

Decriminalization of Narcotics

Argentina • Australia • Brazil • Canada • Costa Rica
Czech Republic • Germany • Ireland • Israel
Mexico • Netherlands • New Zealand
Norway • Portugal • South Africa
Uruguay

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Comparative Summary

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This report, prepared by the foreign law specialists and analysts of the Law Library of Congress, provides a review of laws adopted in Argentina, Australia, Brazil, Canada, Costa Rica, the Czech Republic, Germany, Ireland, Israel, Mexico, the Netherlands, New Zealand, Norway, Portugal, South Africa, and Uruguay with regard to legalization, decriminalization, or other forms of regulation of narcotics and other psychoactive substances. Individual country surveys included in this study demonstrate varied approaches to the problem of prosecuting drug use, possession, manufacturing, purchase, and sale.

The country surveys demonstrate some diversity and common threads among these jurisdictions as to defining narcotics, distinguishing between “hard” and “soft” drugs, establishing special regulations concerning cannabis, refusing to prosecute personal use and/or possession of small quantities of drugs for personal use, giving law enforcement authorities the discretion not to prosecute minors and first-time offenders, applying alternative forms of punishment, and providing treatment opportunities. The following approaches toward decriminalization of narcotics were identified:

- Production, marketing, and consumption of marijuana is legalized and regulated (Uruguay);
- Drugs are prohibited but the sale and use of soft drugs is tolerated and regulated (Netherlands);
- The personal possession and use of small amounts of drugs is not penalized while other drug-related activities are prohibited (Costa Rica, Czech Republic, Mexico, Portugal); and
- Treatment and alternative punishments for minor drug offenses are allowed (Argentina, Australia, Brazil, Germany, Israel, New Zealand, Norway).

While most of the countries reviewed do not prosecute individual drug users or have an option for avoiding their criminal prosecution, in general, possessing, manufacturing, and trading in drugs is prohibited. The Czech Republic made the possession of drugs legal after the collapse of the Communist regime but reinstated the penalties for possession in “larger than small” amounts shortly thereafter.

Most of the countries differentiate between soft and hard drugs, listing cannabis as a soft narcotic, and two countries, the Netherlands and Uruguay, provide for special cannabis-related rules. While in the Netherlands marijuana is still classified as an illicit substance, these two countries tolerate and regulate the use of cannabis. Other jurisdictions provide for less strict or suspended punishment, or substitute traditional punishment with voluntary addiction treatment, community work, or other forms of alternative punishment if someone is caught using or dealing soft drugs. Additionally, New Zealand regulates the production and sale of so-called “new psychoactive substances,” such as party pills and synthetic cannabis. Previously unregulated and sold without restrictions, these drugs recently became subject to government control, including

the regulation of their sale. In Germany, even though drugs are divided into different schedules, for law enforcement purposes all narcotics are treated equally, and the distinction between soft and hard drugs can only be considered at sentencing, taking into account associated risks and damages.

In all of the countries reviewed such drug-related offenses as distributing drugs, possessing them in large amounts, cultivating plants containing a narcotic substance, producing drugs and possessing items for their production, etc., are recognized as crimes. Meanwhile, the possession of drugs for personal use in small amounts is no longer a criminal offense in some jurisdictions, but rather a misdemeanor subject to a monetary fine or other nonpecuniary punishment. These jurisdictions include Brazil, the Czech Republic, Norway, Portugal, and the Australian Capital Territory. An interesting example is provided by Costa Rica where the use of narcotics, including personal use, is prohibited by law but no penalty for this violation is found in the Criminal Code. In Argentina, the possession of narcotics remains illegal but the Supreme Court has ruled that “private actions of individuals are exempt from the authority of judges as long as they do not offend or injure others,” declaring penalties against an adult who consumed marijuana unconstitutional.

Costa Rica, Germany, Israel, New Zealand, and the Australian State of New South Wales are among those jurisdictions where the police, prosecutors, or courts have discretion to drop charges if a minor offense involving prohibited drugs has been committed for the first time and the accused person is willing to undergo addiction treatment.

The possession and use of narcotics is a crime under the laws of most of the countries included in this report. However, in some countries medical treatment is prescribed for those found in violation of drug laws or can be chosen by the accused person as an alternative to traditional punishment. Mexican law requires that individuals found in possession of limited quantities of narcotics be referred to addiction treatment programs. In Norway a minor drug offender can opt to enroll in a drug treatment program instead of going to prison, but violation of the treatment program conditions will place the offender in jail. In Argentina a judge may replace imprisonment by detoxification and rehabilitation treatment. Special treatment for children is prescribed by the laws of New Zealand.

It appears that where decriminalization of drug-related activities has occurred, it was done with the purpose of securing the health and safety of the individual and the public. Even in those countries where the use of some drugs is allowed (Uruguay), advertising or promoting drugs, or consuming them in a public place, is prohibited. Dutch legislation emphasizes that coffee shops are prohibited from advertising drugs and causing a nuisance. The reduction of harm from drug use is the declared purpose for the creation of varied medical and social service facilities (e.g., needle exchanges, drug consumption rooms). However, even the authorization of such services by law (Germany, Netherlands, Portugal) has not resulted in the legalization of narcotics.

Information on pending proposals for the legalization of cannabis in Canada and South Africa, and decriminalization of the possession of small amounts of heroin, cocaine, and cannabis for personal use in Ireland, is also included in the report.

Countries Where Cannabis Is Legal and Regulated

Uruguay

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SUMMARY Uruguay's Law to Legalize and Regulate Cannabis adopted in 2013 brought radical change to the country's approach to cannabis production and use. The law allows legal access to marijuana in four ways: medical marijuana through the Ministry of Health, home-grown marijuana, membership clubs, and sales to adults in drugstores. Although registration of consumers and cannabis clubs has been completed, implementation of sales in pharmacies is still underway. The law provides for education and public health awareness as to the risks involved in the consumption of marijuana.

I. Introduction

By adopting Law No. 19172 on December 20, 2013,¹ Uruguay became the first country in Latin America to legalize and regulate cannabis.² The aim of the law is to prevent abusive consumption of marijuana and educate the population about its harmful effects, while combating drug trafficking.³ The law regulates the production, marketing, and consumption of cannabis, while promoting education about and prevention of cannabis use.⁴

When introducing the bill in the Senate, the congressional majority report laid out the basis of the measure as an alternative to policies of prohibition as well as a regulation of the market of drugs in order to give the government a more efficient way to reduce supply and demand.⁵ The congressional debate was centered on three main issues: an increase in marijuana consumption, its harmful effects on health and the difficulties to supervise and monitor compliance with the law.⁶

¹ Ley No. 19172, Regulación y Control de Cannabis, DIARIO OFICIAL [D.O.], Jan. 7, 2014, <http://www.impo.com.uy/bases/leyes/19172-2013>, archived at <https://perma.cc/2JDW-P25C>.

² PITTAMIGLIO, RODRIGUEZ FOLLE Y ASOCIADOS, ABOGADOS, ESTUDIO DE LA LEY 19172. LA DROGA Y SU INFLUENCIA EN EL MUNDO DEL TRABAJO 1, <http://www.prfabogados.com/administrador/pdf/DROGA%20%20TRABAJO%201.pdf> (last visited June 29, 2016), archived at <https://perma.cc/8R47-MCJH>.

³ *Id.*

⁴ Ley No. 19172, arts. 1 & 2.

⁵ *Informe en Mayoría sobre la Regulación del Cannabis en el Senado Uruguayo-Un Debate Histórico*, TNI (Dec. 10, 2013), <https://www.tni.org/es/art%3%ADculo/informe-en-mayoria-sobre-la-regulacion-del-cannabis-en-el-senado-uruguayo>, archived at <https://perma.cc/8V4N-5GPV>.

⁶ Valeria Gil & Pablo Meléndrez, *Cannabis Legal: Uruguay se Cortó Solo*, EL PAIS (Dec. 11, 2013), <http://www.elpais.com.uy/informacion/cannabis-legal-uruguay-se-corto.html>, archived at <https://perma.cc/Q6Z3-UXYR>.

II. Cannabis Regulation

Under the new law, the state controls the cannabis industry chain, from production to consumption, including the import, export, planting, cultivation, harvesting, acquisition, storage, marketing, and distribution of cannabis and its derivatives, through the institutions empowered by law.⁷

Law 19172 created the Institute for the Regulation and Control of Cannabis (IRCC) to regulate the planting, cultivation, harvesting, production, processing, storage, distribution, and sale of cannabis.⁸ The IRCC also promotes and proposes actions to reduce risks and harms derived from cannabis use and monitors compliance with the law.⁹ The National Council on Drugs (NCD), created in 1988,¹⁰ is the authority that sets the national policy on cannabis in accordance with the objectives of Law 19172, with the cooperation and advice of the IRCC.¹¹

Although amended many times, Decree-Law 14294¹² of 1974 is still in force with regard to all drugs except for cannabis. As to those other drugs, Decree-Law 14294 allows consumption, but penalizes possession for purposes other than consumption.¹³

Law 19172 provides that the planting, growing, harvesting, and marketing of cannabis must be authorized by the IRCC.¹⁴ The authority of the IRCC includes issuing licenses to produce, process, collect, distribute, and sell industrial and psychoactive cannabis; registering users and those engaged in self-cultivation; authorizing cannabis club membership; monitoring compliance with the law; determining and adjudicating sanctions for violations; and enforcing the imposition of sanctions.¹⁵

Sanctions for violations of Law 19172 include warnings, fines, confiscation of goods or items, destruction of goods, suspension of the offender in the pertinent registry, temporary or permanent disqualification from transacting in cannabis, and partial or complete closure of establishments.¹⁶

⁷ *Id.* art. 2.

⁸ Ley No. 19172, arts. 17–18(A).

⁹ *Id.* art. 18(B) & (C).

¹⁰ Decreto 463/988, Se Crea la Junta de Prevención y Represión del Tráfico Ilícito y Uso Abusivo de Drogas [Creating the Council for the Prevention and Suppression of the Illegal Trafficking and Abuse of Drugs] (also known as Junta Nacional de Drogas [National Council on Drugs, NCD]), D.O., July 25, 1988, http://www.info.drogas.gub.uy/html/marco_legal/documentos/12-Decreto-463_998.pdf, archived at <https://perma.cc/TE8X-8KMH>.

¹¹ Ley No. 19172, art. 19.

¹² Decreto-Ley No. 14294, D.O., Nov. 11, 1974, http://www.infodrogas.gub.uy/html/marco_legal/documentos/02-DecretoLey14294.pdf, archived at <https://perma.cc/CNN5-NMD6>.

¹³ *Id.* arts. 30–40.

¹⁴ Ley No. 19172, art. 5.

¹⁵ *Id.* art. 28.

¹⁶ *Id.* art. 40.

Law 19172 amended article 30 of Decree-Law 14294 to provide that the production without legal authorization of raw materials or substances capable of producing psychological or physical dependency is subject to a prison sentence of twenty months to ten years, except when produced for scientific or pharmaceutical research, or for medicinal use.¹⁷ However, the production of marijuana by planting, growing, and harvesting cannabis plants with psychoactive effects when meeting legal requirements under the law does not give rise to criminal liability.¹⁸

Law 19172 decriminalizes anyone who possesses psychoactive cannabis plants in a reasonable quantity, exclusively for his or her personal consumption.¹⁹ The maximum quantity considered for personal use is 40 grams.²⁰ It further provides that anyone who keeps, holds, stores, or possesses in his/her home a harvest of up to six cannabis plants with psychoactive effects or a harvest obtained through membership in a cannabis club that results in a maximum of 480 grams will not be subject to criminal penalties.²¹ Home growers of marijuana are required to register in the IRCC and are not permitted to register more than one domicile for this purpose.²² Any unauthorized cannabis patch must be eradicated upon a court's order.²³

Cannabis clubs are duly registered civil entities of between fifteen and forty-five members that are allowed to grow up to ninety-nine marijuana plants in specific places.²⁴ No member may access more than 480 grams a year.²⁵ Marijuana membership clubs that plant, cultivate, and harvest psychoactive cannabis for personal or shared domestic consumption are subject to the control of the IRCC, and must be authorized by the Ministry of Education and Culture.²⁶

Only Uruguayan nationals or foreigners with legal residence in the country who have reached the age of majority (eighteen years of age), and are not incapacitated may become members of these clubs.²⁷ Both the clubs and their members must be registered in the Cannabis Registry within the IRCC.²⁸ Identity information entered into the Cannabis Registry will be considered sensitive and protected.²⁹ Registration of cultivation is free of charge for the petitioners.³⁰

¹⁷ *Id.* art. 5.

¹⁸ *Id.* art. 6.

¹⁹ *Id.* art. 7.

²⁰ *Id.*

²¹ *Id.* arts. 5 & 7.

²² *Id.*

²³ *Id.*

²⁴ Ley No. 19172, art. 5.

²⁵ *Id.*

²⁶ *Id.*; Decreto 120/2014, Regulating Law No. 19172, art. 21, D.O., May 19, 2014, http://www.ircca.gub.uy/wp-content/uploads/2014/06/Decreto_reglamentacion_ley_19.172.pdf, archived at <https://perma.cc/6TAB-VBD6>.

²⁷ Decreto 120/2014, art. 25.

²⁸ *Id.* art. 26; Ley No. 19172, art. 28.

²⁹ *Id.*

³⁰ Ley No. 19172, arts. 8 & 28(B).

The IRCC also has the authority to issue licenses for the sale of psychoactive cannabis to pharmacies.³¹ Marijuana to be sold in drugstores will be produced by a limited number of companies previously selected through national and international bidding.³² The legal sale of cannabis by pharmacies is expected to begin in July 2016.³³ Fifty pharmacies have registered with the IRCC and the Ministry of Public Health since May 2016, when the government opened the registry.³⁴ Registered pharmacies are required to install fingerprint recognition software to identify consumers and safety boxes to protect the marijuana in stock.³⁵ Registered consumers will be allowed to purchase 10 grams per week or 40 grams per month.³⁶ The government faces the difficult task of communicating that people should buy marijuana only through approved channels like pharmacies or clubs while avoiding encouraging its consumption.³⁷

According to pharmacy associations, the low number of pharmacies registered is due to concerns that the sale of marijuana would affect their image with regard to clients with traditional values, especially in provinces where the population is against the legal sale of cannabis.³⁸

III. Public Health, Education, and Social Safeguards

Law 19172 provides for the National Integrated Health System (NIHS) to take measures aimed at education, awareness campaigns, and prevention with regard to the health risks of cannabis use, particularly addiction.³⁹ The National Public Education System is required to set up educational policies aimed at the promotion of health and the prevention of harmful cannabis use at the elementary, secondary, and vocational education levels.⁴⁰

Advertising or promoting cannabis in any way and consumption of cannabis in public spaces is prohibited.⁴¹ Similarly, those eighteen years old or younger and those who are legally incapacitated will not have access to cannabis for recreational use.⁴² Driving under the influence

³¹ *Id.* art. 5.

³² *Id.*

³³ Gabriel Pereyra, *Casi 5.000 Autocultivadores Registrados y 50 Farmacias Prontas para Iniciar Venta de Marihuana*, EL OBSERVADOR (May 31, 2016), <http://www.elobservador.com.uy/casi-5000-autocultivadores-registrados-y-50-farmacias-prontas-iniciar-venta-marihuana-n917909>, archived at <https://perma.cc/ZT35-TNP2>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Sólo 50 Farmacias Uruguayas Comenzarán a Vender Marihuana*, EL DIARIO (June 19, 2016), http://www.eldiario.es/sociedad/Solo-farmacias-uruguayas-comenzaran-marihuana_0_528447402.html, archived at <https://perma.cc/L6PN-JXMZ>.

³⁹ Ley No. 19172, art. 9.

⁴⁰ *Id.* art. 10.

⁴¹ *Id.* arts. 11 & 13.

⁴² *Id.* art. 14.

of cannabis will be sanctioned with disqualification from driving if the concentration found in the driver's body is beyond the allowable amount.⁴³

IV. Legislative and Political Debate

In 2011 grassroots activists started a movement for some form of regulation of the use of marijuana for personal consumption.⁴⁴ The Comisión de Adicciones de Diputados (Commission on Addictions of the Chamber of Deputies in Congress) gathered all the stakeholders on this issue, including doctors, educators, politicians, law enforcement, students, etc., to debate the different approaches and solutions to marijuana consumption.⁴⁵

According to a report by the National Council on Drugs, the debate was prompted by the failure of prohibition and the increase in marijuana consumption by youth.⁴⁶ The debate was extensive, which allowed the Uruguayan society to be informed on the issues at stake.⁴⁷ Each aspect of the law was subject to comprehensive debate.⁴⁸ The government's goal was to reach consensus on a legal framework directed at reducing profits for the illegal cannabis market while raising awareness of the public health consequences and harmful effects of marijuana consumption.⁴⁹

The government aimed at establishing legal mechanisms to access cannabis, specifying the amount allowed to be grown for individual consumption.⁵⁰ The government sought to give legality to the marijuana market by managing it, while at the same time obtaining resources to fund support and treatment programs for drug addictions and to conduct prevention campaigns.⁵¹

The media and polling entities played a key role in the success of this debate by reaching out to all sectors of society, from families to activist groups.⁵² The end product was a law that will regulate the marijuana market to protect the users and their health while depriving criminal organizations of their share of the marijuana market.⁵³

⁴³ *Id.* art. 15.

