



Atlantic drift

American drug laws are perceived to be draconian and ineffective. But are we any better off in the UK?

Anna Ling examines the varying impact the law on both sides of the Atlantic has on the punishment and civil rights of drug offenders.

In the UK, drug strategies tend to focus on harm reduction and criminalising suppliers. In contrast, US federal and state drugs laws target not only drug suppliers, but also drug users.

Specifically, in the UK, it is not illegal to be under the influence of a drug or to internally 'possess' it, unless you are driving. It is also not illegal to be in possession of drug paraphernalia or cannabis seeds, and it is not illegal to supply cannabis seeds.

In the US, it is generally a crime to simply be under the influence of a controlled substance and internal possession is an offence. Furthermore, in the US, possession and supply of cannabis seeds and of marijuana paraphernalia is a crime. The US essentially criminalises all conduct related to drug use.

But when it comes to the rights of the suspect and the scope and extent of police powers, it is the UK which exercises the harshest laws. A British police officer can legally stop any vehicle at any time. The officer does not need to have reasonable grounds that a crime has been committed to execute the stop. The police can search a vehicle if they have reasonable grounds to think it contains stolen goods, drugs,

weapons, or explosives or other terrorist material. The vehicle search could include the search of the car itself, including the boot, the occupants and their bags contained in the vehicle.

In the US, a police officer must have probable cause of a violation of law, such as a road traffic offence, to legally stop a vehicle. A police officer will further need reasonable suspicion to further detain or search the occupants or vehicle. Recently, the US Supreme Court ruled that passengers in vehicles pulled over by the police have the same rights as drivers to challenge the legality of the traffic stop when it results in an arrest. Thus, the laws protecting the individual are greater in the US than the UK.

Furthermore, after a suspect has been arrested in the UK, police have a wide range of powers to search the suspect's person, property and premises owned or occupied by the suspect. Section 32 of the Police and Criminal Evidence Act 1984 permits the search of an arrested person when there are reasonable grounds for believing that a search is necessary. Section 32 also grants the police power to enter and search any premises where the suspect was at the time of arrest or

immediately before the arrest for evidence relating to the offence for which he was arrested. Under section 18 of the Act, the police can search any premises occupied by someone who is under arrest for certain serious offences, even though the suspect was arrested away from these premises. In other words, the police can search basically any premises upon an arrest alone, but they must have reasonable grounds for suspecting that there is evidence on the premises relating to the arrested person's offence or similar offence.

In the United States the laws of search are much more restrictive and are designed to protect the individual, their homes and privacy. Thus, for the police to search a person's home, a search warrant must be obtained from an impartial judge, unless there are emergency circumstances, before premises can be searched. The search warrant must show probable cause for the search and be specific as to each individual property sought to be searched.

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If the police violate the laws, suppression of evidence is warranted and routinely granted by courts in the US, often resulting in the prosecution case collapsing. In the UK a judge will admit evidence, even if illegally obtained, if it is reliable, credible and fair to do so.

Drug trafficking offences are dealt with more severely in the United States, with substantially longer prison sentences than in the UK. In the US federal court, mandatory minimum sentences are common. For example, if a person is convicted of manufacturing, distributing or possession with the intent to supply 100 grams of heroin, 500 grams of cocaine, five grams of crack, or 100 kilos/plants of cannabis, the sentence would be a minimum mandatory of 5 years. There are also ten-year minimum mandatory sentences depending on the quantities involved. The minimum mandatory sentences will also be doubled when the defendant has one prior felony drug conviction.

In addition, the US federal criminal system does not allow for parole or licence. Thus a person sentenced under federal law is expected to actually serve 85 per cent of their time in prison. If the defendant has two or more prior felony drug convictions, a mandatory life imprisonment is required when threshold drug quantities are involved. Most federal drug trafficking cases will generally only involve those cases of large-scale drug trafficking and conspiracy cases. State drug sentencing will vary depending on each state's laws, but tend not to be as severe as federal sentencing laws.

The other common feature of US sentencing laws, and one which the UK does implement, contrary to popular belief, are the three strikes laws. The stated justification for these laws is that habitual offenders are incorrigible and chronically criminal, and must be imprisoned as a matter of public safety.

The first true 'three strikes' law, with virtually no

exceptions provided, was enacted in 1993 in Washington. Now, approximately twenty-six states and the federal government have adopted three strikes statutes. Under three strikes, a third felony conviction will bring a sentence of life in prison, with no possibility of parole until a long period of time, most commonly 25 years, has been actually served.

The exact application of the three strikes laws varies from state to state. Some states, similar to the UK, require that all three felony convictions are for violent crimes in order for the mandatory sentence to be pronounced. Others, like California, mandate the enhanced sentence for any third felony conviction so long as the first two felonies were deemed to be either 'violent' or 'serious,' or both. Thus, a person in California with two prior violent or serious felony convictions could be sentenced for life for a present third non-violent felony offence, such as theft, shoplifting or possession of a controlled substance.

In the past 15 years, the court system in the United States has targeted drug users with a focus on abstinence. For example, many states have been utilising drug diversion programmes and drug courts in lieu of formal criminal proceedings. Successful completion of these programmes allows defendants to escape a criminal conviction. There are now more than 650 drug courts – developed in the early 1990s as an alternative to traditional criminal justice prosecution for drug-related offences – in the US, and pilot programmes have recently emerged in the UK.

The mission to ensure people remain drug free in America extends to college students. The US Supreme Court has ruled that random or suspicion-less drug testing of student athletes is allowed. Many schools also have voluntary drug testing programmes when parents and pupils provide consent. The US Supreme Court has not yet ruled whether mandatory random drug testing of students in general is legal.

In the US, the stigma of prior drug convictions can further limit a student's opportunities. College level students in the US can be denied federal financial aid if they have past drug convictions. Under the Higher Education Act Aid Elimination Penalty signed into law in 1998, nearly 200,000 would-be college students have been declared ineligible for financial aid, which they need to attend college.

Until 2004, schools in the UK were advised against drug testing by government education bosses. Since then, guidance states that head teachers are within their rights to employ random drug testing policies on the students. However, consent from the parent prior to random drug testing is recommended. Where no consent has been given prior to a random drug test it may result in a possible challenge by parents and pupils under the Human Rights Act.

While American criminal drugs laws and sentencing are excessively punitive, the scope and extent of protecting the individual's rights should be a model followed by the UK.

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