

For discussion on
5 June 2012

Legislative Council Panel on Security

**Public Consultation on
Community-based Drug Testing**

PURPOSE

This paper briefs Members on the Administration's plan for a public consultation exercise on a community-based drug testing¹ (CDT) scheme.

BACKGROUND

Task Force on Youth Drug Abuse

2. Highlighting the grave harm caused by the abuse of psychotropic substances to those who consume them and the community at large, the difficulties in detecting and proving consumption of dangerous drugs which is a serious arrestable offence², and the degree of seriousness of the whole youth drug abuse problem, the Task Force on Youth Drug Abuse (Task Force) chaired by the Secretary for Justice noted in its report released in November 2008 that there was a strong case to pursue a legislative exercise to provide for compulsory drug testing by law enforcement agencies for the lawful purposes of investigation and prevention of crime and protection of public health. It recommended that the Government should look into whether and how a compulsory drug testing scheme may be made available in Hong Kong. Recognising the sensitivity of the matter, the Task Force further suggested that a proposal for a compulsory drug testing scheme should be set out in a detailed consultation paper and public views should be invited before taking

¹ This community-based approach was named as compulsory drug testing in the report of the Task Force on Youth Drug Abuse.

² Under Section 8 of the Dangerous Drugs Ordinance (Cap.134), it is an offence to smoke, inhale, ingest and inject a dangerous drug. The maximum penalty is a fine of \$1,000,000 and imprisonment for seven years.

forward the proposal. A summary of the relevant recommendations made by the Task Force is at **Annex**.

Development since the Task Force's Recommendations

3. Since the release of the Task Force Report, the Administration has worked closely with different sectors to implement the recommendations made, based upon the five-pronged strategy of (a) preventive education and publicity; (b) treatment and rehabilitation; (c) law enforcement and legislation; (d) external cooperation; and (e) research. Various measures have been adopted, including amongst others, increasing resources to enhance different facets of preventive education and publicity programmes, and drug treatment and rehabilitation services³. These various initiatives have resulted in additional recurrent expenditure of \$140 million per annum.

4. Taking into account the successful experience of the Trial Scheme of School Drug Testing in Tai Po in 2009/10 and 2010/11 school years as a preventive measure to strengthen the resolve of students to stay away from drugs and to help trigger the motivation of students who were troubled or had abused drugs to seek help and quit⁴, the Government began in the 2011/12 school year to promote the Healthy School Programme with a drug testing component (HSP(DT)). The school-based HSP(DT), comprising both diversified personal growth programmes and voluntary drug testing, is a holistic initiative aiming to enhance students' resilience to stay away from drugs and cultivate their positive values, thereby fostering a drug-free culture on campus.

5. Apart from tightened enforcement by the law enforcement agencies, there has been more focus on publicising the harmful effects of psychotropic substances and promoting awareness of consumption of dangerous drugs being a serious arrestable criminal offence.

³ There has been an increase in resources for youth outreaching teams and school social work service to strengthen support for the identification and assistance to young people at risk and those with drug problems. To ensure more accessible and effective counselling and support for drug abusers, the number of counselling centres for psychotropic substance abusers (CCPSAs) has increased from five to eleven with the provision of additional resources for on-site medical support services. The capacity of substance abuse clinics has also been expanded. In addition, a pilot project on enhanced probation scheme for young drug offenders was launched in October 2009.

⁴ A review on the Trial Scheme during 2010/11 school year shows that most (about 80%) of the participating students believed that the Scheme was effective in establishing a drug-free campus. Also, the drug abuse situation for students in Tai Po was shown to be better than that outside the district.

6. Together, these various initiatives have helped to bring improvements in the drug scene, with a decline in the number of reported drug abusers to the Central Registry of Drug Abuse (CRDA) by 18% from 13 990 in 2009 to 11 469 in 2011. The decline among those aged under 21 was more pronounced, with a drop of 41% from 3 388 to 2 006 over the same period. The overall number of newly reported cases saw a more phenomenal improvement, recording a decrease by 28% from 4 460 to 3 200 in the same period, and that among those aged under 21 by 46% from 2 253 to 1 229.