⁴⁴ JUNTA NACIONAL DE DROGAS & FRIEDRICH EBERT FOUNDATION, EL CAMINO: CÓMO SE REGULÓ EL CANNABIS EN URUGUAY SEGÚN SUS ACTORES POLÍTICOS Y SOCIALES 34–35 (Jan. 2015), <http://library.fes.de/pdf-files/bueros/uruguay/11201.pdf>, archived at <https://perma.cc/JD9N-9625>.

⁴⁵ *Id.* at 34.

⁴⁶ *Id.* at 68.

⁴⁷ *Id.* at 69.

⁴⁸ *Id.*

⁴⁹ *Id.* at 70.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 71.

⁵³ *Id.*

Countries that Do Not Penalize Personal Possession and Use

Costa Rica

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SUMMARY The General Health Law of Costa Rica prohibits the personal use of narcotics and other drugs, but does not penalize those who violate this prohibition. Likewise, Law No. 8204 on Narcotics and Psychotropic Substances, Unauthorized Drugs, Related Activities, Money Laundering and the Financing of Terrorism penalizes all activities related to the production, commerce, and trafficking of such narcotics and substances, but does not punish their personal consumption. Prior Law No. 7093 of 1988 also did not prohibit or penalize the personal use of illegal drugs. However, a comprehensive amendment promulgated by Law No. 7233 of 1991 imposed fines for the consumption of unauthorized drugs in public places. Both Law No. 7093 and 7233 were superseded by the current Law No. 8204.

A bill that would regulate the production of cannabis and hemp plants for medical and industrial purposes was debated in the Legislative Assembly in December of 2014. However, that bill has yet to pass. In January 2016 a criminal tribunal in the city of Alajuela acquitted an attorney who had planted marijuana for personal consumption.

I. Introduction

Controlled substances are governed in Costa Rica by the General Health Law¹ and Law No. 8204 on Narcotics (*estupefacientes*) and Psychotropic Substances, Unauthorized Drugs, Related Activities, Money Laundering and the Financing of Terrorism.² Neither of them punish the personal use of unauthorized drugs, as explained below.

II. General Health Law

Article 28 of the General Health Law prohibits the “personal use” of narcotics, and of tranquilizers, stimulants, and hallucinogens that are subject to restricted use under international conventions and by the laws of the country, with the exception of their use for therapeutic

¹ Ley General de Salud, No. 5395, LA GACETA [L.G.], Nov. 24, 1973, http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=6581&nValor3=96425&strTipM=TC, archived at <https://perma.cc/BT4D-9V4E>. The text of the superseded health code, Código Sanitario, L.G., Mar. 15, 1944, is not available.

² Ley sobre Estupefacientes, Sustancias Psicotrópicas, Drogas de Uso no Autorizados, Actividades Conexas, Legitimación de Capitales y Financiamiento al Terrorismo, No. 8204, L.G., Jan. 1, 2002, http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=48392&nValor3=91617&strTipM=TC, archived at <https://perma.cc/57KH-5QN5>. Law No. 8204 comprehensively amended Law No. 7786, Ley sobre Estupefacientes, Sustancias Psicotrópicas, Drogas de Uso no Autorizados, Actividades Conexas, No. 7786, L.G., May 15, 1998.

reasons and with a medical prescription under the express authorization of the Ministry of Health.³

Similarly, article 127 of the General Health Law prohibits the cultivation, import, export, trafficking and use of *papaver somniferum* or poppies, *erythroxylon coca* or coca, *cannabis indica* and *cannabis sativa* or cannabis, and all plants and seeds of similar effects that are so declared by the Ministry of Health, and mandates their destruction.⁴

Although article 28 of the General Health Law specifically prohibits the personal use of narcotics and other drugs, no penalty for its violation is found in the Code. In contrast, under article 371 of the Code, a penalty of six to twelve years' imprisonment may be imposed on those who, for whatever reason, grow poppies, coca, cannabis, or plants of similar effect whose cultivation, possession, or trafficking has been prohibited or restricted by the Ministry of Health.⁵

Article 137 of the General Health Law requires the confiscation and destruction of any drug that is illegally cultivated, possessed, traded, distributed, or stored.⁶

III. Statutory Law on Narcotics and Psychotropic Substances

While superseded Law No. 7093 on Narcotics and Psychotropic Substances penalized with eight to twenty years' imprisonment the illegal cultivation, manufacture, preparation, refining, transport, distribution, storage, and trafficking of drugs and their financing,⁷ it did not prohibit or impose penalties for the personal use of illegal drugs.

Law No. 7093 was considerably amended by Law No. 7233 of 1991.⁸ Although the amended Law 7093 did not impose penalties restricting the personal freedom of the drug user for his/her personal use of drugs, it penalized this activity with fines. Article 24 imposed sixty- to 180-day-fines on persons who consumed or used unauthorized drugs in public places or in public places. If the person was a minor, the appropriate authorities had to inform the minor's parents or guardian.⁹

³ Ley General de Salud art. 28.

⁴ *Id.* art. 127.

⁵ *Id.* art. 371.

⁶ *Id.* art. 137.

⁷ Ley sobre Estupefacientes, Sustancias Psicotrópicas, Drogas de Uso no Autorizado y Actividades Conexas, No. 7093, art. 16, L.G., May 2, 1988, *published in* CÓDIGO PENAL CON ÍNDICE ALFABÉTICO Y LEYES CONEXAS (San José, Editorial Porvenir 1988). A prior drug statute, Ley sobre Drogas Estupefaciented, enacted on September 29, 1930, with an unknown official publication date, is not available.

⁸ Ley sobre Estupefacientes, Sustancias Psicotrópicas, Drogas de Uso no Autorizado y Actividades Conexas, No. 7093, *as amended by* Law No. 7233, L.G., May 21, 1991, http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=4971&nValor3=78293&strTipM=TC, archived at <https://perma.cc/KQ25-6B6D>.

⁹ *Id.* art. 24.

Law No. 7093 was superseded by the current Law No. 8204 on Narcotics and Psychotropic Substances, Unauthorized Drugs, Related Activities, Money Laundering and the Financing of Terrorism, effective January 11, 2002, which regulates narcotics (*estupefacientes*), psychotropic substances, and drugs likely to cause physical or psychological dependencies.¹⁰ Law No. 8204 contains no provision penalizing the personal use of unauthorized drugs, but imposes the penalty of imprisonment for other drug-related activities, such as cultivation, production, manufacture, refining, preparation, distribution, commerce, supply, transport, and storage of the drugs and substances regulated by the Law.¹¹

Moreover, article 79 of Law No. 8204 mandates the promotion and facilitation of free, voluntary placement or outpatient treatment for therapy and rehabilitation in public or private health centers to persons who use unauthorized drugs on the streets or in public places. If the drug users are minors, the authorities are obliged to inform the National Child Welfare Agency (Patronato Nacional de la Infancia, PANI) of the situation, and PANI will mandate compulsory treatment.¹²

In 2010 the Office of the Public Prosecutor issued a guideline, Instructivo General No. 02-2010, stating that under article 28 of the Constitution, no one may be disturbed or prosecuted for any act that does not infringe the law. The guideline also invokes article 39 of the Constitution, stating that one will be made to suffer a penalty except for a crime, offense, or fault sanctioned by a previous law. Based on these constitutional provisions, the guideline instructs court prosecutors to reject police reports of possession of drugs for personal use.¹³ Another guideline, Instrucción General 01/2011, instructs prosecutors to assess police reports of confiscated unauthorized drugs, to remit the drugs for destruction, and to order the immediate release of the detainee when the case is not connected to any criminal activity; otherwise, criminal proceedings will be initiated.¹⁴

Law No. 9161 added article 77*bis* to Law No. 8204, imposing a penalty of three to eight years' imprisonment, rather than the longer term of eight to twenty years imposed by article 77, on a woman who brings narcotics or psychotropic substances into a prison if the following circumstances are met: the woman is in poverty; the woman is the head of a household in vulnerable conditions; the woman has under her care minors, elderly people, or people with any disability; or the woman is elderly in conditions of vulnerability. The judge, after finding that

¹⁰ Ley No. 8204, L.G., Jan. 1, 2002.

¹¹ *Id.* art. 58.

¹² *Id.* arts. 3 & 79.

¹³ Fiscalía General de la República, Ministerio Público de Costa Rica, Poder Judicial, Instructivo General No. 02-2010 (Oct. 2010), available at <http://www.druglawreform.info/images/stories/Fiscalia - Instructivo General - 02-2010.pdf>, archived at <https://perma.cc/XFV5-HHNNH>.

¹⁴ Fiscalía General de la República, Ministerio Público de Costa Rica, Poder Judicial, Instrucción General 01/2011 (Nov. 2011), available at <http://www.druglawreform.info/images/stories/Fiscalia - Instructivo General - 01-2011.pdf>, archived at <https://perma.cc/8PPL-PVMU>.

any of the above circumstances are present, may order that the penalty be served by house arrest or probation.¹⁵

IV. Recent Developments

A. Proposed Legislation

In 2014 a bill to regulate the use of cannabis for therapeutic purposes, the Draft Law on Research, Regulation, and Control of Cannabis and Hemp Plants for Medical, Food, and Industrial Uses, was submitted to the Legislative Assembly.¹⁶ Although the bill was initially debated during an extraordinary session of the Legislative Assembly in December of 2014,¹⁷ it has not yet been approved.¹⁸

B. Criminal Tribunal Ruling

According to a report in *La Nación*, a criminal tribunal in Alajuela, the second most important Costa Rican city and the capital of the province of the same name, has acquitted a lawyer who was arrested four times for growing marijuana for personal consumption. After the verdict, the accused person's attorneys explained that growing marijuana in someone's home for personal consumption carries no criminal penalties or economic sanctions. Article 58 of Law No. 8204 penalizes with eight to fifteen years' imprisonment anyone who "without authorization distributes, trades, supplies, manufactures, develops, refines, transforms, extracts, prepares, cultivates, produces, transports, stores or sales drugs or cultivates the plants from which such substances are obtained," they said, but article 58 does not penalize the personal consumption of drugs. In addition, they argued that the only thing that the authorities can do if they find crops of drugs for personal use is to confiscate and destroy them, as required by article 137 of the General Health Law.¹⁹

¹⁵ Ley No. 9161, Reforma de la Ley No. 8204 sobre Estupefacientes, Sustancias Psicotrópicas, Drogas de Uso no Autorizado, Actividades Conexas, Legitimación de Capitales y Financiamiento de Terrorismo, L.G., Sept. 23, 2013, http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=75699&nValor3=93995&strTipM=TC, archived at <https://perma.cc/C6S9-6EPL>.

¹⁶ Proyecto de Ley, Ley para la Investigación, Regulación y Control de las Plantas Cannabis y Cáñamo para Uso Medicinal, Alimentario e Industrial, Exp. No. 19.256 (introduced Aug. 14, 2014, by Marvin Atencio Delgado, Diputado), available at http://www.druglawreform.info/images/stories/Proyecto-19256_Cannabis.pdf, archived at <https://perma.cc/3MD6-XM63>.

¹⁷ Andrés Martínez, *Gobierno Abre Debate en Congreso sobre Legislación de Marihuana Medicinal*, TELETICA.COM (Dec. 15, 2014), available at <http://www.teletica.com/Noticias/75247-Gobierno-abre-debate-en-Congreso-sobre-legalizacion-de-marihuana-medicinal.note.aspx>, archived at <https://perma.cc/J84S-946A>.

¹⁸ Telephone Interview with Centro de Investigación Legislativa del Departamento de Servicios Bibliotecarios, Documentación e Información [Center for Legal Research of the Costa Rican Legislative Assembly] (June 27, 2016).

¹⁹ See Katherine Chaves R., *Siembra de Cannabis Para Consumo Personal No Está Penalizada*, LA NACIÓN (Jan. 20, 2016), http://www.nacion.com/sucesos/juicios/Siembra-cannabis-consumo-personal-penalizada_0_1537646251.html, archived at <https://perma.cc/9B7D-P33X>.

The tribunal's decision was based on the fact that it could not be proved that the drugs were destined for sale and trafficking. The judge explained that, although growing marijuana is in fact illegal, it is not a crime if it is not sold. Moreover, the judge added that if the attorney continued growing marijuana, the appropriate authorities would continue confiscating it.

The fifty-six-year-old lawyer, who had been arrested four times for the same charges of growing marijuana in his home located thirty meters from the tribunal, was facing twenty-four years of imprisonment. The tribunal's ruling was a two-to-one decision of a three-judge panel. The dissenting judge argued that he reached the conclusion that with the number of plants the defendant had planted, he could have manufactured 5,000 marijuana cigarettes.²⁰

²⁰ *Costa Rica: Tribunal Absuelve a Abogado que Cultiva Marihuana en su Casa en Alajuela*, ENTORNO INTELIGENTE (Jan. 19, 2016), <http://www.entornointeligente.com/articulo/7726536/COSTA-RICA-Tribunal-absuelve-a-abogado-que-cultiva-marihuana-en-su-casa-en-Alajuela>, archived at <https://perma.cc/J955-EJHR>.

Czech Republic

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SUMMARY The Czech Republic is the only Eastern European country in the post-Communist era to have reduced punishments for some drug-related activities. The production and sale of drugs have always been punishable under Czech criminal law. The possession of drugs was decriminalized after the collapse of the Communist regime, but penalties were reinstated in 1999 for possession in amounts “larger than small.” The new Criminal Code enacted in 2009 differentiates between cannabis and other drugs, and imposes less strict penalties for the use and cultivation of cannabis. The use of cannabis for medical purposes was legalized in 2013.

Despite inheriting from the Soviet bloc a policy of harshly repressing drug users, today the Czech Republic has a drug policy that is described as “pragmatic, rational and sometimes too liberal.”¹

The 1961 Criminal Law was the main piece of legislation on drug-related offenses until 2010, when the new Criminal Code came into effect.² Articles 187 and 188 of the 1961 Law criminalized the possession, production, and sale of narcotic substances.³ After the collapse of the Communist regime, the possession of drugs for personal use was decriminalized in 1990.⁴ Instead, a new crime, “spreading addiction,” was included in the Criminal Law. In 1999, a new section 187a was added to the Criminal Law that made it a crime to possess drugs in amounts “larger than small.”⁵

In 2009, the Czech Republic enacted a new Criminal Code that repealed the Criminal Law of 1961.⁶ The new Code established penalties of six months to five years of imprisonment for producing and distributing drugs,⁷ possessing them “in an amount larger than small,”⁸ cultivating

¹ Tereza Filipková, *Cannabis Policy in the Czech Republic*, TNI (Sept. 25, 2015), <https://www.tni.org/en/article/cannabis-policy-in-the-czech-republic>, archived at <https://perma.cc/3LXC-NG8Y>.

² Testni zakon [Criminal Law] No. 140/1961, Dec. 8, 1961, SBIRKA ZAKONU [SB] [OFFICIAL GAZETTE] No. 65/1961, <http://www.zakonyprolidi.cz/cs/1961-140/zneni-0>, archived at <https://perma.cc/R6DT-KJ45>, English translation available at http://www.coe.int/t/dlapil/codexter/Source/country_profiles/legislation/CT%20Legislation%20-%20Czech%20Republic%20Criminal%20Code.pdf, archived at <https://perma.cc/4DZ8-BDB4>.

³ *Id.*

⁴ Zákon č. 175/1990 [Law No. 175/1990], May 18, 1990, SB No. 31/1990, <http://www.zakonyprolidi.cz/cs/1990-175/zneni-0>, archived at <https://perma.cc/6M53-45TG>.

⁵ Zákon č. 112/1998 [Law No. 112/1998], May 29, 1998, SB No. 39/1998, <http://www.zakonyprolidi.cz/cs/1998-112/zneni-19990101>, archived at <https://perma.cc/GT3F-AJT8>.

⁶ TESTNI ZAKONIK [CRIMINAL CODE] No. 40/2009, Feb. 9, 2009, SB No. 11/2009, <http://www.zakonyprolidi.cz/cs/2009-40>, archived at <https://perma.cc/5V5K-JD76>, English translation available at <http://www.ejtn.eu/PageFiles/6533/Criminal%20Code%20of%20the%20Czech%20Republic.pdf>, archived at <https://perma.cc/BLT3-V96W>.

