regulations, 2000 (DCR). Both came into effect in 2001. This law created a court that was distinct from all others, designed not for the trial of cases but rather for the rehabilitation of drug dependent accused persons. The DCA resembles the Drug Court Act 1998, No 150 of New South Wales, and Australia, the objectives of which are quite similar to that of the Jamaican legislation. One stark difference though, is that the person must have pleaded guilty or indicated an intention to plead guilty whereas in the Jamaican Act, this is not necessary. Ultimately, the Jamaican Act was tailored to suit the needs of the Jamaican landscape.<sup>2</sup>

Under the DCA "drugs" is interpreted to include alcohol, ganja, cocaine, opium and morphine. Any offender dependent on any of the specified drugs can benefit from treatment in the DTC as long as he or she fits other criteria.

The objectives of the court are succinctly stated in Section 3 of the Act. They are to reduce the incidence of drug use and dependence by persons whose criminal activities are found to be linked to such dependence, to reduce the level of criminal activity that results from drug abuse and to provide assistance to those persons that will enable them to function as law abiding citizens.

### **Operations of the DTC**

The DCA has general application, enabling a DTC to be implemented in any or all of the 14 parishes throughout the island of Jamaica. Indeed, DTCs began as a pilot project in two parishes and have now expanded to four parishes.

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<sup>2</sup> It is important to note that different jurisdictions utilize different terms to refer to the concept of the DTC. In the USA the term 'drug court' is used whereas in the Caribbean the term 'drug treatment court' is used. In Mexico the term 'addiction treatment court' is used.

As with DTCs in other countries, a holistic approach is utilized for the rehabilitation of an offender in a Jamaican DTC. Participants receive advice and guidance in areas such as family and emotional support, conflict management, education, employment, development of social skills and legal assistance.

The DTC is presided over by a Resident Magistrate<sup>3</sup> (RM) and two Justices of the Peace (JP),<sup>4</sup> one of whom must be female. The phenomenon of a JP presiding over a DTC is peculiar to Jamaica. The provision for one of the JPs to be female was advanced at a time when men dominated the position of RM, and was made to guard against having a bench with three men. This could be because women in Jamaica are viewed as the “gentler sex” and it was thought that they would be more sensitive to the needs of drug court participants, or it could also be because of heightened gender awareness and the need to have a bench that consisted of persons from both genders.

When a person is referred to a DTC, the question of eligibility must be determined. The DTC is available to anyone who fits the following eligibility requirements:

- The person is charged with a relevant offense;
- The person appears to be dependent on the use of drugs;
- The person is at least 17 years of age;
- The person is not suffering from any mental condition that could prevent or restrict his or her active participation in a prescribed treatment program.

It is important to note that the provisions of the Act are very inclusive. It is in no way restricted to individuals charged with only drug offences. The ambit of cases is very wide, as a relevant offense is any offense that a RM has the jurisdiction to try and includes a myriad of offenses both drug related and non-drug related, once the person appears to be dependent on the use of drugs. Based on the provisions, any individual at any stage of the court proceedings can take advantage of the program. In Jamaica, the DCA makes provisions for the offender to be treated whether he has pled guilty or been found guilty, or even if he has not entered any plea at all. This is a remarkable feature, given that in most other jurisdictions, the program is available only to individuals who have pled guilty. When the individual opts to enter a plea of not guilty, the prosecution can defer the prosecution of the offense pending participation in the program. If the individual successfully completes the prescribed treatment program, the DTC shall discharge him in relation to the relevant offense.

What is more, the program is available even to individuals who have committed violent offenses. The only restriction is that if the offense is a violent one, it must be of such a nature that it still falls under the jurisdiction of a RM, suggesting that the injuries sustained by the victim were not serious or life threatening and not likely to be permanent. Offenses that come under the jurisdiction of the Circuit Court (the High Court) would not fall under the ambit of the DTC. In practice, a great number of persons who benefit from the program are not those charged with violent offenses but rather, those charged with property related

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<sup>3</sup> A feature of the *Judicature Resident Magistrates Act* (having the function of a judge of the resident magistrate’s courts) available at: <http://www.moj.gov.jm/laws/judicature-resident-magistrates-act>

<sup>4</sup> The justice of the peace is a judicial public officer, albeit with limited powers. In addition to the number of duties and functions within the community, the JP actually performs judicial functions serving in the Court of Petty Sessions as set out in the *Justices of the Peace Jurisdiction Act (1850)* from which their authority is derived, available at <http://www.moj.gov.jm/node/519>.

offenses. The Act creates a DTC model that is all-encompassing and provides for the treatment of individuals before conviction, after conviction and even where there is no conviction. In all instances, if the offender successfully completes the program, he or she leaves the criminal justice system without any criminal record in respect of the offense for which he was before the DTC.