Recent developments

7. In spite of signs of improvements, feedback from non-government organisations points to an evolving problem of increasing difficulties in identifying those who are abusing drugs. Unlike addiction to traditional drugs like heroin, it is more difficult to detect abuse of psychotropic substances, which has become more popular in recent years, because of the normal absence of withdrawal symptoms in the short term. Frontline workers reflect that it has taken longer and longer for drug abusers to be reached by the help networks. It is common for drug abusers to seek help only when the withdrawal symptoms become more apparent, or when the deteriorating health conditions caused by the psychotropic substances compel drug abusers to seek medical assistance. This phenomenon is corroborated by statistics showing a hefty increase in the drug history of newly reported drug abusers in the CRDA, with half of whom having taken drugs for 3.5 years or more in 2011, almost doubling in a span of four years, from 1.9 years in 2008.

8. This reveals a gap which remains to be filled since psychotropic substances are known to be the cause of serious, sometimes irreversible, harm to both the physical and mental health of abusers.

9. There are also situations of individuals with obvious signs of drug abuse, yet remaining difficult to provide timely referral to treatment. For example, there have been various occasions when dangerous drugs are discarded on the floor at entertainment venues (e.g. a karaoke room inside an upstairs bar) during Police operations but nobody admits to possession. Even if individuals are found to be evasive and have flushed faces, glazed eyes, slurred speeches and uncoordinated movements, there is often little that could be done unless possession could be clearly established. In 2011, there were 105 cases of dangerous drug seizure at night entertainment venues without arrest.

10. Various alternative, less intrusive measures have been taken forward in the past few years to tackle the problem of drug abuse. In the light of the latest challenges highlighted above, there are voices in the community urging us to consider if it is time to take a step further by introducing drug testing at the community level by legislative means as a necessary and proportional measure to facilitate early identification of drug abusers and timely intervention, provided that there are adequate safeguards protecting the rights of individuals concerned.

COMMUNITY-BASED DRUG TESTING

The Need of a Public Consultation Exercise

11. Any proposal to mandate by law individuals to undergo drug tests involves sensitive yet important issues of protecting the rights of individuals, and calls for community consensus. We have over the past few months engaged in informal dialogue with various stakeholders (members of the Action Committee Against Narcotics (ACAN), medical practitioners, those in the anti-drug, social service and education sectors, etc) on whether there is a case to take forward CDT, and if so, how. Understandably some voiced human rights and civil liberties concerns, whereas some others supported the implementation of CDT but held divergent opinions on how a CDT scheme should operate. That said, there was general support, taking into account known sensitivity of the subject, for proceeding to consultation later in the year in order to facilitate an informed and rational discussion of the issues, in particular to gauge whether there could be consensus on how certain sensitive issues could be tackled.

Issues for Consideration

12. With the Task Force's recommendations (at Annex) as the starting point, we have during informal dialogue sought to deliberate with stakeholders on a number of principles.

13. The majority of views heard appreciated the Task Force's direction that the primary objective of a CDT is early identification of, hence allowing timely assistance to, the drug abusers, rather than to seek out those who have committed an offence for punishment. In particular, taking note of the growing problem of the prolonged period taken before those who have drug problems to be reached by help networks (paragraphs 7 to 9 above), there was general support among interested

parties for further dialogue to identify viable measures to tackle the problem.

14. In respect of concerns about the rights of the individuals and unwarranted intrusion by law enforcement agencies, there has been discussion on whether it is possible to address such concerns by building in checks and balances in the system, for example, the requirement that law enforcement officers could only exercise the power to conduct CDT if there are reasonable grounds to suspect that an offence of drug consumption has been committed under situations like the one in paragraph 9 above. There has also been discussion on what further safeguards may be built into the system, e.g. requirements on proper training and authorisation for law enforcement officers, and safeguards to protect the rights of young persons who are to undergo the drug test. The views heard in general welcomed the Task Force's recommendation⁵ regarding the taking of body samples of a minor in the presence of his or her parent, guardians (or relatives) or an independent person if the former is not available.