⁷ *Id.* § 283.

plants containing a narcotic substance,⁹ producing drugs and possessing items for their production,¹⁰ spreading drug addiction,¹¹ and producing substances with hormonal effects.¹² The sections in the Criminal Code on possession for personal use and the cultivation of plants treat cannabis differently from other drugs and provide for less strict penalties.¹³

The possession of drugs for personal use in small amounts is not a criminal offense, but rather a misdemeanor subject to a monetary fine of up to 15,000 Czech koruna (approximately US\$612).¹⁴ A major issue in drug enforcement since 1999 has been that of determining what constitutes a “small amount” of drugs. Initially, this was decided on a case-by-case basis within the judicial system.¹⁵ However, in 2009, the government issued a resolution specifying the “small amounts” for various drugs.¹⁶ This resolution, however, was abolished in 2013 by the Constitutional Court, which found that only a law, not a government regulation, could define what constitutes a criminal offense.¹⁷ Subsequently, the definition of “small amounts” was clarified in an opinion of the Criminal Division of the Supreme Court, which mostly duplicated the government’s resolution, but set stricter rules for the most common drugs.¹⁸ In particular, the Supreme Court decriminalized the possession of 1.5 g of methamphetamine, 1.5 g of heroin, 1 g of cocaine, 10 g of cannabis dry matter, 5 units of ecstasy, and 5 g of hashish.¹⁹ The Court also stated that “the drug user’s possession of only one dose before using it is not illegal possession.”²⁰

In November 2013 the police arrested a number of “growshop” owners after the Supreme Court held that the combined selling of cannabis seeds, fertilizers, flowerpots, and books for cannabis

⁸ *Id.* § 284.

⁹ *Id.* § 285.

¹⁰ *Id.* § 286.

¹¹ *Id.* § 287.

¹² *Id.* § 288.

¹³ *Id.* §§ 284, 285.

¹⁴ *Zakon o prestupcích* [Law on Offenses] No. 200/1990, May 18, 1990, SB No. 35/1990, <http://www.zakonyprolidi.cz/cs/1990-200>, archived at <https://perma.cc/RAT5-ZS59>.

¹⁵ Filipková, *supra* note 1.

¹⁶ *Nařízení vlády č. 467/2009* [Government Regulation No. 467/2009], Dec. 28, 2009, SB No. 148/2009, <https://www.zakonyprolidi.cz/cs/209-467>, archived at <https://perma.cc/AKR3-PBK7>.

¹⁷ *Nález Ústavního soudu č. 259/2013* [Decision of the Constitutional Court No. 259/2013], Aug. 13, 2013, SB No. 99/2013, <https://www.zakonyprolidi.cz/cs/2013-259>, archived at <https://perma.cc/X4Y2-45NN>.

¹⁸ *Stanovisko trestního kolegia Nejvyššího soudu č. 301/2013* [Opinion of the Criminal Division of the Supreme Court No. 301/2013], available at <http://www.policie.cz/clanek/mnozstvi-vetsi-nez-male.aspx>, archived at <https://perma.cc/XZ9T-QYAM>.

¹⁹ Filipková, *supra* note 1.

²⁰ VIKTOR MRAVČÍK ET AL., NATIONAL REPORT: THE CZECH REPUBLIC – 2013 DRUG SITUATION 15 (Sept. 2014), available at http://www.emcdda.europa.eu/attachements.cfm/att_239732_EN_VZ_2013_EN_final.pdf, archived at <https://perma.cc/4D4F-VEB4>.

cultivation fulfilled the elements of the crime of spreading drug addiction.²¹ According to the police, these shops promoted drug use by offering the complete technology needed for cannabis cultivation.²²

Those who cultivate cannabis for personal use may find the application of the various provisions of the Criminal Code confusing.²³ For example, a person caught growing cannabis plants may be subject to penalties for cultivation,²⁴ but if the arrest occurs after harvesting and during the process of drying, the offense is qualified as production,²⁵ and if the plants have already been dried, the person is charged with illegal possession.²⁶

Cannabis for medical use was allowed by law in 2013.²⁷ An implementing regulation allows for prescription of 180 g of dry matter per month.²⁸ There is a special electronic prescription form, and only specialized medical professionals are permitted to prescribe cannabis, not general practitioners.²⁹ Growing or importing medical cannabis is subject to licensing.³⁰

²¹ CRIMINAL CODE § 287.

²² *Id.*

²³ Filipková, *supra* note 1.

²⁴ CRIMINAL CODE § 285.

²⁵ *Id.* § 283.

²⁶ *Id.* § 284.

²⁷ Zákon č. 50/2013 [Law No. 50/2013], Mar. 4, 2013, SB No. 22/2013, <http://www.zakonyprolidi.cz/cs/2013-50>, archived at <https://perma.cc/9SRJ-FUWJ>.

²⁸ Vyhláška č. 236/2015 [Decree No. 236/2015], Sept. 4, 2015, SB No. 98/2015, <https://www.zakonyprolidi.cz/cs/2015-236>, archived at <https://perma.cc/V9Z5-5LGZ>.

²⁹ Filipková, *supra* note 1.

³⁰ Law No. 50/2013.

Mexico

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I. Relevant Law

Although possession of illegal drugs is generally a crime under Mexican law, possession of the following narcotics is not criminally punishable in amounts that do not exceed the listed quantities. Such small amounts of narcotics are considered by law to be for immediate and personal consumption, which is not criminally punishable, provided that such possession takes place outside of certain places, including educational institutions and prisons:

Narcotic	Maximum Amount for Immediate and Personal Consumption	
Opium	2 g	
Heroin or diacetylmorphine	50 mg	
Cannabis	5 g	
Cocaine	500 mg	
LSD	0.015 mg	
MDA, Methylenedioxyamphetamine	<i>Powder</i>	<i>Capsules or tablets</i>
	40 mg	1 unit whose weight is not higher than 200 mg
MDMA, 3,4-Methylenedioxymethamphetamine	40 mg	1 unit whose weight is not higher than 200 mg
Methamphetamines	40 mg	1 unit whose weight is not higher than 200 mg ¹

Source: From article 479 of the Ley General de Salud, *infra* note 1, as translated by the author.

Individuals who are found in possession of these narcotics in quantities at or below the listed amounts must be referred to addiction treatment programs.²

¹ Ley General de Salud [General Law on Health], as amended through June 2016, arts. 478, 479, DIARIO OFICIAL DE LA FEDERACIÓN [D.O.], Feb. 7, 1984, available on the website of Mexico's House of Representatives at http://www.diputados.gob.mx/LeyesBiblio/pdf/142_010616.pdf, archived at <https://perma.cc/EA8H-6PYF>.

² *Id.* art. 478.

This rule was enacted in 2009 pursuant to an initiative introduced in 2008, which indicated that the list of drugs and quantities the possession of which is not criminally punishable was compiled based on information provided by law enforcement and health authorities concerning the most commonly consumed drugs in Mexico.³ The policy underlying the initiative was that consumers of drugs should be treated not as criminals but as persons suffering from addiction, which should be treated as a public-health problem rather than as a crime.⁴

II. Initiative on Legalizing Medical Use of Cannabis

In June 2016, Mexico's Senate announced that it is considering an initiative to legalize the medicinal use of cannabis.⁵ This initiative proposes to grant authority to Mexico's Department of Health to design and execute policies aimed at regulating the production and use of medicinal products derived from cannabis, as well as the importation of cannabis-based medicines from abroad.⁶ It is unclear whether this initiative will become law.

³ Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Ley General de Salud, del Código Penal Federal y del Código Federal de Procedimientos Penales [Decree Amending Several Provisions of the General Law on Health, the Federal Criminal Code and the Federal Code of Criminal Procedure], D.O., Aug. 20, 2009, available at <http://www.diputados.gob.mx/LeyesBiblio/ref/lgs.htm> (click on document no. 44 of the list), archived at <https://perma.cc/5DF6-PNS2>.

⁴ *Id.*

⁵ Press Release, Senado de la República [Mexico's Senate], Aprueban comisiones regular uso médico de la cannabis [Senate Committees Approve Medical Use of Cannabis] (June 15, 2016), <http://comunicacion.senado.gob.mx/index.php/informacion/boletines/29226-aprueban-comisiones-regular-uso-medico-de-la-cannabis.html>, archived at <https://perma.cc/WC54-MN37>.

⁶ *Id.*

Netherlands

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SUMMARY The Dutch Opium Act contains the legal rules pertaining to narcotics. The Act differentiates between soft and hard drugs. In general, possession and trade in drugs is illegal, but penalties are more severe for hard drugs. The Prosecutor-General publishes directives that set out the Dutch tolerance policy in drug cases, which means that even though the activity is technically illegal, the offender will not be prosecuted as long as certain conditions are met. The directives address the operation of coffee shops in which soft drugs may be purchased and used, the different approaches in cases involving hard drugs and soft drugs, and what constitutes a small quantity of drugs for personal use. Furthermore, courts have the option to suspend the detention of an addict with a history of crime on the condition that he or she undergoes treatment in a special institution for intensive treatment.

I. General Overview

The legal rules concerning narcotic drugs are set out in the Dutch Opium Act.¹ The Opium Act differentiates between “hard drugs” (schedule I) and “soft drugs” (schedule II). Cannabis is listed in schedule II. Sentences for acts involving substances listed in schedule I are more severe than for those listed in schedule II.²

“Drugs” include substances and preparations.³ “Substances” are defined as “elements with a human, animal, plant or chemical origin, including animals, plants, parts of animals or plants, as well as micro-organisms.”⁴ “Preparations” are defined as “solid or liquid mixtures of substances.”⁵

In general, bringing drugs into and taking them out of the territory of the Netherlands, and growing, preparing, treating, processing, selling, supplying, providing, transporting, possessing, and manufacturing drugs, is prohibited in the Netherlands.⁶ Exceptions exist for pharmacists,

¹ Wet van 12 mei 1928, tot vaststelling van bepalingen betreffende het opium en andere verdoovende middelen (Opiumwet) [Act of May 12, 1928, Containing Regulations Concerning Opium and Other Narcotic Substances (Opium Act)], May 12, 1928, Staatsblad van het Koninkrijk der Nederlanden [Stb.] [Official Gazette of the Kingdom of the Netherlands] 1928, No. 167, <http://wetten.overheid.nl/BWBR0001941/2016-05-01>, archived at <http://perma.cc/B2GM-HG5W>, unofficial English translation available at <http://www.emcdda.europa.eu/topics/law/drug-law-texts?pluginMethod=eldd.showlegalextextdetail&id=2142&lang=en&T=2>, archived at <http://perma.cc/YD3T-6UV4>.

² *Id.* art. 10.

³ *Id.* art. 1, para. 1d.

⁴ *Id.* art. 1, para. 1b.

⁵ *Id.* art. 1, para. 1c.

⁶ *Id.* arts. 2, 3.

doctors, dentists and veterinary surgeons within the normal practice of their professions.⁷ Furthermore, an application for an exemption from the Opium Act for cannabis and cannabis resin can be filed with the Bureau voor Medicinale Cannabis (Office for Medicinal Cannabis Research) for reasons of public health, animal health, academic or chemical analytical research, training, or trade-related purposes.⁸

II. Dutch Drug Policy

The Prosecutor-General issues directives that define the Dutch prosecution policy in drug cases. The directives address, among other issues, the conditions of operating coffee shops, the different approaches in cases involving hard drugs and soft drugs, and what constitutes a small quantity of drugs for personal use.

Technically, it is illegal to buy and sell soft drugs, but the Dutch government tolerates the sale of soft drugs in coffee shops to prevent users of soft drugs from coming into contact with hard drugs.⁹ Coffee shops are establishments where cannabis may be sold and used but no alcoholic drinks may be sold or consumed.¹⁰ As long as certain conditions and guidelines are met (discussed below), the public prosecutor's office will not prosecute, under a policy of tolerance (*gedoogbeleid*). In addition, if anyone is caught with small quantities of drugs for personal use outside of a coffee shop, he or she will not be prosecuted.

A. Coffee Shops

The Opium Act Directive¹¹ sets out the rules for the toleration policy applicable to the operation of coffee shops. Coffee shops are prohibited from

- advertising,
- possessing or selling hard drugs,
- causing a nuisance,
- allowing minors to enter the premises or selling soft drugs to them,

⁷ *Id.* art. 5.

⁸ *Id.* art. 8, para. 1.

⁹ *Why Are Coffee Shops Allowed to Sell Soft Drugs in the Netherlands?*, GOVERNMENT OF THE NETHERLANDS, <https://www.government.nl/topics/drugs/contents/why-are-coffee-shops-allowed-to-sell-soft-drugs-in-the-netherlands> (last visited June 29, 2016), archived at <http://perma.cc/G64S-NCVM>.

¹⁰ Aanwijzing Opiumwet [Opium Act Directive], Mar. 1, 2015, Staatscourant [Stert.] [Official Journal] 2015, No. 5391, at 2, § 1, <https://zoek.officielebekendmakingen.nl/stcrt-2015-5391.pdf>, archived at <http://perma.cc/RMU3-ZKY2>.

¹¹ Aanwijzing Opiumwet [Opium Act Directive], Mar. 1, 2015, Stert. 2015, No. 5391, archived at <http://perma.cc/RMU3-ZKY2>.

- selling more than a limited amount of soft drugs per transaction and having more than 500 grams in stock, and
- allowing nonresidents of the Netherlands to enter the premises and buy soft drugs.

The rules that the coffee shops need to adhere to are called “AHOJGI-criteria,” formed by the initial letters of the Dutch words for the individual criteria.¹² The residency requirement came into effect on January 1, 2013. It was added in order to combat rising drug-related crime and nuisance caused by drug dealers and drug users, in particular users from abroad.¹³

Within the national framework, local governments choose how to implement the criteria. They are also authorized to add additional criteria for the operation of coffee shops.¹⁴ Mayors are in charge of enforcement of the tolerance criteria.¹⁵ If a coffee shop does not adhere to the AHOJGI-criteria, the mayor is authorized to close the business.¹⁶

Some cities like Amsterdam have chosen not to enforce the Dutch residency requirement in coffee shops, because they generate most of their income from tourists. The mayor of Amsterdam made that decision based on the coalition agreement presented by the new government in October 2012.¹⁷

The national government also discussed adding a distance requirement from schools to the AHOJGI-criteria, which was supposed to go into effect on January 1, 2014. According to the plan, coffee shops had to be located at least 350 meters away from any schools that had students younger than 18 years.¹⁸ The plan was eventually discarded, but local authorities are free to adopt it nonetheless and most cities have established a distance requirement of 250 meters.¹⁹

B. User Rooms

Some local authorities have also established so called “user rooms,” in which drug addicts may use their own drugs in a clean environment and will not become a nuisance for the public. The

¹² *Affichering* [Advertising] – A; *Harddrugs* [Hard Drugs] – H; *Overlast* [Nuisance] – O; *Jeugd* [Minors] – J; *Geringe Hoeveelheid* [Limited Amount] – G; *Ingezetenen van Nederland* [Residents from the Netherlands] – I.

¹³ GOVERNMENT OF THE NETHERLANDS, *supra* note 9.

¹⁴ Opium Act Directive, at 6, § 3.4.

¹⁵ *Id.* at 3, § 1.

¹⁶ Opium Act art. 13b.

¹⁷ *Coffeeshops: Toeristen kunnen nog steeds in coffeeshops gebruiken in Amsterdam* [Coffeeshops: Tourists Can Still Use in Coffeeshops in Amsterdam], I AMSTERDAM, <http://www.iamsterdam.com/nl/uit-in-amsterdam/ontdek-amsterdam/feiten-en-cijfers/coffeeshops> (last visited June 29, 2016), archived at <http://perma.cc/R9M3-9ZSS>.

¹⁸ BERT BIELEMAN ET AL., COFFEESHOPS IN NEDERLAND 2014 [COFFEE SHOPS IN THE NETHERLANDS 2014] at 5 (May 2015), available at <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2015/05/01/coffeeshops-in-nederland-2014/coffeeshops-in-nederland-2014.pdf>, archived at <http://perma.cc/O6VY-B3Z8>.

¹⁹ *Id.* at 37.

establishments are not allowed to provide or sell drugs. In general, social workers are present to offer therapy options. The use of drugs in “user rooms” is also tolerated by the prosecution.²⁰

C. Soft Drugs

The Directive for the Prosecution of Opium Act Offenses – Soft Drugs²¹ defines a small quantity of soft drugs for personal use as an amount of up to 5 grams. Likewise there is a presumption that the cultivating of no more than five cannabis plants is merely for personal use. Anyone who possesses or trades a small quantity of soft drugs or cultivates less than five plants for personal use will not be prosecuted. The directive states that the offender has to relinquish the drugs and that they will be taken out of circulation.²² For the possession of larger amounts of soft drugs, first-time offenders incur a fine; offenders who have been caught twice will either incur a fine or community service; and offenders who have committed multiple offenses will either have to pay a fine, do community service, or serve a prison sentence.