### **Procedure for Referring Persons to the DTC**

The Act provides two avenues through which an accused can gain entrance into the program. Both avenues place an obligation on the arresting officer. The first avenue makes provision for any person charged with a relevant offense who the arresting officer believes to be dependent on any drug to be recommended for participation in the DTC. A relevant offense is any offense that can be tried by a RM. The second avenue allows an arresting officer to bring any person charged with a specified drug related offense directly to a sitting of the DTC. The first avenue is provided for in Section 6 of the Act which stipulates that:

“(1) Subject to section 7, where a person is arrested and charged with a relevant offence and the arresting officer has reasonable cause to believe that the person is dependent on any drug, the arresting officer shall include in the police report, a note of the facts giving rise to that belief.

(2) as soon as practicable after the person is charged with the offence, the Clerk of Courts in the parish in which the person is arrested-

(a) shall review the police report and the person’s criminal record; and

(b) may, if satisfied that the person is eligible, recommend to the Court that the person be referred to the Drug Court to be dealt with in accordance with section 8.”

Section 6 of the DCA should be read in conjunction with Section 4(1) of DCR which provides:

“For the purposes of section 6 of the Act (procedure after arrest) the person arrested shall be brought before the court on the first sitting of the court following the date of the arrest.”

Section 4(2) provides:

“Where, pursuant to section 6(2) of the Act, a recommendation is made to the court that a person be referred to the Drug Court, the Resident Magistrate shall ascertain whether the person is an eligible person; explain to the person the reasons why he is being referred to the Drug Court and the consequences of such referral; and require the person to signify his consent in writing to being referred.”

The second avenue through which persons are referred to the DTC is provided for in Section 7(1) of the DCA which states:

“A person who is arrested and charged with a relevant offence specified in subsection (3) should be brought before the Drug Court to be dealt with in accordance with section 9.”

It should be noted that section 7, subsection (3) of the DCA was also amended to take into account the amendments under the DDA. Subsection 7(3) now states that the offences referred to are offences under the Dangerous Drugs Act as follows:

- “(a) possession of-
  - i. not more than one ounce of prepared opium;
  - ii. more than two ounces but less than eight ounces of ganja;
  - iii. not more than one-tenth of an ounce of cocaine, heroin, or morphine, as the case may be;
- (b) possession of any pipes or utensils for use in connection with the smoking of opium or any utensils used in connection with the preparation of opium for smoking;
- (c) smoking or otherwise using-
  - (i) prepared opium; or
  - (ii) ganja, in contravention of section 7E of that Act, where the person has contravened that section on two or more previous occasions.
- (d) frequenting any place used for the purpose of smoking opium.”

Section 9 empowers the court to make an order requiring the individual to undergo the prescribed treatment program and to comply with any conditions imposed by the court if the court is satisfied that the person is an eligible person and having regard to the person’s antecedents it would be appropriate for the person to participate in the program and that the person accepts the conditions imposed by the DTC.

### **Potential Impact of the Amendments on the DTC**

This section will look at the potential impact that the amendments to the DDA could have on the different areas pertinent to the DTC, such as the eligibility criteria, the procedure for referring persons to the DTC, the operations of the program, the target population and the youth population, and end with a look at how this will affect the treatment of DTC participants.

### **Impact on Eligibility Criteria**

There are four main eligibility criteria. Firstly the person must be charged with a relevant offense. This will not be impacted in any significant way based on the fact that the DTC embraces and draws into its ambit individuals charged with not only drug related offenses but rather any offense for which an individual can be tried in the RM Court. The second criterion is that the person appears to be dependent on drugs. This is the single most important criterion in determining eligibility and this will not change. The third criterion that

the participants must be at least seventeen years of age would not be subject to any change except to say that there may be a need to consider bringing persons ranging from age 12 to 16 years within the regime of the DCA. Fourthly the mental health of the persons would still be assessed to ensure that there is no mental issue that would restrict active participation in the program.