15. On the scope of application of CDT⁶, there has been general support for the view that a CDT scheme, if implemented, should apply to persons of all ages, rather than young people only, since it is not justifiable to have discriminatory treatment for people of different age groups. However, there is also general support for providing more lenient treatment to young people by allowing them an additional opportunity instead of facing immediate prosecution. The Task Force report highlighted the question of consulting the public on the options of a two-tier or three-tier intervention structure⁷. We hope to continue to gather views on the options which may be available to provide young people below 18 who are found to have taken drugs with an opportunity for treatment and rehabilitation under guidance and supervision rather than facing immediate prosecution, such as through a system akin to the

⁵ Task Force's Recommendation 7.4.

⁶ Task Force's Recommendation 7.2.

⁷ Task Force's Recommendation 7.3. Under a three-tiered system contemplated by the Task Force, a person tested positive for the first time would be given a warning and offered the service of voluntary treatment and rehabilitation programmes. If the same person is caught and tested positive for a second time ("the second-timer"), the law enforcement officer of a sufficiently senior rank has the discretionary power to offer the second-timer a mandatory treatment option in lieu of prosecution. If the same person is caught and tested positive for a third time or more, he would be prosecuted and the positive drug test result would be admissible evidence to prove consumption at trial.

Police Superintendent's Discretion Scheme (PSDS). In this connection, many acknowledged that after significant injection of new resources in the past few years, downstream support services are much more ready to cope with new demands that may arise from a CDT scheme.

16. Another issue raised by the Task Force for public consultation was whether there should be a case to consider giving the offence of consumption of drugs extra-territorial effect⁸, such that it would still be an offence even if the drugs have been taken outside Hong Kong. This could be a powerful tool to plug the loopholes of cross-boundary drug abuse or using cross-boundary travel record as a defence, but involves complex issues concerning jurisdiction, for which public consensus should be sought.

WAY FORWARD

17. We plan to engage with interested parties in considering the issues highlighted in the Task Force report and further examine those set out at paragraphs 12 to 16 above before we formally consult the public later in the year. The objective of the consultation exercise would be to encourage the public to fully air their views on relevant issues. The Administration would adopt an open position on the matter. Whether and how CDT should be implemented are matters to be decided in light of the views of the community.

ADVICE SOUGHT

18. Members are invited to note the plan for public consultation and offer comments, in particular, on the issues highlighted in paragraphs 12 to 16 above.

Narcotics Division
Security Bureau
29 May 2012

⁸ Task Force's Recommendation 7.5.

**Summary of Task Force on Youth Drug Abuse's
Recommendations Related to Community-based Drug Testing**

As a matter of principle, new legislation should be introduced to empower law enforcement officers to require a person reasonably suspected of having consumed dangerous drugs to be subjected to a drug test, although important issues including the extent of coverage, human rights concerns, read-across implications on law and enforcement, resources as well as implementation details have to be carefully considered. A proposal for a compulsory drug testing scheme should be set out in a detailed consultation paper and public views should be invited before the proposal is taken forward. (Recommendation 7.1)

2. In particular, public views should be sought as to whether the proposed compulsory drug testing scheme should apply to young persons only or to persons of all ages, and if the former, what the age limit should be. (Recommendation 7.2)

3. The primary purpose of the compulsory drug testing scheme is to enable early intervention for treatment and rehabilitation, instead of facilitating prosecution. The proposed compulsory drug testing scheme for youngsters should therefore comprise a tiered intervention structure offering a warning and/or treatment and rehabilitation option for those who test positive, diverting them away from possible prosecution which should be the last resort. The public should be consulted on the options of a two-tier or a three-tier intervention structure. (Recommendation 7.3)

4. The proposed compulsory drug testing scheme should provide for the taking of body samples of a minor in the presence of his or her parent or legal guardian (or relatives), or an independent person in case the former is not available. The public should be consulted on the possible pool of independent persons. (Recommendation 7.4)

5. Given the trend of and concern about cross boundary drug abuse among young people, the public should be consulted as to whether extra-territorial effect should be introduced to the offence of consumption of drugs (and the extent in terms of the degree of connection of the drug

abusers to Hong Kong), or whether the status quo should be maintained (i.e. no extra-territorial effect). (Recommendation 7.5)

6. Alongside the formulation of a detailed proposal for a compulsory drug testing scheme, the Administration should conduct an assessment on the corresponding increase in the demand for downstream support services, including in particular treatment and rehabilitation programmes, as well as the resource implications. (Recommendation 7.6)