D. Hard Drugs

With regard to hard drugs, possession of small quantities of up to 0.5 grams/1 pill for personal use will also not be prosecuted.²³ As with soft drugs, the offender will have to relinquish the drugs and they will be taken out of circulation. The prosecution of possession of larger amounts follows the same principle as the prosecution for possession of soft drugs with the difference that the fines are higher and the community service and prison time is longer.

III. Placement in an Institution for Habitual Offenders

In 2004, the Placement in an Institution for Habitual Offenders Act came into effect.²⁴ It incorporates the Penal Care Facility for Addicts Act, which was adopted in 2001. The Act provides that addicts with a history of crime or habitual offenders in general may be committed to a special institution for intensive treatment for a period of at most two years. The offender’s detention is suspended on the condition that he or she undergoes treatment in such an institution.

²⁰ Opium Act Directive, at 3, § 2.

²¹ Richtlijn voor strafvordering Opiumwet, softdrugs [Directive for the Prosecution of Opium Act Offenses – Soft Drugs], June 1, 2016, Stcrt. 2016, No. 23647, <https://zoek.officielebekendmakingen.nl/stcrt-2016-23647.pdf>, archived at <http://perma.cc/2GEE-W6V4>.

²² *Id.* pp. 1 & 2.

²³ Richtlijn voor strafvordering opiumwet, harddrugs [Directive for the Prosecution of Opium Act Offenses – Hard Drugs], Mar. 1, 2015, Stcrt. 2015, No. 4953-n1, <https://zoek.officielebekendmakingen.nl/stcrt-2015-4953-n1.pdf>, archived at <http://perma.cc/AM8N-38H4>.

²⁴ Wet van 9 juli 2004 tot wijziging van het Wetboek van Strafrecht, het Wetboek van Strafvordering en de Penitentiaire beginselenwet (Plaatsing in een inrichting voor stelselmatige daders) [Act of July 9, 2004, Amending the Penal Code, the Code of Criminal Procedure, and the Prisons Act (Placement in an Institution for Habitual Offenders)], July 9, 2004, Stb. 2004, No. 351, <https://zoek.officielebekendmakingen.nl/stb-2004-351.pdf>, archived at <http://perma.cc/P9JK-2SNZ>.

Portugal

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SUMMARY In 1999, after the approval of a national strategy to combat drugs and drug addiction, the Portuguese government issued Law No. 30/2000, which decriminalized the acquisition, possession, and use of specified plants, substances, or preparations for a person's own consumption, and turned such conduct into misdemeanors. Law No. 30/2000 created a Commission for Drug Dissuasion for the processing of these misdemeanors and the application of sanctions, which is regulated by Decree-Law No. 130-A/2001. To further implement the strategy, the government in 2001 enacted Decree-Law No. 183, which approved a general system of prevention policies, risk reduction, and minimization of harm that created programs and public health structures for increasing awareness and providing for the referral of drug addicts for treatment.

I. Introduction

In the late 1990s, drug addiction was a major concern in Portugal.¹ To address the situation, on February 16, 1998, the government issued an order creating the Commission for the National Strategy for Drug Control (Comissão para a Estratégia Nacional de Combate à Droga), which was charged with proposing a national strategy to combat drugs. That strategy contains the basic guidelines of the policy on drugs and drug addiction in various fields, including primary prevention, treatment, social rehabilitation, training and research, risk reduction, and combatting drug trafficking.²

Based on a report prepared by the Commission, on April 22, 1999, the government approved the first National Strategy for the Fight Against Drugs and Drug Addiction (Estratégia Nacional de Luta Contra a Droga e a Toxicodependência) for the period 1999–2004.³ The Strategy recommended decriminalization of drug use and the reclassification of drug use, possession, and purchase as administrative offenses (*ilícitos de mera ordenação social*).⁴ The Strategy noted that maintaining criminal sanctions was justified with regard to the cultivation of drugs for consumption, because cultivation dangerously aligns with trafficking.⁵

¹ *Política Portuguesa*, SICAD, <http://www.sicad.pt/PT/PoliticaPortuguesa/SitePages/Home%20Page.aspx> (last visited June 16, 2016), archived at <https://perma.cc/Y8F6-8M68>.

² Despacho 3229/98 (2a. Série), DIÁRIO DA REPÚBLICA No. 45/1998, Série II, de 23 de Fevereiro de 1998, https://dre.pt/web/guest/analisejuridica/-/aj/publicDetails/maximized?p_auth=MguOwVr4&p_auth=YyURA4xc&diplomaId=3319678&mode=pdf, archived at <https://perma.cc/Z5XP-YSGN>.

³ Resolução do Conselho de Ministros No. 46/99, DIÁRIO DA REPÚBLICA No. 122, Série I-B, de 26 de Maio de 1999, http://www.sicad.pt/BK/Publicacoes/Lists/SICAD_PUBLICACOES/Attachments/71/ENresolucao.pdf, archived at <https://perma.cc/8T3N-MCU7>; see also SICAD, *supra* note 1.

⁴ Resolução do Conselho de Ministros No. 46, Item 26.

⁵ *Id.*

To implement the National Strategy, the government enacted Law No. 30 of November 29, 2000; Decree-Law No. 130-A of April 23, 2001; and Decree-Law No. 183 of June 21, 2001 (all discussed below).

II. Law No. 30 of November 29, 2000

The National Strategy led to the approval of Law No. 30 of November 29, 2000, which defines the legal regime applicable to the use of narcotic drugs and psychotropic substances, and the health and social protection of people who consume such substances without a prescription.⁶ The plants, substances, and preparations subject to this legal regime are listed in tables I through IV of Decree-Law No. 15 of January, 22, 1993.⁷ Law No. 30 also revoked article 40 (on the criminalization of drug use) and article 41 (regulating the voluntary treatment of drug users) of Decree-Law No. 15/93.⁸

A. Use of Listed Substances

According to article 2(1) of Law No. 30/2000, the use, acquisition, and possession of plants, substances, or preparations listed in the abovementioned tables for a person's own consumption constitute misdemeanors (*contra-ordenações*).⁹ However, the acquisition and possession of these substances must not exceed the amount required for average personal use during a ten-day period.¹⁰

B. Jurisdiction for Processing and Execution

The processing of misdemeanors and the application of sanctions rest with the Commission for Drug Dissuasion (Comissão para a Dissuasão de Toxicodependência), which was specially created for this purpose and functions within dependent services facilities of the Institute for Drugs and Drug Addiction (Instituto da Droga e Toxicodependência) in each district.¹¹ The administration of fines and alternative sanctions is the responsibility of the police.¹²

⁶ Lei No. 30/2000, de 29 de Novembro, *as amended by* Decreto-Lei No. 114/2011, de 30 de Novembro, art. 1(1), http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=186&tabela=leis&so_miolo, archived at <https://perma.cc/S4VS-4LQR>.

⁷ *Id.* art. 1(2).

⁸ *Id.* art. 28. Decree-Law No. 15 of January 22, 1993 defines the legal framework applicable to the trafficking and consumption of narcotic drugs and psychotropic substances. Decreto-Lei No. 15/93, de 22 de Janeiro, *as amended by* Lei No. 77/2014, de 11 de Novembro, art. 1, http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=181&tabela=leis, archived at <https://perma.cc/E2W2-F5XH>.

⁹ *Id.* art. 2(1). Decree-Law No. 433, of October 27, 1982, *as amended by* Law No. 109 of December 24, 2001, defines *contra-ordenação* as all illegal and objectionable (*censurável*) facts that fit into a legal category subject to a fine. Decreto-Lei No. 433/82, de 27 de Outubro, *as amended by* Lei No. 109/2001, de 24 de Dezembro, art. 1, http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=166&tabela=leis, archived at <https://perma.cc/7S23-PEW9>.

¹⁰ Lei No. 30/2000, art. 2(2).

¹¹ *Id.* art. 5(1). On January 26, 2012, Decree-Law No. 17/2012 replaced the Institute for Drugs and Drug Addiction with the Intervention Service in Addictive Behaviors and Dependencies (Serviço de Intervenção nos Comportamentos Aditivos e nas Dependências, SICAD). Decreto-Lei No. 17/2012, de 26 de Janeiro, art. 10,

C. Apprehension and Identification

The police authorities must identify a user and eventually perform the search and seizure of plants, substances, or preparations referred to in article 1 of Law No. 30/2000 that are found in the possession of the user, which are forfeited to the state. The police must then prepare a report that is sent to the Commission with territorial jurisdiction.¹³

Where it is not possible to identify the user at the place and time of the occurrence, the police may, if necessary, detain the user to ensure his appearance before the Commission, subject to legal conditions governing detention for identification.¹⁴

D. Nature and Circumstances of Use

The Commission hears the drug user and gathers the other information (*elementos*) necessary to make a decision on whether the user is a drug addict, what substances were used, the circumstances and place of use, and the economic situation of the user.¹⁵ The drug user can request the participation of a therapist, subject to regulation by the Commission.¹⁶

In making this decision, the Commission or the drug user may propose or request appropriate medical examinations, including but not limited to blood or urine tests.¹⁷ If the Commission's determination was not based on such medical exams, the drug user may request them, and the results must be analyzed in a manner that enables the Commission to reassess its initial conclusion.¹⁸

The examination must be carried out by a properly authorized health service, or by a private service selected by the drug user, within thirty days.¹⁹

E. Treatment

If a drug user agrees to undergo treatment, the Commission communicates with the public or private health service chosen by the user, who must be informed of available alternatives.²⁰ The user is responsible for the costs of treatment provided by a private health service.²¹

http://www.sicad.pt/BK/Institucional/Legislacao/Lists/SICAD_LEGISLACAO/Attachments/818/Decreto-Lei_17_2012.pdf, archived at <https://perma.cc/HL79-QKLU>.

¹² Lei No. 30/2000, art. 5(2).

¹³ *Id.* art. 4(1). Article 8(1) of Law No. 30 determines that the Commission has territorial jurisdiction over the user's home area, unless this is unknown, in which case the Commission where the user was found has jurisdiction.

¹⁴ *Id.* art. 4(2).

¹⁵ *Id.* art. 10(1).

¹⁶ *Id.* art. 10(2).

¹⁷ *Id.* art. 10(3).

¹⁸ *Id.* art. 10(4).

¹⁹ *Id.* art. 10(5).

²⁰ *Id.* art. 12(1).

The health service must inform the Commission every three months on whether to continue with the treatment.²²

F. Provisional Suspension of Commission Proceedings

The Commission must provisionally suspend proceedings whenever a drug user without prior registration of misdemeanor proceedings under Law No. 30/2000 is considered a nonaddicted user,²³ whenever a drug user without registration of a prior misdemeanor proceeding under Law No. 30/2000 accepts to undergo treatment,²⁴ or if a drug user with a prior registration of misdemeanor proceedings under Law No. 30/2000 agrees to undergo treatment.²⁵ The decision to provisionally suspend proceedings is not appealable.²⁶

G. Duration of Suspension

The proceedings may be suspended for up to two years and may be extended for another year by reasoned decision of the Commission.²⁷ The Commission must close and cannot reopen a case if a nonaddicted drug user has not relapsed or if an addicted user submits to treatment and does not improperly stop it.²⁸ The statute of limitations period does not run during the suspension of proceedings.²⁹

H. Suspension of Sanction

The Commission may suspend the determination of the sanction if the drug user agrees to undergo voluntarily treatment.³⁰ The suspension period may last for up to three years.³¹ If during the period of suspension the drug user stops treatment for reasons attributable to him or her, the suspension is revoked and the appropriate sanction for the underlying offense is determined.³² The Commission declares the process closed if, after the suspension period, there is no reason that could lead to its revocation.³³

²¹ *Id.* art. 12(2).

²² *Id.* art. 12(3).

²³ *Id.* art. 11(1).

²⁴ *Id.* art. 11(2).

²⁵ *Id.* art. 11(3).

²⁶ *Id.* art. 11(4).

²⁷ *Id.* art. 13(1).

²⁸ *Id.* art. 13(2).

²⁹ *Id.* art. 13(4).

³⁰ *Id.* art. 14(1).

³¹ *Id.* art. 14(2).

³² *Id.* art. 14(3).

³³ *Id.* art. 14(4).

I. Sanctions

1. Under Law No. 30

Nonaddicted drug users may be fined or, alternatively, subjected to a nonpecuniary sanction.³⁴ Nonpecuniary sanctions are also applicable to addicted users.³⁵ Pursuant to article 15(2), the Commission determines the penalty according to the need to prevent the use of narcotic drugs and psychotropic substances.³⁶ In the application of sanctions, the Commission takes into account the situation of the drug user and the nature and circumstances of drug use, considering, in particular,

- a) the gravity of the act;
- b) the agent's fault;
- c) the type of plants, substances, or preparations consumed;
- d) the public or private nature of consumption;
- e) in the case of public consumption, the place of consumption;
- f) in the event of a non-addicted user, the occasional or habitual nature of consumption;
- g) the personal situation of the drug user, particularly his economic and financial situation.³⁷

Instead of a fine, the Commission may impose a reprimand (*admoestação*) as an alternative.³⁸

According to article 17(2) of Law No. 30/2000, without prejudice to the provision of article 15(2) of Law No. 30/2000, the Commission may impose the following sanctions as an alternative to a fine, or as the primary sanction:

- a) prohibition on exercising a profession or activity, in particular those subject to a licensing regime, [that could] thereby result in risk to the safety of self or others;
- b) prohibition on frequenting certain places;
- c) prohibition on accompanying, lodging, or receiving certain persons;
- d) prohibition on the absence of an alien without authorization;
- e) periodic presentation in a place to be indicated by the commission;

³⁴ *Id.* art. 15(1).

³⁵ *Id.* art. 15(2).

³⁶ *Id.* art. 15(3).

³⁷ *Id.* art. 15(4).

³⁸ *Id.* art. 17(1).

- f) suspension [or] prohibition on the concession and renewal of a license to use and carry a weapon of defense, hunting, or recreation;
- g) seizure of items belonging to the drug user that pose a risk to the drug user or the community, or promote the commission of a crime or other offense; [or]
- h) deprivation of grant management or a benefit awarded on a personal basis by public bodies or services, which will be entrusted to the entity that conducts the process or that accompanies the treatment process, when accepted.³⁹

As an alternative to the abovementioned sanctions, the Commission may, provided that the drug user agrees, order him or her to provide compensation or public service to a public or private charitable institution, in accordance with the regime established in paragraphs 3 and 4 of article 58 of the Penal Code.⁴⁰ The Commission may suspend the execution of any of the mentioned sanctions, substituting them for the fulfillment of certain obligations under the terms of article 19 of Law No. 30/2000 (discussed below).

2. *Under the Penal Code*

Article 58(1) of the Penal Code determines that if a punishment not exceeding two years is to be applied, the court may replace it with a community service requirement if doing so is deemed an adequate and sufficient form of punishment.⁴¹ The Penal Code defines “community service” as the provision of free services to the state, other public legal entities, or private organizations whose purposes the court considers of interest to the community.⁴²

For the purposes of calculating the length of community service, each prison day established by the sentence is to be replaced by an hour of work, to a maximum of 480 hours.⁴³ Community service can be performed on Saturdays, Sundays, and holidays, as well as on weekdays, but may not affect normal working hours or exceed, per day, the overtime limits set by law.⁴⁴

J. Fines

The range of potential fines differs depending on the table of Decree-Law No. 15 of January 22, 1993, the substances or preparations are listed on.⁴⁵

³⁹ *Id.* art. 17(2) (translation by author).

⁴⁰ *Id.* art. 17(3).

⁴¹ CÓDIGO PENAL, Decreto-Lei No. 48/95, de 15 de Março, *as amended by* Lei No. 110/2015, de 26 de Agosto, art. 58(1), http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=109&tabela=leis&ficha=1&pagina=1&so_miolo, archived at <https://perma.cc/ZLS8-ANF4>.

⁴² *Id.* art. 58(2).

⁴³ *Id.* art. 58(3).

⁴⁴ *Id.* art. 58(4).

⁴⁵ Lei No. 30/2000, arts. 16(1), 16(2).

Sixty percent of the proceeds of fines are distributed to the state and 40% to Intervention Service in Addictive Behaviors and Dependencies (Serviço de Intervenção nos Comportamentos Aditivos e nas Dependências, SICAD), formerly the Institute for Drugs and Drug Addiction.⁴⁶

K. Reprimand

The Commission may simply give a reprimand if, taking into account the personal conditions of the drug user; the type of consumption; and the type of plants, substances, or preparations consumed, it believes that the user will refrain from use in the future.⁴⁷ A reprimand is an oral censorship, and the user must expressly be alerted to the consequences of his or her behavior and asked to refrain from further drug use.⁴⁸ The Commission must give the reprimand when the decision to apply the sanction is final,⁴⁹ and must deliver the reprimand immediately if the user renounces the right to appeal.⁵⁰

L. Suspension of the Enforcement of the Sanction

In the case of an addicted drug user who refuses treatment or cannot be treated, the Commission may suspend enforcement of sanctions and require him or her to periodically appear before the health services. This suspension of the enforcement of sanctions may be subject to acceptance by the user of the measures provided for in article 19(3),⁵¹ which provides that the Commission may propose other monitoring solutions advisable in specific cases.