### **Impact on the Procedure for Referring and Admitting Suitable Persons into the DTC**

The first avenue mentioned in the DCA for persons to enter into the DTC enables any person charged with any offense that is triable by a Resident Magistrate and who appears to be dependent on drugs to be a suitable candidate to participate in the DTC program. This includes persons charged with drug related offenses and those charged with non-drug related offenses. The amendments would not have an effect on the admissibility of persons charged with non-drug related offenses entering into the program because those persons would continue to be brought before a regular sitting of the Resident Magistrate's Court and be thereafter referred to the DTC if they appear to be dependent on drugs. This means that the entrance of a person charged with shoplifting, for example, who is found to be dependent on drugs would not be impacted by these amendments.

On the other hand, in relation to the second avenue for persons to enter into the DTC mentioned in the DCA, which requires that the person be charged with a specified drug offense, there will be unavoidable changes. The previous position relating to offenses specified in Section 7(3) of the DCA (in the case of ganja), that such persons can be brought before the DTC on the first sitting of the court following the arrest, no longer applies except where the person is found in possession of more than two ounces of ganja. This is because under the amendments, the possession of two ounces or less of ganja now requires the officer to issue a ticket to the person, as opposed to requiring him to attend court.

The possession of any pipes or utensils for use in connection with the smoking of ganja is no longer an offense. The smoking or otherwise using ganja is not an offense unless done in a public place. It should be noted that the offence of smoking ganja in a public place would be subject to the same fixed penalty, non- payment of which requires the person to appear before a Court of Petty Sessions. Police officers would no longer be automatically required to bring these persons before the DTC to be dealt with in accordance with section 9 of the DCA. There is however an exception to this which is provided for in the section 7(3) amendments. This is where the person found smoking ganja in a public place in contravention of section 7E of the Act has contravened that section on two or more previous occasions. Effectively this person could be brought before the DTC.

Unlike the first avenue, the second avenue provides for persons who would come under its ambit to be brought directly to a sitting of the DTC by the arresting officer. The amendments would therefore mean that accused persons charged with possession of two ounces or less of ganja or smoking ganja (where carried out in a public place), can no longer be brought directly to a sitting of the DTC by a police officer. This however does not impact a police officer's ability to bring persons who are charged with possession of more than two ounces of ganja, not more than an ounce of opium or not more than one-tenth of an ounce of cocaine, heroin or morphine directly to a sitting of the DTC.

In theory, all this would represent a remarkable change. Had the provision in section 7(3) requiring arresting officers to bring persons directly to the DTC been utilized by police

officers, then this might have impacted on the admissibility of suitable persons into the DTC, but experience has shown that this provision is scarcely utilized. A survey carried out in the four DTCs in Jamaica supports this position. Data was collected from the four parishes in which the DTCs exist: St James, St Catherine, St Thomas and the Corporate Area, and spanned the period 2012 to 2014. These were some of the questions posed:

- Please indicate whether any of the persons were referred by the arresting officer and if so how many;
- Please indicate how many of the files relating to the persons referred contained a police report with a note of the facts giving rise to the belief that the person is dependent on drugs in accordance with section 6(1) of the Drug Court (Treatment and Rehabilitation of Offenders) Act;
- Please indicate whether any of the participants were brought directly to a sitting of the DTC by the arresting officer in accordance with the provisions of section 7(1) of the Drug Court (Treatment and Rehabilitation of Offenders) Act. If so how many?

The answers to all those questions in the four parishes was “None,” except for the second question answered by the Corporate Area DTC, the answer to which was that of the eighty-five files referred for the years 2012 to 2014, three of them contained a police report with a note of the facts giving rise to the belief that the person is dependent on drugs.