In the case of a nonaddicted drug user, the Commission may opt for suspension of the sentence if, taking into account the personal conditions of the drug user; the type of consumption; and the type of plants, substances, or consumed preparations involved, it concludes that the purpose of preventing consumption is better served by this approach and the drug user accepts the conditions offered by the Commission under article 19(3) of Law No. 30/2000.⁵²

Article 19(3) of Law No 30/2000 determines that the Commission may propose other monitoring solutions advisable for the circumstances of each case, in order to guarantee respect for the dignity of the individual and his or her acceptance of the measures set out in article 17(2)(a–d) of Law No. 30/2000.⁵³

⁴⁶ *Id.* art. 16(3).

⁴⁷ *Id.* art. 18(1).

⁴⁸ *Id.* art. 18(2).

⁴⁹ *Id.* art. 18(3).

⁵⁰ *Id.* art. 18(4).

⁵¹ *Id.* art. 19(1). The regime of periodic presentation is determined by an order (*portaria*) issued by the Minister of Health. *Id.* art. 19(4).

⁵² *Id.* art. 19(2).

⁵³ *Id.* art. 19(3).

M. Duration of Suspended Enforcement of Sanctions

The suspension period for the enforcement of sanctions is set between one and three years after the final and nonappealable decision of the Commission, not counting the time the drug user is deprived of liberty by virtue of a coercive measure, criminal sentence, or security measure.⁵⁴ The Commission determines the duration of the measures provided for in article 19(3) of Law No. 30/2000, which cannot exceed the maximum limit of six months.⁵⁵

N. Regular Presentation

Where enforcement of sanctions is suspended subject to the user's periodic appearance before the health services, the Commission makes the necessary communications to the health center of the user's home area or to another agreed upon health service.⁵⁶ The health center must inform the Commission on the regularity of appearances or noncompliance and the reasons for the noncompliance, if known.⁵⁷

O. Communication of Measures

The decision to order the suspension of enforcement of sanctions must be communicated to those services and authorities whose cooperation with the enforcement measures was requested.⁵⁸ The services and authorities must communicate noncompliance to the Commission for the purposes of article 23(2) and (3) of Law No. 30/2000.⁵⁹

P. Effects of the Suspension

The Commission declares the termination of the sanction if, after the suspension period, there is no reason that could lead to the revocation of the suspension decision.⁶⁰ Article 23(2) of Law No. 30/2000 determines that the suspension of a sanction is revoked whenever the drug user repeatedly breaches the imposed measures.⁶¹ Article 23(3) establishes that the revocation of a suspension determines compliance with the applicable sanction.⁶²

⁵⁴ *Id.* art. 20(1).

⁵⁵ *Id.* art. 20(2).

⁵⁶ *Id.* art. 21(1).

⁵⁷ *Id.* art. 21(2).

⁵⁸ *Id.* art. 22(1).

⁵⁹ *Id.* art. 22(2).

⁶⁰ *Id.* art. 23(1).

⁶¹ *Id.* art. 23(2).

⁶² *Id.* art. 23(3).

Q. Duration of the Sanctions

The sanctions provided for in article 17(2) of Law No. 30/2000 and the accompanying measures provided for in article 19 must have a minimum duration of one month and a maximum duration of three years.⁶³

R. Fulfilment of the Sanctions and Accompanying Measures

The decision to impose sanctions or accompanying measures is reported to the police, and the police must inform the agencies (*serviços*) and authorities whose cooperation is needed for implementation of these measures.⁶⁴

S. Subsidiary Law

In the absence of a specific provision of Law No. 30/2000, the general regime of administrative offenses must be applied.⁶⁵

III. Decree-Law No. 130-A of April 23, 2001

According to the terms of Law No. 30/2000, the processing of the drug-related misdemeanors and the application of sanctions are the responsibility of the Commission for Drug Dissuasion.⁶⁶ On April 23, 2001, the government enacted Decree-Law No. 130-A to establish the organization, the process for the dissuasion of the drug user, and the Commission's operating system for the dissuasion of drug abuse and to regulate other supplementary matters.⁶⁷

A. Territorial Jurisdiction

Offices of the Commission for Drug Dissuasion must be established in each district capital of the mainland within facilities made available by the Institute for Drugs and Drug Addiction (now, SICAD).⁶⁸ The Commission in the consumer's home area has territorial jurisdiction, unless the home area is not known, in which case the Commission in the area where the drug user was found has jurisdiction.⁶⁹

⁶³ *Id.* art. 24.

⁶⁴ *Id.* art. 25.

⁶⁵ *Id.* art. 26 (indirectly referencing Decree-Law No. 433, of October 27, 1982, as amended by Law No. 109 of December 24, 2001).

⁶⁶ *Id.* art. 5(1).

⁶⁷ Decreto-Lei No. 130-A/2001, de 23 de Abril, as amended by Decreto-Lei No. 114/2011, de 30 de Novembro, art. 1, http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=193&tabela=leis, archived at <https://perma.cc/6DMM-RP3X>.

⁶⁸ *Id.* art. 2(1).

⁶⁹ *Id.* art. 2(2).

B. Knowledge of the Offense

A police officer who becomes aware of an offense as provided for in Law No. 30/2000 must prepare a report describing

- a) the facts that constitute the offense;
- b) the date, time, place and circumstances in which the offense was committed;
- c) all information available about the identification of the offender and his domicile;
- d) the steps taken as well as the known evidence, including witnesses who can testify about the facts.⁷⁰

The report is signed by the entity that prepared it and sent to the Commission with territorial jurisdiction by the fastest way possible, so that it is received by the Commission within thirty-six hours after the occurrence.⁷¹ To prevent the disappearance of evidence, the police authorities confiscate the substances listed in the report and ship them within the shortest period of time to the Commission, to be deposited in the district's command.⁷²

When it is not possible to identify the offender and the offender's place of residence at the time the offense occurs, the police may arrest the offender to enable his/her identification or to ensure his/her appearance before the Commission under the legal regime of detention for identification.⁷³ In this case, the offender may contact a family member or attorney by telephone.⁷⁴

C. Preliminary Measures

When the offender reveals signs of physical or psychological decompensation, if the offender agrees or if the person's safety is in danger, the police authorities may take him or her to a public health service so that the necessary care can be provided; alternatively the police may, if possible, communicate to the Commission with territorial jurisdiction to allow it to adopt appropriate procedures.⁷⁵ Under these circumstances, the police must immediately send to the chairman of the Commission with territorial jurisdiction a report identifying the person, the date, and the reasons for the presentation.⁷⁶

⁷⁰ *Id.* art. 9(1) (translation by author).

⁷¹ *Id.* art. 9(2).

⁷² *Id.* art. 9(3).

⁷³ *Id.* art. 9(4).

⁷⁴ *Id.* art. 9(5).

⁷⁵ *Id.* art. 10(1).

⁷⁶ *Id.* art. 10(2).

Once the report has been prepared, the drug user must be immediately notified by the police authority to appear before the Commission with territorial jurisdiction, which must occur in the shortest time possible, not to exceed seventy-two hours after the occurrence.⁷⁷

When the offender discloses any disability, the police authorities must contact the person's legal representative in the shortest time possible in order to inform that person of the offense and provide notice to appear before the Commission.⁷⁸ The offender or his or her representative must be informed that they can hire an attorney, or require that an attorney be appointed.⁷⁹

Decree-Law No. 130-A/2001 further details the composition (art. 3) and functions of the commission (arts. 4-8); police procedures and hearings (arts. 12-16); and several other procedures related to the processing of the offenses and the application of sanctions.

IV. Decree-Law No. 183 of June 21, 2001

Decree-Law No. 183 of June 21, 2001, approved the general system of prevention policies, which are aimed at the reduction of risk and the minimization of harm.⁸⁰

A. Purpose

According to article 1, Decree-Law No. 183/2001 is intended to create programs and public health structures for the awareness and referral for treatment of drug addicts, prevent and reduce risky attitudes and behaviors, and minimize the individual and social harm caused by drug abuse.⁸¹

B. Duty of the State

For the protection of public health and the health of drug users, and in compliance with international obligations, the state bears the duty to make accessible to all drug users with risky attitudes and behaviors the abovementioned programs and structures, prioritized according to the specifics of each case.⁸²

Whenever possible, partnerships with other public or private entities are encouraged.⁸³ To the extent possible, programs and structures must focus on referral for treatment and the cessation of drug use.⁸⁴

⁷⁷ *Id.* art. 11(1).

⁷⁸ *Id.* art. 11(2).

⁷⁹ *Id.* art. 11(3).

⁸⁰ Decreto-Lei No. 183/2001, de 21 de Junho, http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=196&tabela=leis&ficha=1&pagina=1&, archived at <https://perma.cc/DF9L-4LXH>.

⁸¹ *Id.* art. 1.

⁸² *Id.* art. 2(1).

⁸³ *Id.* art. 2(2).

⁸⁴ *Id.* art. 2(3).

For these purposes, the following programs and structures are regulated by this Decree-Law:

- a) supporting offices for drug addicts;
- b) reception centers;
- c) shelter centers;
- d) points of contact and information;
- e) mobile spaces for the prevention of infectious diseases;
- f) replacement programs;
- g) needle-exchange programs;
- h) street teams; [and]
- i) programs for supervised use.⁸⁵

1. Support Offices for Drug Addicts

The support offices for drug addicts (*gabinetes de apoio a toxicodependentes sem enquadramento sócio-familiar*) are places for screening, support, and referral for treatment.⁸⁶ The support offices are intended to contribute to the diagnosis and improvement of social and health conditions of marginalized and excluded drug users, and their referral for treatment.⁸⁷

2. Reception Centers

Reception centers (*centros de acolhimento*) are temporary residential spaces.⁸⁸ They are designed to provide environments less conducive to drug use and to provide social and therapeutic treatment of excluded drug users.⁸⁹

3. Shelter Centers

Shelter centers (*centros de abrigo*) are spaces for overnight stays.⁹⁰ The shelters aim to help improve sleeping conditions for drug users without social and family support, bring them closer

⁸⁵ *Id.* art. 3 (translation by author).

⁸⁶ *Id.* art. 6(1).

⁸⁷ *Id.* art. 6(2). The management and functioning of the supporting offices are regulated by articles 7–13 of Decree-Law No. 183/2001.

⁸⁸ *Id.* art. 14(1).

⁸⁹ *Id.* art. 14(2). The management and functioning of reception centers are regulated by articles 15–20 of Decree-Law No. 183/2001.

⁹⁰ *Id.* art. 21(1).

to social systems, minimize the conditions that favor drug use, and provide for users' referral to treatment.⁹¹

4. *Points of Contact and Information*

Points of contact and information are spaces designed to prevent or reduce drug use and its risks.⁹² These spaces are also used to educate the population about the risks and effects of drug addiction, and other issues that may contribute to the prevention of consumption.⁹³

5. *Mobile Spaces for the Prevention of Infectious Diseases*

Mobile spaces for the prevention of infectious diseases are spaces for

- a) the tracking and treatment of the most common infectious diseases in drug users;
- b) the vaccination of the population at risk;
- c) the reduction of injecting and/or smoking heroin on the street through the substitution of methadone, which must be dispensed in facilities assigned to projects in accordance with the law.⁹⁴

6. *Low-Demand Replacement Programs*

Low-demand replacement programs (*programas de substituição em baixo limiar de exigência*) have the following objectives:

- a) reduction in heroin use, by replacing it with methadone, to be dispensed through programs with great accessibility, without requiring immediate abstinence and in adequate facilities for this purpose;
- b) increase in the regularity of contacts of drug users with professionals from a public health team that can particularly help with the person's future abstinence.⁹⁵

7. *Needle Exchange Programs*

The purpose of needle exchange programs is to prevent the transmission of infectious diseases intravenously.⁹⁶ The programs are designed to promote accessibility to the exchange of syringes and needles, filters, wipes, distilled water, citric acid, and other suitable materials.⁹⁷

⁹¹ *Id.* art. 21(2). The management and functioning of shelter centers are regulated by articles 22–28 of Decree-Law No. 183/2001.

⁹² *Id.* art. 29(1).

⁹³ *Id.* art. 29(2). The management and functioning of points of contact and information are regulated by articles 30–34 of Decree-Law No. 183/2001.

⁹⁴ *Id.* art. 35 (translation by author). The management and functioning of mobile spaces are regulated by articles 36–41 of Decree-Law No. 183/2001.

⁹⁵ *Id.* art. 42 (translation by author). The management and functioning of the replacement programs are regulated by articles 43–49 of Decree-Law No. 183/2001.

⁹⁶ *Id.* art. 50(1).

8. *Street Teams*

Street teams (*equipas de rua*) are designed to promote the reduction of risks, by intervening in public spaces where drug use is experienced as a social problem.⁹⁸

9. *Programs for Supervised Use*

The objective of the programs for supervised use (*programas para consumo vigiado*) are to increase infection-free intravenous use and the consequent reduction of risks associated with this form of use, and to get closer to drug users in their socio-cultural context, with a view to building their awareness and referring them to treatment, through the creation of sites for this type of use.⁹⁹

⁹⁷ *Id.* art. 50(2). The management and functioning of the needle exchange programs are regulated by articles 51–57 of Decree-Law No. 183/2001.

⁹⁸ *Id.* art. 58. The management and functioning of the street teams are regulated by articles 59–64 of Decree-Law No. 183/2001.

⁹⁹ *Id.* art. 65. The management and functioning of the programs for supervised use are regulated by articles 66–72, 74 of Decree-Law No. 183/2001.

*Countries that Allow Treatment and Alternative Punishments
for Minor Offenses*

Argentina

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Argentina's Law 23737 of 1989 punishes drug possession with imprisonment of one to six years and a fine.¹ Article 14 of the Law also punishes the possession of small quantities of drugs for personal use. However, the penalty in such cases is imprisonment for one month to two years, which can be replaced by detoxification and rehabilitation treatment.²

In the 2009 *Arriola* decision³ the Supreme Court declared the penalty provision (second paragraph) of article 14 unconstitutional as a violation of article 19 of the National Constitution (NC), which provides as follows:

The private actions of individuals, which in no way offend public order or morality, nor injure a third party, are only reserved to God and are exempted from the authority of judges. No inhabitant of the Nation shall be obliged to perform what the law does not demand nor deprived of what it does not prohibit.⁴

The *Arriola* case involved five individuals who were arrested when leaving their house with small quantities of marijuana. The Supreme Court concluded that criminalizing the possession of drugs for personal use when it does not pose any danger or harm to others is a violation of NC article 19.⁵ It also ruled that personal use protected under the NC must not affect others, and that possession for personal use must be determined by the small quantity of the drug in question.

The ruling does not specifically state what amounts are considered “small amounts” for personal-use purposes. The broad language used in the ruling, coupled with the fact that decisions rendered by the Supreme Court are only applicable to each individual case and do not bind other lower courts, has led other courts to continue prosecuting drug users.⁶ Therefore, each judge has the authority to determine the quantity and circumstances that qualify as “personal use.”⁷

¹ Ley No. 23737, art. 14, para. 1, Sept. 1, 1989, BOLETIN OFICIAL [B.O.], Oct. 10, 1989, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/138/texact.htm>, archived at <https://perma.cc/G78S-55ZU>.

² *Id.* art. 14, para. 2 & art. 17.

³ Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 25/8/2009, “Arriola, Sebastián y otros / Recurso de Hecho” (Arriola Case) (A. 891. XLIV), <http://sjconsulta.csjn.gov.ar/sjconsulta/documentos/verUnicoDocumento.html?idAnalisis=671140>, archived at <https://perma.cc/Z25T-PKHS>.

⁴ CONSTITUCIÓN NACIONAL art. 19, B.O., Dec. 15 1994, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/804/norma.htm>, archived at <https://perma.cc/5GSA-2DT9> (translation by author).

⁵ Arriola Case at 86, para. 14..

⁶ Santiago Safar, El Fallo Arriola: Punto de Partida para la Edificación de una Jurisprudencia Razonable en Torno a la Tenencia de Estupefacientes para Consumo Personal 20 (unpublished seminar paper, Universidad Nacional de La Plata, n.d.), available at http://www.jursoc.unlp.edu.ar/documentos/publicaciones/Fallo_Arriola_cambio_jurispr_en_relac_tenencia_persona_Sant_SAFAR.pdf (last visited June 30, 2016), archived at <https://perma.cc/S6ME-XZT8>.

⁷ *Id.*

In the *Arriola* case, the Supreme Court did not decriminalize the use of marijuana in general. It only ruled that it is unconstitutional to impose criminal penalties on an adult who consumes a small amount of marijuana in a private setting with no harm to others.⁸

On April 2016, the government reportedly announced that it will send a bill to Congress that would amend Law 23737 to set clear limits and amounts on drugs for purposes of establishing personal use in order to avoid the confusion created by the *Arriola* decision.⁹

⁸ *La Corte no Ordenó la Despenalización General del Consumo de Marihuana*, CENTRO DE INFORMACIÓN JUDICIAL (Aug. 25, 2009), <http://www.cij.gov.ar/nota-2156-La-Corte-no-ordeno-la-despenalizacion-general-del-consumo-de-marihuana.html>, archived at <https://perma.cc/J223-3FPU>.

⁹ Daniel Gallo, *El Gobierno Definirá la Cantidad de Drogas de Tenencia para Consumo*, LA NACIÓN (Apr. 25, 2016), <http://www.lanacion.com.ar/1892519-el-gobierno-definira-la-cantidad-de-drogas-de-tenencia-para-consumo>, archived at <https://perma.cc/7J9R-E257>.

Australia

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SUMMARY Australian state and territory legislation contains offenses related to illicit drugs. Cannabis and other illicit substances are illegal throughout the country. In three jurisdictions, however, certain minor offenses, primarily involving possession of small amounts of cannabis or smoking implements, may be dealt with by way of an infringement notice, with a fine to be paid within a specified period in order for the person to avoid being charged with an offense. In addition, in line with initiatives developed under the National Drug Strategy, all states and territories operate “diversion” programs aimed at diverting people apprehended for certain minor drug offenses from the criminal justice system and into education or treatment programs. Diversion programs are operated by the police, who may caution and refer individuals to education or intervention sessions, as well as by the courts. In some jurisdictions, specialized drug courts have the ability to refer offenders to treatment and rehabilitation services and to monitor their progress.

I. Introduction

The Commonwealth of Australia is a federation of six states, two mainland self-governing territories, and several external territories. Each state and self-governing territory has laws prohibiting the cultivation, manufacture, sale or supply, possession, and use of specified drugs. Federal criminal laws also contain drug offenses, including offenses related to importing and exporting narcotics.¹

A National Drug Strategy, involving some nongovernment organizations as well as all Australian governments, has been in place since 1985. The aims of the strategy are “improving health, social and economic outcomes for Australians by preventing the uptake of harmful drug use and reducing the harmful effects of licit and illicit drugs in our society.”² Consultation on a new strategy covering the years 2016–2025 is currently being undertaken. The draft strategy

¹ See *Serious Drugs*, COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS (CDPP), <https://www.cdpp.gov.au/crimes-we-prosecute/serious-drugs> (last visited June 21, 2016), archived at <https://perma.cc/9RRP-JXJH>; *Drug Manufacture*, CDPP, <https://www.cdpp.gov.au/crimes-we-prosecute/serious-drugs/drug-manufacture> (last visited June 21, 2016), archived at <https://perma.cc/B5YF-448S>; *Drug Possession*, CDPP, <https://www.cdpp.gov.au/crimes-we-prosecute/serious-drugs/drug-possession> (last visited June 21, 2016), archived at <https://perma.cc/P7AF-27WV>; *Drug Trafficking, Selling and Cultivation*, CDPP, <https://www.cdpp.gov.au/crimes-we-prosecute/serious-drugs/drug-trafficking-selling-and-cultivation> (last visited June 21, 2016), archived at <https://perma.cc/TP3Z-9KYQ>; *Importing and Exporting Drugs or Precursors*, CDPP, <https://www.cdpp.gov.au/crimes-we-prosecute/serious-drugs/importing-and-exporting-drugs-or-precursors> (last visited June 21, 2016), archived at <https://perma.cc/DL7R-BNMA>.

² *National Drug Strategy*, AUSTRALIAN GOVERNMENT, NATIONAL DRUG STRATEGY, <http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/home> (last updated Nov. 24, 2015), archived at <https://perma.cc/Z3EG-WGSR>.

describes a nationally agreed harm minimisation approach to reducing the harm arising from alcohol, tobacco and other drug use. As well as outlining the national commitment to the harm minimisation approach, the strategy describes priority actions, groups and drug types and summarises effective demand, supply and harm reduction strategies. The strategy also includes headline indicators to monitor success.³

While there is no national decriminalization policy, and recreational cannabis cultivation, sale, possession, and use is illegal across the country, three jurisdictions (Australian Capital Territory, South Australia, and Northern Territory) have decriminalized minor cannabis offenses. Other states have introduced drug diversion programs where offenders are cautioned and may be referred to an education or intervention program rather than being charged with minor drug offenses. According to the Australian Institute of Criminology,

[i]n line with the National Illicit Drug Strategy, Australian states and territories have introduced initiatives to divert some drug users away from courts and the criminal justice system. There are two main streams of diversion: directly to treatment or education programs or the issuing of an infringement or on the spot fine. Infringement systems are legislatively based, while some treatment diversion systems rely on restricting the discretion of police to arrest, rather than legislation.⁴

The Australian Institute of Health and Welfare states that

[p]olice and court drug diversion programs expanded markedly in Australia from 1999 when the Australian, state and territory governments established the Illicit Drug Diversion Initiative (IDDI). Supported by Australian Government funding and a national framework, the IDDI enabled new and/or expanded drug diversion programs to be set in place in all states and territories and led to the ‘development of a more systematic approach to diversion.’⁵

Separate from the National Drug Strategy and related initiatives, the federal Parliament enacted legislation in February 2016 that provides for the legalization and regulation of medicinal cannabis products.⁶ It includes a national licensing system for the controlled cultivation of cannabis for medicinal or scientific purposes. In effect, the legislation will mean that “a patient with a valid prescription can possess and use a medicinal cannabis product manufactured from cannabis plants legally cultivated in Australia, where the supply is appropriately authorised

³ *Draft National Drug Strategy 2016–2025*, AUSTRALIAN GOVERNMENT, NATIONAL DRUG STRATEGY, <http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/draftnds> (last updated Sept. 2015), archived at <https://perma.cc/WN8X-ZK2N>.

⁴ *Australian Responses to Illicit Drugs*, AUSTRALIAN INSTITUTE OF CRIMINOLOGY, http://www.aic.gov.au/crime_types/drugs_alcohol/illicit_drugs/diversion.html (last modified Apr. 30, 2015), archived at <https://perma.cc/SGJ7-9EDX>.

⁵ AUSTRALIAN INSTITUTE OF HEALTH AND WELFARE, ALCOHOL AND OTHER DRUG TREATMENT AND DIVERSION FROM THE AUSTRALIAN CRIMINAL JUSTICE SYSTEM 2012–13, at 4 (Bulletin 125, Oct. 2014), <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549012>, archived at <https://perma.cc/A6HQ-CN8M>.

⁶ Narcotics Drugs Amendment Act 2016 (Cth), <https://www.legislation.gov.au/Details/C2016A00012>, archived at <https://perma.cc/AQ2Q-C8JZ>.

under the Therapeutic Goods Act 1989 and relevant state and territory legislation.”⁷ To date, Victoria,⁸ New South Wales,⁹ and Tasmania¹⁰ have taken action to provide people in those states with the ability to access medicinal cannabis products that have been produced in accordance with the federal law. The Queensland government has also introduced a bill on the subject.¹¹

II. State-Level Decriminalization of Minor Drug Offenses

As noted above, three Australian jurisdictions have decriminalized certain minor drug offenses, particularly related to cannabis possession, while others have diversion programs that allow people to avoid conviction for such offenses if they attend specific programs.¹² The relevant legislation and policies of each state and territory are outlined below.

A. Australian Capital Territory

Under the Simple Cannabis Offence Notice (SCON) system of the Australian Capital Territory a person may “possess up to 50 grams of dried cannabis, OR one or two cannabis plants (excluding all hydroponically or artificially cultivated cannabis plants) for personal use only.”¹³ A fine of AU\$100 (about US\$75) applies to such offenses, which are called “simple cannabis offences.” It is possible to pay the fine online.¹⁴ If the fine is paid within sixty days, “no

⁷ Press Release, Susan Ley, Historic Medicinal Cannabis Legislation Passes Parliament (Feb. 24, 2016), <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/health-mediarel-yr2016-ley013.htm>, archived at <https://perma.cc/PM6Z-YHE3>.

⁸ See *Medicinal Cannabis*, HEALTH.VIC, <https://www2.health.vic.gov.au/public-health/drugs-and-poisons/medicinal-cannabis> (last visited June 23, 2016), archived at <https://perma.cc/Q4ZZ-UQGJ>.

⁹ See *Terminal Illness Cannabis Scheme*, NEW SOUTH WALES GOVERNMENT, <http://www.nsw.gov.au/tics> (last visited June 23, 2016), archived at <https://perma.cc/XME4-MSF5>; Press Release, Pru Goward, NSW Welcomes Progress on National Scheme for Controlled Cultivation of Medicinal Cannabis (Feb. 10, 2016), http://www.health.nsw.gov.au/news/Documents/20160210_00.pdf, archived at <https://perma.cc/4W82-U4JC>.

¹⁰ Press Release, Will Hodgman & Michael Ferguson, Tasmania Takes Action on Medicinal Cannabis (Apr. 23, 2016), http://www.premier.tas.gov.au/releases/tasmania_takes_action_on_medical_cannabis, archived at <https://perma.cc/FYA8-HETN>.

¹¹ See *Medicinal Cannabis in Queensland*, QUEENSLAND GOVERNMENT, <https://www.qld.gov.au/health/conditions/all/medicinal-cannabis/queensland/> (last updated May 6, 2016), archived at <https://perma.cc/C8SF-CCZK>.

¹² See generally *Cannabis and the Law*, NATIONAL CANNABIS PREVENTION AND INFORMATION CENTRE (NCPIC), <https://ncpic.org.au/professionals/publications/factsheets/cannabis-and-the-law/> (last updated Feb. 19, 2013), archived at <https://perma.cc/9AZQ-ASWG>; Jennifer Ogilvie & Katie Wills, *Police Drug Diversion in Australia*, CRIMINAL JUSTICE BULLETIN (NCPIC, Mar. 2009), <https://ncpic.org.au/media/1941/police-drug-diversion-in-australia.pdf>, archived at <https://perma.cc/7KBS-A3V6>.

¹³ *Cannabis Laws in the ACT*, ACT GOVERNMENT, ACCESS CANBERRA, https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1874/~/~cannabis-laws-in-the-act (last updated Feb. 22, 2016), archived at <https://perma.cc/AD75-UDZD>. See also *Drugs of Dependence Act 1989 (ACT)* ss 162, 171(1) & 171A, http://www.legislation.act.gov.au/a/alt_a1989-11co/current/pdf/alt_a1989-11co.pdf, archived at <https://perma.cc/UJQ5-FMCD>.

¹⁴ *Simple Cannabis Offence Notice*, ACT GOVERNMENT, ACCESS CANBERRA, <https://form.act.gov.au/smartforms/scon/simple-cannabis-offence-notice-scon/> (last visited June 21, 2016), archived at <https://perma.cc/EF6Y-8A9A>.

criminal record will be recorded.”¹⁵ As possession of any amount of cannabis remains illegal, police have the discretion to issue a SCON or charge an offender with a criminal offense.¹⁶

The SCON system was introduced in 1992.¹⁷ Originally, the amendments to the Drugs of Dependence Act 1989 (ACT) allowed up to five cannabis plants to be dealt with by way of a SCON,¹⁸ but this was reduced to “one or two” by amending legislation passed in 2004, which also excluded artificial or hydroponic cultivation from the simple offense.¹⁹ In 2013, the Act was amended to increase the allowable amount of cannabis that may be subject to a SCON from twenty-five grams to fifty grams.²⁰

In 2014, the *Canberra Times* reported that around five hundred notices had been issued for simple cannabis offenses in the preceding five years.²¹ A spokeswoman for ACT Policing said that the notice system streamlined police procedures and reduced court time, and that “[a]dditional benefits beyond the avoidance of a court experience and possible criminal conviction for the offender are perceived to be a reduction in the contact between the average user and the criminal element involved in dealing drugs.”²² Furthermore, she said that the system reduced the time and resources police spend on minor offenses, allowing them to focus on the cannabis black market. According to the news report, those issued with a notice can choose to attend a drug assessment and treatment program rather than paying the fine.²³

The ACT also operates Diversion Service programs “aimed at diverting people arrested and/or charged with drug or alcohol related offences out of the judicial system into the health system.”²⁴ This includes Police Early Diversion, where police officers refer persons apprehended for

¹⁵ *Cannabis Laws in the ACT*, *supra* note 13.

¹⁶ *Simple Cannabis Offence Notices*, ACT GOVERNMENT, ACCESS CANBERRA, https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1939 (last updated June 21, 2016), archived at <https://perma.cc/M6AU-LKQH>; *Drugs and the Law*, ACT POLICING, <https://www.police.act.gov.au/safety-and-security/alcohol-and-drugs/drugs-and-law> (last visited June 21, 2016), archived at <https://perma.cc/Q5DJ-EF56>.

¹⁷ Drugs of Dependence (Amendment) Act 1992 (ACT) s 3, <http://www.legislation.act.gov.au/a/1992-52/19920918-4655/pdf/1992-52.pdf>, archived at <https://perma.cc/6C7P-AJ5Q>.

¹⁸ *Id.*

¹⁹ Criminal Code (Serious Drug Offences) Amendment Act 2004 (ACT) sch 1 pt 1.3, <http://www.legislation.act.gov.au/a/2004-56/20050306-16279/pdf/2004-56.pdf>, archived at <https://perma.cc/T8QZ-T2XF>.

²⁰ Crimes Legislation Amendment Act 2013 (No 2) (ACT) pt 9, <http://www.legislation.act.gov.au/a/2013-50/20131210-56740/pdf/2013-50.pdf>, archived at <https://perma.cc/DN23-N2AG>.

²¹ Henry Belot, *More Than 480 People Fined for Cannabis Possession Since 2009*, CANBERRA TIMES (Aug. 31, 2014), <http://www.canberratimes.com.au/act-news/more-than-480-people-fined-for-cannabis-possession-in-act-since-2009-20140825-1082x4.html>, archived at <https://perma.cc/74HG-C92V>.

²² *Id.*

²³ *Id.*

²⁴ *Diversion Services*, ACT HEALTH, <http://www.health.act.gov.au/our-services/alcohol-and-other-drugs/diversion-services> (last updated June 22, 2016), archived at <https://perma.cc/3TDW-JVDS>.

possession of small amounts of illicit drugs to the Alcohol and Drug Program Diversion Service for assessment and subsequent treatment referrals.²⁵

B. New South Wales

While New South Wales has not decriminalized cannabis possession, which is an offense under the Drug Misuse and Trafficking Act 1985 (NSW),²⁶ police in the state have “official discretion to caution adults for minor cannabis offences, and to caution people under 18 for minor offences involving any prohibited drug.”²⁷ The Cannabis Cautioning Scheme has been in place since 2000.²⁸

Under the official police guidelines for the Cannabis Cautioning Scheme, if an adult is found in possession of less than fifteen grams of cannabis, or using cannabis, or in possession of smoking implements, police officers can use their discretion to issue an official caution, rather than charging the person with an offense. Such cautions are issued on the spot and the person will be provided with information about the legal status of cannabis and the harms associated with cannabis. The person’s name and address is also recorded in the police computer system. If the person receives a second caution, he or she is “referred to a compulsory drug education session.”²⁹

In order to qualify for a caution, the person must

- admit the offence
- have no criminal history for drug offences (including possession), sexual assault or other offences involving violence
- have received no more than two cannabis cautions previously
- establish their identity (normal checks on identity will be carried out)
- satisfy the police that the cannabis is for personal use only
- have no other charges that must be determined in court anyway. (For example, if the police find a few grams of cannabis in the pocket of a person charged with stealing, both the theft charge and the drug possession charge will go to court.)³⁰

²⁵ *Id.*

²⁶ Drug Misuse and Trafficking Act 1985 (NSW) s 10, <http://www.legislation.nsw.gov.au/inforce/bdc8fe27-fa54-451f-bf3f-eb3c61509c25/1985-226.pdf>, archived at <https://perma.cc/67GC-N23J>.

²⁷ Steven Bolt, *Diversion From the Criminal Justice System*, DRUGS AND THE LAW – HOT TOPICS (State Library of New South Wales, Find Legal Answers, 2015), http://www.legalanswers.sl.nsw.gov.au/guides/hot_topics/drugs/diversion.html, archived at <https://perma.cc/77AY-U5LT>.