The results of the data collected elucidates the fact that in the three years preceding the year 2015, no police officer has ever brought an accused person directly to a sitting of the DTC or referred an accused person to the DTC. It is true that, for those three years, all of the participants in the program entered through the provision under the second avenue, whereby the person is first taken to the regular court and then referred to the DTC by the Clerk of Courts (Jamaican prosecutor). However, the Clerk of Courts in most instances did so without the benefit of a police report with a note of the officer’s belief that the person is dependent on drugs. Although section 6(1) of the DCA provides for the arresting officer to include in his report a note of the facts giving rise to his belief that a person is dependent on any drug, this is scarcely done. The identification of suitable persons for the DTC program is rarely done by the arresting officer, and the means by which most participants enter the program is through either the initiative of the judge, prosecutor, defense attorney or probation officer, or simply by way of an indication from the accused person himself that he has a drug problem and needs help. That police officers rarely utilize this provision is a matter of concern for the DTC. It begs the question whether or not they will carry out the obligations being imposed on them under the amendments, whereby the police officer is obligated to refer minors and persons dependent on drugs to the National Council on Drug Abuse.

There will therefore be changes in the way in which persons are referred to the DTC. This does not however mean that all persons charged with offenses of possession of two ounces or less of ganja or smoking ganja in a public place will be excluded from the DTC but it may prove more difficult for them to find their way into the DTC. The procedure to be followed would be similar to the procedure followed in the case of traffic tickets where when an accused person challenges the charge, he is obliged to attend court to state his plea of not guilty, after which he can be tried for the offense. If a person wishes to challenge the ganja offense for which he is charged, as in the case of a traffic infraction, he would have to appear before the Petty Sessions Court for his case to be determined before Justices of the Peace. Although the amendments stipulate that the offence of possession of two or less ounces of ganja is now subject to adjudication before a court of Petty Sessions, a Resident

Magistrate has the same jurisdiction as two justices of the peace and so has jurisdiction to try petty sessional offences. In that event, the individual, if he is dependent on drugs, could still potentially be identified by a prosecutor, JP, RM, probation officer, attorney-at-law or by his own acknowledgement of drug -dependence, and therefore could still be referred to the DTC under the provisions contained in section 7 of the Act. Although referred, this does not mean automatic admission into the program. The question of admissibility of these individuals may however be a concern for the DTC.

The aim of the DTC is to provide an alternative to incarceration for the drug-dependent offender who has committed an offence because of drug dependency or addiction. Persons for whom the most severe penalty would be that of community service or a fine would perhaps not be deemed to be eligible participants. This posture is not a novel one. For many years now the emphasis of the DTC has been the provision of an alternative to incarceration for the drug dependent offender. This is what advocates of the DTC concept have been promoting. This is what the DTC stands for, the treatment and rehabilitation of the offender who is so dependent on drugs that he commits crimes as a result of this, a crime which would otherwise attract a sentence of imprisonment. The emphasis of the DTC should be on dependency and should be focused on treating persons who are addicted to drugs or are dependent on drugs and not the recreational or infrequent user of drug.

Another very important factor that ought not to be overlooked is that, under the provisions of the Act, ganja is just one of the named drugs for which accused persons can be treated. Among the other substances defined as drugs under the DCA is alcohol, a substance which is not currently illegal for adult users. Other drugs which will remain unchanged for the purposes of the DTC are cocaine, opium, alcohol and morphine.

Based on the rationale behind the DTC the changes, although they will impact the referral process, should have little or no impact on the admissibility of suitable participants into the DTC program.

### **Impact on the Operations of the Drug Treatment Court**

In order for a person to be accepted into the DTC program, he must first consent to participate in the program; this includes his consent to the treatment plan. The treatment plan can be very rigorous and should include one-on-one sessions, group counseling sessions, educational sessions, drug testing and a recovery plan which incorporates a statement of the problems to be addressed, time-limited goals to be achieved which address the problem; steps to be taken by the treatment provider and the participant to achieve the goals, target dates for achievement of steps and goals and, where possible, dates of resolution and a description of the type and frequency of counseling services to be provided.

This treatment plan is supervised by the court and participants are required to make frequent court appearances where the team inclusive of the RM, the JPs, the prosecutor, the defense attorney, probation officer, psychiatrist and counselor all discuss his/her progress. During the pre-court meeting decisions are taken as to whether or not sanctions or incentives are to be imposed depending on how the participant is doing. When the participants appear before open court the sanction or incentive is imposed.

In assessing whether or not the operations of the DTC will be affected by the reforms, it is essential to examine the key components of a DTC. The ten key components of drug courts



as published by the National Association of Drug Court Professionals Drug Court (NADCP) Standards are:

- Drug courts integrate alcohol and other drug treatment services with justice system case processing;
- Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights;
- Eligible participants are identified early and promptly placed in the drug court program;
- Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services;
- Abstinence is monitored by frequent alcohol and other drug testing;
- A coordinated strategy governs drug court responses to participants' compliance;
- Ongoing judicial interaction with each drug court participant is essential;
- Monitoring and evaluation measure the achievement of program goals and gauge effectiveness;
- Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations;
- Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness;

These key principles ought to guide how DTC practitioners operate in the DTC. Through training of DTC practitioners, these key principles are emphasized as essential to the operation of a DTC. Regardless of the substance for which a participant is being treated for, the key principles remain constant.

A brief look at the key principles suggests that that they will not be impacted by the changes to the law relating to ganja. The first mentioned key component is the integration of alcohol and other drug treatment services with justice system case processing. This is expected to remain the same as the essence of a DTC program is the integration of treatment services into the justice system. Another component, abstinence for example is a critical key component which will still be promoted. When an individual is accepted to participate in the program, one significant requirement is that he is expected to refrain from using drugs. This includes both legal and illegal drugs. The restrictions imposed in most instances include restrictions on alcohol use. It stands to reason that regardless of whether or not ganja is a legal drug, the requirement to abstain from all drugs will still apply. One factor to be considered is whether or not the DTC will consider an infraction involving possession of ganja to be a criminal charge requiring sanction. The program promotes a drug free life regardless of whether or not the drug is legal; the stance would remain the same, as persons currently being treated for alcohol dependency are subject to the same treatment as those being treated for drugs which are illegal.

These reforms may also impact on the perception of the participants. This may require a change in the type of counseling that is offered to them. It is a fact that many participants or prospective participants would be aware of the reform. Although they may not have full knowledge of the legal ramifications, they have an appreciation that there will be some relaxation about the use of ganja. This may impact their commitment to adhere to a drug free lifestyle and so this fact must be discussed in the counseling sessions and addressed in the most suitable way.

## Target Population

The amendments may also have an impact on the target population in the DTC. It is a fact that some participants opt to participate in the DTC program in order to avoid a criminal record. With the removal of a criminal record for some offences, this will no longer be a motivating factor for those persons. These individuals are usually the type of low risk accused persons who are not necessarily repeat offenders and who were found in possession of ganja and wish to have his or her record untarnished, in many instances because of plans to migrate. With the changes, these persons will no longer be drawn to the DTC.

Treating the right persons is a concern not only in Jamaica but in other places that have DTCs. According to Douglas Marlowe, Chief of Science, Policy and Law for the National Association of Drug Court Professionals, the individuals who respond best to the DTC model are, "individuals who (1) have negative risk factors for failure in less intensive treatment or supervisory programs, and (2) are compulsively addicted to drugs or alcohol. These individuals are commonly referred to as 'high risk/high need' offenders or the 'high value cases.' This terminology is borrowed from a Canadian school of thought in criminology known as Risk, Needs, Responsivity Theory or RNR. Among the most carefully studied and well validated paradigms in criminology, RNR correctly predicts that intensive programs such as drug treatment courts should produce the greatest benefits for offenders who have more severe antisocial backgrounds, clinical impairments or treatment resistant histories. Such individuals typically require intensive monitoring and sustained treatment interventions in order to dislodge their entrenched, negative behavioral pattern." (Marlowe, 2013)

Persons who are charged with possession of small quantities of drugs, ganja in particular, are usually regarded as low risk offenders. Although the DTCs treat these individuals when they are dependent on the use of drugs, these individuals are not always a threat to society and are less likely to graduate to committing more serious crimes. DTCs may be more effective if they target individuals who are a threat to society. Marlowe speaks about these individuals as well and categorizes them as low-risk and low-needs offenders. He points out that they are more likely to improve their conduct after an arrest, meaning that "intensive interventions may offer few incremental benefits for these individuals, but at a substantial cost." There is also the risk that they are more prone to anti-social conduct after spending time with the high-risk offenders. It is for this reason, Marlowe indicates, that drug courts have been effective but expensive; drug courts that treat low-risk, low-needs populations may not reduce serious crime or jail populations because these individuals are not likely to be sent to jail in the first place. (Marlowe, 2013)

Questionnaires were sent out to all the DTCs in Jamaica with a view to collecting data for the last three years, in relation to whether or not the persons referred to the DTC were charged only for drug offenses, or whether it was a mix of drug offenses and other offenses. The data collected is shown below.