²⁸ *Cannabis Cautioning Scheme*, NSW POLICE FORCE, http://www.police.nsw.gov.au/community_issues/drugs/cannabis_cautioning_scheme (last updated June 20, 2014), archived at <https://perma.cc/J54P-BGJ2>. See also Press Release, Bureau of Crime Statistics and Research, Cannabis Cautioning Scheme Evaluation (Sept. 23, 2014), http://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2004/bocsar_mr_r54.aspx, archived at <https://perma.cc/6TCZ-BFFP>.

²⁹ Bolt, *supra* note 27.

³⁰ *Id.*

People under the age of eighteen may be issued a caution for minor offenses involving cannabis and other drugs, including cannabis cultivation. The cautioning system “is part of a range of alternative systems under the Young Offenders Act 1997 (NSW) to divert young people from courts and prisons.”³¹ Under this legislation, the following drug offenses can be dealt with by way of a police caution:

- possession of 15 grams of cannabis or less
- possession of smoking implements
- cultivation of no more than five cannabis plants
- possession of no more than one gram of heroin, cocaine or amphetamine
- possession of no more than 0.0008 grams of LSD
- possession of no more than 0.25 grams of ecstasy
- use of a prohibited drug.³²

To be eligible for a caution, the young person must admit the offense and there must be no other offenses that would require the person to go to court. Police must accept that the drugs are for personal use rather than supply. Different from the adult caution system, juvenile cautions are issued by a police officer or other official about a week after the offense, rather than on the spot. There are no limits on the number of cautions that can be issued, although police always have the discretion to bring charges.³³

The Drug Court of New South Wales was the first to be trialed and evaluated in Australia. The Court has sentencing discretion to require an offender to participate in an ongoing rehabilitation program under court supervision. If the offender agrees to the program, any penalty imposed by the Court is suspended and the person’s completion of the program is taken into account in determining the final sentence.³⁴

C. Northern Territory

Under the Misuse of Drugs Act (NT), police in the Northern Territory have discretion to issue infringement notices to adults found in possession of up to fifty grams of cannabis plant material, one gram of cannabis oil, ten grams of cannabis resin or cannabis seed, or two non-hydroponic plants.³⁵ A person served with an infringement or “on the spot” notice is subject to a fine of

³¹ *Id.* Young Offenders Act 1997 (NSW) pt 4, <http://www.legislation.nsw.gov.au/inforce/74ebdba2-1c2c-4c65-baac-25fc44c7ae91/1997-54.pdf>, archived at <https://perma.cc/HH94-HRKA>.

³² Bolt, *supra* note 27.

³³ *Id.*

³⁴ *Id.* See generally *For Participants*, DRUG COURT OF NSW, http://www.drugcourt.justice.nsw.gov.au/Pages/dc_participants.aspx (last updated Jan. 29, 2016), archived at <https://perma.cc/5M73-GBPL>.

³⁵ Misuse of Drugs Act (NT) s 20A & sch 3, [http://notes.nt.gov.au/dcm/legislat/legislat.nsf/d989974724db65b1482561cf0017cbd2/253504625fd126e769257fbd0022ca10/\\$FILE/ATT5VPPC.pdf/Repm033.pdf](http://notes.nt.gov.au/dcm/legislat/legislat.nsf/d989974724db65b1482561cf0017cbd2/253504625fd126e769257fbd0022ca10/$FILE/ATT5VPPC.pdf/Repm033.pdf), archived at <https://perma.cc/BG55-YQSB>.

AU\$200 (about US\$150) and has twenty-eight days to pay the fine in order to avoid a criminal charge.³⁶ Infringement notices were introduced through legislation enacted in 1996.

Persons under the age of seventeen may not receive infringement notices and will instead be prosecuted in court.³⁷

The Northern Territory also participates in the national Illicit Drug Diversion Initiative through two main programs: the NT Illicit Drug Pre Court Diversion Program (NTIDPCDP), which is overseen by the Department of Health and NT Police, and the Court Referral and Evaluation for Drug Intervention and Treatment Program (CREDIT NT), which is overseen by the Department of Justice and operated by the Magistrates Court.³⁸ The NTIDPCDP commenced in 2002 and is “available to first time offenders for use and possession of any illicit substance.”³⁹ CREDIT NT is “a bail program which provides support for defendants with substance abuse problems by providing access to drug treatment and rehabilitation, accommodation and other supports.”⁴⁰

D. Queensland

The Queensland police service operates a drug diversion program where people arrested or questioned for a minor drug offense have an “opportunity to receive professional help to quit using drugs, rather than going through the normal court process and getting a criminal record.”⁴¹ The diversion program was established by legislation enacted in 2000.⁴² The Queensland Police website states that

[m]ost drug offences in Queensland involve possession of small amounts of cannabis. A court appearance without appropriate health interventions has not been successful in

³⁶ *Id.* ss 20D, 20C(d) & 20E; 2 DEPARTMENT OF HEALTH (NORTHERN TERRITORY), THE BUSH BOOK, ch. 1, “Cannabis and the Law in the NT,” http://www.nt.gov.au/health/healthdev/health_promotion/bushbook/volume2/chap1/cannabis.htm#CannabisandtheLaw (last visited June 21, 2016), archived at <https://perma.cc/YR9A-R2D9>.

³⁷ 2 THE BUSH BOOK, *supra* note 36, ch. 1.

³⁸ *Other Substances: Illicit Drugs*, NT DEPARTMENT OF HEALTH, http://www.health.nt.gov.au/Alcohol_and_Other_Drugs/Other_Substances/index.aspx (last reviewed Aug. 2009), archived at <https://perma.cc/9LP2-8VZJ>.

³⁹ Northern Territory Parliament, Ice Select Committee, Northern Territory Response to Questions on Notice 6 (June 19, 2015), http://www.nt.gov.au/lant/parliamentary-business/committees/ice/Answers_to_Questions_Taken_on_Notice_NT_Police_Service_Public_Hearing_19_June_2015.pdf, archived at <https://perma.cc/YN9Z-LRTS>.

⁴⁰ DEPARTMENT OF JUSTICE, MEDIA GUIDE: NORTHERN TERRITORY COURTS – SUPREME COURT AND MAGISTRATES COURT 8 (May 2011), http://www.nt.gov.au/justice/ntmc/media/documents/Media_Guide.pdf, archived at <https://perma.cc/8BM4-GZ9J>.

⁴¹ *Drug Offences*, QUEENSLAND GOVERNMENT, <https://www.qld.gov.au/law/crime-and-police/types-of-crime/drug-offences/> (last updated July 29, 2016), archived at <https://perma.cc/PPC2-VF2U>. See generally *Prevention and Treatment for Alcohol and Drugs*, QUEENSLAND HEALTH, <https://www.health.qld.gov.au/public-health/topics/atod/prevention/default.asp> (last updated Sept. 29, 2015), archived at <https://perma.cc/X4PS-TG6D>.

⁴² Police Powers and Responsibilities Act 2000 (Qld) s 379 (“Additional case where arrest for a minor drugs offence may be discontinued”), <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PolicePowResA00.pdf>, archived at <https://perma.cc/XX8V-CGRP>.

reducing cannabis use or drug related offences. The PDDP [Police Drug Diversion Program] offers people apprehended for a minor drugs offence with an opportunity to receive professional help through early intervention and prevention, to address their drug use, before proceeding through the normal court process and incurring a criminal record.⁴³

The program is available for people caught with up to fifty grams of cannabis or in possession of a smoking implement.⁴⁴ Only one offer of diversion is permitted. The person must not have committed another indictable offense related to the drug offense and must not have been previously sentenced to a term of imprisonment under certain provisions of the Drugs Misuse Act 1986 (Qld)⁴⁵ or convicted of an offense involving violence. The person must also admit having committing the minor drug offense. A child who has been previously cautioned for a minor drug offense must be offered the diversion program.⁴⁶

The person is given and asked to sign a form titled “Minor Drugs Offence Diversion (Agreement to Attend and Requirement to Comply),” requiring him or her to attend and complete a Drug Diversion Assessment Programme (DDAP) with an approved Queensland Health service provider.⁴⁷ The DDAP session, which takes about two hours, includes an assessment of the person’s drug use, involving questions about how often he or she uses drugs and any problems that may influence that usage, and education on the “health effects of illicit drug use and the legal consequences of continued use.”⁴⁸ The provider will then work with the person to develop a plan to help stop him or her using illicit drugs. This might include the provision of information about, and referral to, a voluntary treatment program for drug dependence. The person is encouraged to take a friend or family member to the session.⁴⁹

“Court diversion” is also available for persons who appear before the Magistrate’s Court or Children’s Court on charges involving certain minor drug possession offenses.⁵⁰ People under seventeen years of age will be given the chance to attend a drug education and information

⁴³ *Police Drug Diversion Programme*, QUEENSLAND POLICE, <https://www.police.qld.gov.au/programs/drugs/pddp/> (last updated Aug. 25, 2014), archived at <https://perma.cc/88DX-VHW7>.

⁴⁴ Police Powers and Responsibilities Act 2000 (Qld) sch 6 (definition of “minor drugs offence”).

⁴⁵ Drugs Misuse Act 1986 (Qld), <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/D/DrugsMisuseA86.pdf>, archived at <https://perma.cc/P6JZ-VJW4>.

⁴⁶ *Id.* s 379. See also *Police Drug Diversion Program*, LEGAL AID QUEENSLAND, <http://www.legalaid.qld.gov.au/Find-legal-information/Criminal-justice/Diversion-and-referral-options/Police-drug-diversion-program> (last visited June 21, 2016), archived at <https://perma.cc/2MQF-HZX9>.

⁴⁷ QUEENSLAND POLICE, QUEENSLAND ILLICIT DRUG DIVERSION INITIATIVE: WHAT DO I NEED TO KNOW ABOUT THE POLICE DRUG DIVERSION PROGRAM? 1 (2013), https://www.police.qld.gov.au/programs/drugs/pddp/Documents/pdp_offender.pdf, archived at <https://perma.cc/L6JY-PGHL>.

⁴⁸ *Id.* at 2.

⁴⁹ *Id.*

⁵⁰ See Penalties and Sentences Act 1992 (Qld) ss 15B–21, <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PenaltASenA92.pdf>, archived at <https://perma.cc/DU53-9UJP>; Youth Justice Act 1992 (Qld) pt 7 div 3, <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/Y/YouthJustA92.pdf>, archived at <https://perma.cc/SF4C-WQU2>.

session in order to avoid conviction, while adults will be asked to sign a document in which he or she agrees to be of good behavior for a period of time and to attend a drug education and information session.⁵¹ Examples of minor offenses for which an adult may qualify for court diversion include fifty grams of cannabis, one gram of heroin, one gram of methadone, one gram of amphetamine, one gram of cocaine, and three tickets or tabs of LSD. The full list of what is considered minor amounts for different drugs is provided by regulations.⁵²

E. South Australia

Under South Australia's Controlled Substances Act 1984 (SA), minor offenses involving personal possession of small amounts of cannabis, cannabis resin, or smoking equipment may be dealt with by way of an on the spot fine.⁵³ Such fines, or "expiation fees," are applied to "simple cannabis offences" by way of an expiation notice given under the Expiation of Offences Act 1996 (SA).⁵⁴ The limits under the Act are one hundred grams of marijuana, twenty grams of resin, one non-hydroponic plant, or cannabis smoking equipment,⁵⁵ and the fines range from between AU\$150 (about US\$112) and AU\$300 (about US\$224) depending on the offense,⁵⁶ with a person having sixty days to pay in order to avoid being charged with an offense.⁵⁷

The infringement notice and fine system first came into effect in 1987,⁵⁸ making South Australia the first Australian jurisdiction to decriminalize possession of minor amounts of cannabis.

South Australia Police also operate the Police Drug Diversion Initiative, with Drug and Alcohol Services SA responsible for statewide coordination of the program and supporting health

⁵¹ *Court Diversion for a Minor Drug Offence*, LEGAL AID QUEENSLAND, <http://www.legalaid.qld.gov.au/Find-legal-information/Criminal-justice/Diversion-and-referral-options/Court-diversion-for-a-minor-drugs-offence> (last visited June 20, 2016), archived at <https://perma.cc/G56D-38VW>.

⁵² Penalties and Sentences Regulation 2015 (Qld) regs 5 & 6 & sch 1, <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PenaltASenR15.pdf>, archived at <https://perma.cc/L6TU-CFB8>.

⁵³ *Illicit Drug Laws*, SA HEALTH, <http://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/health+topics/legal+matters/illicit+drug+laws> (last visited June 21, 2016), archived at <https://perma.cc/9FXW-B4Z6>.

⁵⁴ Controlled Substances Act 1984 (SA) s 45A, <https://www.legislation.sa.gov.au/LZ/C/A/CONTROLLED%20SUBSTANCES%20ACT%201984/CURRENT/1984.52.UN.PDF>, archived at <https://perma.cc/N7V7-X2HW>; Expiation of Offences Act 1996 (SA), <https://www.legislation.sa.gov.au/LZ/C/A/EXPIATION%20OF%20OFFENCES%20ACT%201996/CURRENT/1996.27.UN.PDF>, archived at <https://perma.cc/FR88-D7UQ>.

⁵⁵ *Id.* ss 33K(2) & 33L(2); Controlled Substances (Controlled Drugs, Precursors and Plants) Regulations 2014 (SA) reg 15, <https://www.legislation.sa.gov.au/LZ/C/R/CONTROLLED%20SUBSTANCES%20%28CONTROLLED%20DRUGS%20PRECURSORS%20AND%20PLANTS%29%20REGULATIONS%202014/CURRENT/2014.236.UN.PDF>, archived at <https://perma.cc/KL34-LWED>.

⁵⁶ Controlled Substances (Controlled Drugs, Precursors and Plants) Regulations 2014 (SA) sch 5.

⁵⁷ Expiation of Offences Act 1996 (SA) s 16(3)(b).

⁵⁸ Controlled Substances Amendment Act 1986 (SA) (*see* Controlled Substances Act 1984 (SA) at p. 82, regarding insertion of section 45A).

workers in administering the program.⁵⁹ Under the Controlled Substances Act 1984 (SA), a police officer must refer a person who is alleged to have committed a simple drug possession offense to a nominated assessment service.⁶⁰ For adults, this applies to all illicit substances other than cannabis (to which an expiation notice applies) and for children aged ten to seventeen years it applies to all drugs.⁶¹

F. Tasmania

According to a 2014 Tasmanian government report,

[t]he Tasmanian Illicit Drug Diversion Initiative (IDDI) program (Police Diversion) is a discretionary police diversion program aimed at eligible drug offenders who are at the early stages of contact with the criminal justice system. The Tasmanian component of the Police diversion program provides for the diversion of offenders apprehended by Tasmania Police officers for the use of small quantities of illicit drugs (mainly cannabis) to drug treatment services. The Tasmanian framework uses existing police discretion and ‘Commissioners Instructions’ to allow Tasmania Police officers to divert eligible offenders to education, assessment and treatment. The level of diversion is proportional to the nature of the offence.⁶²

The youth justice legislation and police policy also allow police to issue informal and formal cautions to young people in relation to drug possession and use. If a formal caution is issued, “attendance at a health diversion can be mandated.”⁶³

In addition, the Magistrates Court of Tasmania operates a Court Mandated Diversion program that allows magistrates to divert eligible offenders into drug treatment. The program commenced as pilot in 2007. Under the program, “[f]ollowing a plea or finding of guilt, eligible and suitable individuals can be diverted into drug treatment through sentencing to a Drug Treatment Order (DTO) where a Magistrate will continually review the individual’s progress on the order. A DTO is an intensive community based sentence that has a custodial sentence attached.”⁶⁴ To be

⁵⁹ *Police Drug Diversion Initiative (PDDI)*, SA HEALTH, <http://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/clinical+resources/clinical+programs/drug+and+alcohol+programs/police+drug+diversion+initiative+pddi> (last modified Apr. 6, 2016), archived at <https://perma.cc/7MKW-E5LQ>.

⁶⁰ Controlled Substances Act 1984 (SA) s 36.

⁶¹ *Police Drug Diversion Initiative (PDDI)*, CENTACARE, <http://centacare.org.au/service/police-drug-diversion-initiative-pddi/> (last visited June 23, 2016), archived at <https://perma.cc/XQT9-2SDC>.

⁶² Tasmanian Government, Review of Drug Use and Service Responses in North West Tasmania 11 (Nov. 2014), http://www.dhhs.tas.gov.au/_data/assets/pdf_file/0009/177534/Review_of_Drug_Use_in_NW_Tasmania.pdf, archived at <https://perma.cc/7V69-BB36>.

⁶³ Guidelines for Managing Drug-Related Incidents in Tasmanian Schools 2015–2019 (Memorandum of Understanding Between Tasmanian Police and Tasmanian Schools and Colleges) 12 (2015), <http://www.police.tas.gov.au.s3.amazonaws.com/wp-content/uploads/2010/06/Managing-Drug-Related-Incidents-in-Tasmania-Schools-Guideline-MoU-2015-2019-A14.100800.pdf>, archived at <https://perma.cc/2XAF-PKC9>.