**Corporate Area DTC**

<b>Year</b>	<b>Number of persons referred</b>	<b>Number of person charged with offences under the Dangerous Drugs Act</b>
<b>2012</b>	36	19
<b>2013</b>	32	8
<b>2014</b>	17	12

**St. James DTC**

<b>Year</b>	<b>Number of persons referred</b>	<b>Number of person charged with offences under the Dangerous Drugs Act</b>
<b>2012</b>	44	40
<b>2013</b>	29	26
<b>2014</b>	26	22

**St. Thomas DTC**

<b>Year</b>	<b>Number of persons referred</b>	<b>Number of person charged with offences under the Dangerous Drugs Act</b>
<b>2012</b>	N/A	N/A
<b>2013</b>	7	2
<b>2014</b>	10	0

**St. Catherine DTC**

<b>Year</b>	<b>Number of persons referred</b>	<b>Number of person charged with offences under the Dangerous Drugs Act</b>
<b>2012</b>	N/A	N/A
<b>2013</b>	N/A	N/A
<b>2014</b>	11	9

The above data demonstrates that the DTC does not treat only persons who are charged with offenses contrary to the Dangerous Drugs Act, but rather it is a mix of both drug related and non-drug related offenses.

In fact, the offenses for which persons are charged include many property offenses. It is important to note also that the DTC has never been exclusively for drug offenses, and where persons are charged with drug offenses, this is not restricted to only possession of ganja, but extends also to possession of cocaine. The fact that some of the persons charged with

simple possession offenses opt to participate in the program in order to avoid a criminal record is not consistent with the objectives of the DTC, which is to target persons who commit crimes because of a drug dependency. In light of the amendments to the DDA, the DTC may become more relevant and treat the type of persons for which it was intended that is, the high risk population, the individuals who have a real dependency or addiction to drugs and have committed crimes because of this dependency.

### **Treatment issues**

There are diverging views concerning the impact that decriminalization of ganja will have. One view is that with decriminalization there will be an increase in drug use and dependency, a subsequent increase in addiction and psychosis and therefore a greater need for more treatment services. Another view is that there will be no significant change in the number of persons who will need treatment services. Though there is much debate about this issue, there is not yet enough concrete information from any of the other regions that have implemented this reform to fully prove one position. The position seems uncertain and the research by policy makers and regulators seems to be continuing. Although there appears to be much uncertainty as to whether usage will increase or remain static, no one has suggested that there will be any contraction in use or in the number of persons who will require treatment. The DTC treats persons who are in need of treatment and rehabilitation. Either way the DTC will still remain relevant.

We should not lose sight of the fact that ganja, although quite prevalent in Jamaica, is not the only drug for which DTC participants receive treatment. Other prevalent drugs for which treatment is provided are cocaine and alcohol.

### **The impact on the general youth population**

Drug use among the youth population is a global public health concern and Jamaica is not excluded. It is said that youth is often times the period where drug use is initiated and continues into adulthood.

Study investigator Michael T. Compton, MD, Chairman, Department of Psychiatry, Lennox Hill Hospital, New York City, and professor of psychiatry, Hofstra University North Shore–LIJ School of Medicine, Hempstead, New York, spoke to delegates attending the American Psychiatric Association's (APA's) 2014 Annual Meeting about the impact of marijuana use on youths indicating that:

“Heavy marijuana use between the ages of 15 to 17 years, a period of potentially critical brain development, could result in an earlier age of onset of psychosis in those destined to develop the disorder, new research suggests. Preliminary data from the Allied Cohort on the Early course of Schizophrenia (ACES) II project, a secondary analysis of ACES, showed that youth who used cannabis when aged 15 to 17 years experienced first episode psychosis (FEP) an average of almost 4 years earlier than their counterparts with FEP who did not use cannabis. Any delay in psychosis onset is important because this improves outcomes in terms of severity of symptoms and functional disability...” (Compton, 2014)

The amendments relate to every person and so would also decriminalize the possession of two ounces of ganja and the smoking of ganja for persons below the age of 18 years, so theoretically there should be some change. Police officers are mandated to refer all minors found in breach to the National Council on Drug Abuse. It is hoped that, in the case of minors, mechanisms will be put in place to ensure that they are not only referred but also that they follow up on the referral. No doubt there may be a need to place a burden on the NCDA to ensure that these referrals are followed upon. Some worry that with decriminalization ganja may become more readily available and this may result in an increase in use, leading to increased dependency by some of the most vulnerable members of society. The solution the Minister of Justice proposes to address some of these concerns is for the dissemination of more information and more educational activities as to the risks involved.

Already there are concerns about youth using ganja and other addictive substances in Jamaica. Treatment services in Jamaica geared towards the youth population are limited and so there may be a need to explore and create more treatment services for youth. Although there are DTCs in place for adults there are none in place for youths. Persons under the age of seventeen years are excluded from participating in a DTC program pursuant to the DCA. It may be useful for stakeholders to consider legislative intervention to bring the youth population within the ambit of the DTC model in Jamaica.

### **Should the DTC make any changes to accommodate the new reforms?**

In considering this issue, it is important to get a sense of how it has been approached by other DTCs. In the United States, the NADCP's approach seems to be business as usual. The statement of the CEO of the NADCP is instructive:

"NADCP has long been committed to guiding the Drug Court field and the broader criminal justice and treatment communities with science, not ideology. After thoroughly reviewing the research regarding the safety of recreational marijuana use and the efficacy of 'medical' marijuana, NADCP unequivocally stands against the legalization of marijuana and the use of smoked marijuana as 'medicine.'" (National Association of Drug Court Professionals, 2013b)

The NADCP's position statement is one which emphasizes the fact that although they support continued research into medically safe non-smoked delivery of marijuana for medical purposes they oppose the legalization of smoked or raw marijuana as well as any efforts to approve any medicine outside the FDA process, including marijuana. Participants will still be prohibited from using or smoking raw marijuana and be subject to suitable consequences for such use, however, the emphasis will continue to be on treatment and behavioral interventions geared towards the recovery of the participant from marijuana use and addiction. Professionals and policy makers in Jamaica have attended the NADCP's annual conferences and have implemented some of their approaches in Jamaican DTCs. The position taken by the NADCP therefore may have some influence on the stance of the Jamaican DTC.

It cannot be denied that what happens in North America impacts what happens in Jamaica based on the close proximity of the countries. The DTC concept first originated in the USA and consequently, some practices are similar. However the DTC in Jamaica has been

largely influenced by the Canadian model. In fact professionals from Canada have on occasions trained and shared their experiences with Jamaican DTC practitioners. Jamaican practitioners have visited DTCs in Canada and have implemented some of their practices into the Jamaican DTCs. Visits to DTCs in other countries such as Chile and Belgium have assisted in providing an understanding of some of the best practices of DTCs practitioners all over the globe. More recently the DTC model has been implemented in Trinidad and Tobago, Barbados, Mexico and many other countries in this hemisphere. It is important to note that the DTC model is currently in expansion mode and there is significant diversity in how it is implemented and operated and even how it is termed. Jamaican practitioners stand ready to offer guidance and also to learn from other countries that have explored or are exploring the model of the DTC.

## **Conclusion**

It is important never to lose sight of the main objectives of the Jamaican DCA, which include reducing the incidence of drug use and dependence by persons whose criminal activities are linked to drug dependence as well as empowering these persons to function as law abiding citizens. As such, there must also be an emphasis on achieving long term recovery from drug abuse and addiction, which necessarily includes recovery from the abuse of ganja, alcohol and cocaine, all of which are prevalent in Jamaican society.

It is also important to re-iterate that the DTC should be targeting individuals who are committing crimes because of a dependence on drugs and not only the individuals who have been found to be in possession of drugs. The focus should be on the offender and not on the offense. It is therefore not the business of the DTC to debate the decriminalization or legalization of any drug. Regardless of whether there is decriminalization or legalization, the objectives of the court will remain the same. Where necessary, the court may have to implement more strategies to deal with any treatment issues that may arise as a result of decriminalization. There may be a need to revamp the treatment plan to meet any changes brought about by decriminalization. Hence the need for professionals working in DTC to be equipped with training and capacity building techniques to ensure that they remain au fait with developments in the field and that their strategies to tackle drug abuse continue to be relevant and effective. The essence of the DTC is to offer treatment and supervision to drug dependent offenders, not to emphasize or de-emphasize legalization or decriminalization of ganja. It is the business of the court to continue to treat those who are more in need of treatment than incarceration.

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