⁶⁴ *Court Mandated Diversion*, MAGISTRATES COURT OF TASMANIA, http://www.magistratescourt.tas.gov.au/divisions/criminal_and_general/court_mandated_diversion (last modified Aug. 12, 2014), archived at <https://perma.cc/TP7T-F6MU>. See also Sentencing Act 1997 (Tas) pt 3A, <http://www.thelaw.tas.gov.au/>

eligible for a DTO a person must be over eighteen years of age, have entered guilty pleas or been found guilty of the relevant offenses, be facing a penalty of imprisonment, have a demonstrable history of illicit drug use that contributed to the offense(s), and be willing to participate in supervised treatment.⁶⁵

G. Victoria

Victoria has not decriminalized cannabis. However, police in Victoria are able to issue a caution (Cannabis Caution) to individuals over the age of seventeen who are caught with a small quantity of cannabis (less than fifty grams), provided it is the person's first or second offense and he or she admits to the possession.⁶⁶ A police officer may refer a person to attend an education session to learn about the effects of cannabis and how to stop taking the drug.⁶⁷ The Cannabis Caution program was initiated in 1997.⁶⁸ A caution is available for possession and use offenses under the Drugs, Poisons and Controlled Substances Act 1981 (Vic).⁶⁹

People caught with small amounts of other drugs, and who admit to having the drugs, may also be given Drug Diversion by the police. This program, which was first piloted in 1998,⁷⁰ requires the offender to attend two appointments at a drug treatment agency in order to avoid a criminal record. To be eligible for the Drug Diversion program a person must be over ten years of age, have been arrested for a small amount of illicit drugs other than cannabis, admit the offense, and not have any more than one previous cautioning notice (including a Cannabis Caution).⁷¹ People are not eligible for either a Cannabis Caution or for diversion if they are trafficking, are involved in other offenses at the time, have a prescription drug without a prescription, or do not admit the offense.⁷²

[tocview/index.w3p:cond=;doc_id=59%2B%2B1997%2BAT%40EN%2B2016062300000;histon=;pdfauthverid=;prompt=;rec=;rtfauthverid=;term=;webauthverid](#), archived at <https://perma.cc/5EM8-SGH6>.

⁶⁵ *Court Mandated Diversion: How to Enter the Program*, DEPARTMENT OF JUSTICE, COMMUNITY CORRECTIONS SERVICE, http://www.justice.tas.gov.au/communitycorrections/court_mandated_diversion/enter_the_program (last modified May 5, 2015), archived at <https://perma.cc/E334-SKXE>.

⁶⁶ *Drug Possession*, VICTORIA LEGAL AID, <https://www.legalaid.vic.gov.au/find-legal-answers/criminal-offences/drug-possession> (last updated May 11, 2016), archived at <https://perma.cc/R9DF-N828>.

⁶⁷ VICTORIA POLICE, YOUNG PEOPLE, ALCOHOL, DRUGS AND THE LAW 6 (2010), https://www.police.vic.gov.au/retrievemedia.asp?Media_ID=56941, archived at <https://perma.cc/5ZKQ-TY95>. See also *Forensic Services*, HEALTH.VIC, <https://www2.health.vic.gov.au/alcohol-and-drugs/aod-treatment-services/forensic-aod-services> (last visited June 22, 2016), archived at <https://perma.cc/3ANG-DPV2>.

⁶⁸ VICTORIAN DEPARTMENT OF HUMAN SERVICES, EVALUATION OF THE DRUG DIVERSION PILOT PROGRAM 1 (Sept. 1999), <https://www2.health.vic.gov.au/Api/downloadmedia/%7BC08C67F6-2B39-4C1B-931D-405C66C1C2CD%7D>, archived at <https://perma.cc/8WMB-A8BW>.

⁶⁹ Drugs, Poisons and Controlled Substances Act 1981 (Vic) ss 73 & 75, [http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/LTObjSt1.nsf/DDE300B846EED9C7CA257616000A3571/0D638BD269A209FCA257761001BFAB9/\\$FILE/81-9719a084.pdf](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/LTObjSt1.nsf/DDE300B846EED9C7CA257616000A3571/0D638BD269A209FCA257761001BFAB9/$FILE/81-9719a084.pdf), archived at <https://perma.cc/Q6L3-SAJJ>.

⁷⁰ EVALUATION OF THE DRUG DIVERSION PILOT PROGRAM, *supra* note 68, at 1.

⁷¹ *Forensic Services*, *supra* note 67.

⁷² YOUNG PEOPLE, ALCOHOL, DRUGS AND THE LAW, *supra* note 67, at 6.

Drug offenses are tried in a separate court, the Drug Court, which has different sentencing options. This includes the availability of suspended prison sentences for two years while a person undertakes a Drug Treatment Order. Persons subject to such an order must undergo regular testing, attend drug and alcohol counseling, see a case manager and clinical adviser, and come before a Drug Court Magistrate on a regular basis.⁷³ Other programs include the Children’s Court Clinic Drug Program, which “provides early intervention drug treatment for young people appearing in the criminal division of the court who have demonstrated substance misuse.”⁷⁴

H. Western Australia

Western Australia introduced civil penalties for certain minor cannabis offenses in 2003 (effective from 2004),⁷⁵ but this law was overturned in 2010 (effective from 2011).⁷⁶

Since 2011, Western Australia Police have operated a Cannabis Intervention Requirement (CIR) program under which offenders aged fourteen years or over who are caught with less than ten grams of cannabis and/or a smoking implement with traces of cannabis can be given a CIR. The CIR can be resolved by the person attending a Cannabis Intervention Session within twenty-eight days. These one-hour sessions are run by approved drug counselors and aim to increase awareness about the laws and health effects associated with cannabis use, as well as encouraging discussion and changes in behavior. If the person does not attend a session, the alleged offense will be prosecuted.⁷⁷

An adult can receive only one CIR while a younger person aged fourteen to seventeen years can be given two CIRs.⁷⁸ A young person who commits a third minor cannabis offense will, where appropriate, be referred to a Juvenile Justice Team, rather than being charged.⁷⁹ The program

⁷³ *Id.* at 7.

⁷⁴ *Forensic Services*, *supra* note 67.

⁷⁵ Cannabis Control Act 2003 (WA), [https://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MR_Document:4797P/\\$FILE/CannbsContrlAct2003_00-00-02.pdf?OpenElement](https://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MR_Document:4797P/$FILE/CannbsContrlAct2003_00-00-02.pdf?OpenElement), archived at <https://perma.cc/4VCU-8XQY>.

⁷⁶ Cannabis Law Reform Act 2010 (WA), [https://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MR_Document:20280P/\\$FILE/Cannabis%20Law%20Reform%20Act%202010%20-%20%20%5B00-00-01%5D.pdf?OpenElement](https://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MR_Document:20280P/$FILE/Cannabis%20Law%20Reform%20Act%202010%20-%20%20%5B00-00-01%5D.pdf?OpenElement), archived at <https://perma.cc/HQ53-PPGL>.

⁷⁷ *Illicit Drugs and the Law*, WESTERN AUSTRALIA POLICE, <https://www.police.wa.gov.au/Your-Safety/Alcohol-and-drugs/Illicit-drugs-and-the-law> (last updated Nov. 5, 2015), archived at <https://perma.cc/DMS7-AD4N>. See also *Drugs and Alcohol: The Law*, GOVERNMENT OF WESTERN AUSTRALIA DRUG AND ALCOHOL OFFICE, <http://www.dao.health.wa.gov.au/Drugsandalcohol/TheLaw.aspx> (last updated July 15, 2014), archived at <https://perma.cc/6R57-WGWL>.

⁷⁸ GOVERNMENT OF WESTERN AUSTRALIA DRUG AND ALCOHOL OFFICE, CANNABIS LAWS IN WESTERN AUSTRALIA 4 (2011), http://www.dao.health.wa.gov.au/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core_Download&EntryId=521&PortalId=0&TabId=211, archived at <https://perma.cc/243V-2U5A>.

⁷⁹ *Id.*

does not apply to offenses involving possession or cultivation of cannabis plants, or possession of cannabis resin, cannabis oil, or other cannabis derivatives.⁸⁰

The CIR program is legislated under the Misuse of Drugs Act 1981 (WA)⁸¹ and the Young Offenders Act 1994 (WA).⁸²

A further program, which is also part of the WA Diversion Program, is the Other Drug Intervention Requirement. This initiative “provides assessment and treatment for adults and juveniles for simple possession of illicit drugs. There is emphasis on positive action (not necessarily prosecution) including diversion from the judicial system and referral to treatment services.”⁸³ A person issued an Other Drug Intervention Requirement notice must attend three intervention sessions within forty-two days; if necessary, ongoing support may be made available. The program is primarily for adults who have no previous drug convictions, and a notice can only be issued once.⁸⁴

In addition, Western Australia has both an adult and children’s drug court,⁸⁵ and “[c]ourt diversion programs are available to most offenders appearing in court who have drug-related problems, depending on the seriousness of the offence.”⁸⁶

⁸⁰ *Id.* at 3.

⁸¹ Misuse of Drugs Act 1981 (WA) pt IIIA. [https://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:28280P/\\$FILE/Misuse%20Of%20Drugs%20Act%201981%20-%20%20%5B06-e0-01%5D.pdf?OpenElement](https://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:28280P/$FILE/Misuse%20Of%20Drugs%20Act%201981%20-%20%20%5B06-e0-01%5D.pdf?OpenElement), archived at <https://perma.cc/L3Z5-3H9Y>.

⁸² Young Offenders Act 1994 (WA) s 25(3)(b), [https://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:28405P/\\$FILE/Young%20Offenders%20Act%201994%20-%20%20%5B06-d0-00%5D.pdf?OpenElement](https://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:28405P/$FILE/Young%20Offenders%20Act%201994%20-%20%20%5B06-d0-00%5D.pdf?OpenElement), archived at <https://perma.cc/P73R-K3F5>.

⁸³ *Id.*

⁸⁴ *Other Drug Intervention Requirement*, GOVERNMENT OF WESTERN AUSTRALIA DRUG AND ALCOHOL OFFICE, <http://www.dao.health.wa.gov.au/Informationandresources/WADiversionProgram/OtherDrugInterventionRequirement.aspx> (last updated Sept. 30, 2015), archived at <https://perma.cc/94MX-X8KL>.

⁸⁵ *Drug Court*, GOVERNMENT OF WESTERN AUSTRALIA DRUG AND ALCOHOL OFFICE, <http://www.dao.health.wa.gov.au/Informationandresources/WADiversionProgram/DrugCourt.aspx> (last updated Oct. 7, 2011), archived at <https://perma.cc/9SMK-A3VU>; *Drug Court*, DEPARTMENT OF THE ATTORNEY GENERAL, COURT AND TRIBUNAL SERVICES, http://www.courts.dotag.wa.gov.au/D/drug_court.aspx?uid=5227-1163-1055-5774 (last updated Sept. 1, 2015), archived at <https://perma.cc/WF4Q-L7KH>.

⁸⁶ *WA Diversion Program*, GOVERNMENT OF WESTERN AUSTRALIA DRUG AND ALCOHOL OFFICE, <http://www.dao.health.wa.gov.au/Informationandresources/WADiversionProgram.aspx> (last updated July 6, 2015), archived at <https://perma.cc/MQ64-8FWF>.

Brazil

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I. Introduction

Brazil has not decriminalized narcotics. However, with the promulgation of Law No. 11,343 on August 23, 2006,¹ Brazil changed its approach to the penalization of those caught with drugs for alleged personal use. Although still a crime, instead of imposing prison time as a form of punishment, the law opted for alternative punishments.

II. Law No. 11,343 of August 23, 2006

According to article 28 of Law No. 11,343, whoever acquires, keeps, stores, transports, or carries for personal use drugs without authorization or in violation of a legal or regulatory determination, is subject to the following punishments:

- I – receive a warning about the effects of drugs;
- II – render community services; [or]
- III – . . . attend a program or educational course.²

The same punishment applies to those who, for their own use, plant, cultivate, or harvest crops for the preparation of a small amount of substance or product capable of causing physical or psychological dependence.³ To determine whether the drug was intended for personal use, the judge must consider the nature and quantity of the substance seized, the place and the conditions under which the actions developed, social and personal circumstances, and the person's conduct and prior behavior.⁴

The law continues to criminalize and punish with five to fifteen years in prison and a fine those persons who import, export, ship, prepare, produce, manufacture, purchase, sell, display for sale, offer, store, transport, bring, keep, prescribe, administer, deliver, or provide drugs for use, although free, without authorization or in violation of legal or regulatory requirements.⁵

¹ Lei No. 11.343, de 23 de Agosto de 2006, http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/111343.htm, archived at <https://perma.cc/TP4Y-HHTJ>. Law No. 11,343 defines a “drugs” as substances or products that can cause addiction, as specified by law or in lists periodically updated by the federal executive branch of the government. *Id.* art. 1 (sole para.).

² *Id.* art. 28. The penalties provided for in sections II and III of article 28 must be applied for a maximum of five months. *Id.* art. 28(§ 3). In the case of recidivism, the penalties provided for in sections II and III of article 28 must be applied for a maximum of ten months. *Id.* art. 28(§ 4).

³ *Id.* art. 28(§ 1).

⁴ *Id.* art. 28(§ 2).

⁵ *Id.* art. 33.

III. Extraordinary Appeal

On February 22, 2011, an extraordinary appeal (*recurso extraordinário*)⁶ was filed with the Brazilian Federal Supreme Court (Supremo Tribunal Federal, STF) questioning the compatibility of article 28 of Law 11,343, which criminalizes the possession of drugs for personal use, with the constitutional principles of intimacy and privacy.⁷ The case is still pending before the STF.

IV. Proposed Legislation

A bill was introduced in the Chamber of Deputies on July 14, 2010, to add and amend provisions of Law No. 11,343, of August 23, 2006. The purpose of the bill is to discuss the National Drug Policy System (Sistema Nacional de Políticas sobre Drogas), to provide for the mandatory classification of drugs, to introduce aggravating circumstances to the crimes set forth in articles 33 through 37, to define the conditions of attention to drug users or drug addicts, and to deal with the funding of policies on drugs.⁸ On May 28, 2013, after the bill was discussed and voted on, it was forwarded to the Federal Senate where it is currently under consideration.⁹

⁶ According to article 102(III) of the Brazilian Constitution, the STF has jurisdiction to decide extraordinary appeals in cases decided in the sole or last instances, when the appealed decision (a) is contrary to a provision of the Constitution, (b) declares a treaty or a federal law unconstitutional, (c) upholds a law or act of local government challenged as an infringement of the Constitution, or (d) upholds a local law challenged as contrary to federal law. CONSTITUIÇÃO FEDERAL, http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm, archived at <https://perma.cc/G36G-5DBR>.

⁷ STF, Recurso Extraordinário No. 635569, <http://www.stf.jus.br/portal/processo/verProcessoAndamento.asp?incidente=4034145>, archived at <https://perma.cc/CPU2-Q7TG>. Article 5(X) of the Constitution determines that personal intimacy, private life, honor and reputation are inviolable, guaranteeing the right to compensation for pecuniary or moral damages resulting from the violation thereof. CONSTITUIÇÃO FEDERAL art. 5(X).

⁸ *Projeto de Lei 7663/2010*, CÂMARA DOS DEPUTADOS, <http://www.camara.gov.br/proposicoesWeb/fichade tramitacao?idProposicao=483808>, archived at <https://perma.cc/7QQB-EVKR>.

⁹ *Projeto de Lei da Câmara No. 37, de 2013*, SENADO FEDERAL, <http://www25.senado.leg.br/web/atividade/materias/-/materia/113035>, archived at <https://perma.cc/DBW2-F3MR>.

Germany

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SUMMARY In general, dealing in narcotics in Germany without a license or a prescription from a doctor is illegal and subject to punishment according to sections 29 to 30a of the Narcotic Drugs Act. The Narcotic Drugs Act authorizes the German states to establish drug consumption rooms in which drug-addicted persons are allowed to use narcotic drugs that they bring with them and that have not been medically prescribed. Furthermore, the prosecutors' offices and the courts have discretion to refrain from prosecution or punishment if the suspect possessed or procured small quantities of narcotics for personal use only.

I. General Overview

Narcotic drugs encompass all substances and preparations listed in annexes I to III of the German Narcotic Drugs Act.¹ The narcotics are divided into non-trafficable substances (Annex I), trafficable substances that are not prescribable (Annex II), and trafficable and prescribable substances (Annex III). There is no distinction between soft and hard drugs in order to emphasize that the provisions of the Narcotic Drugs Act apply equally to all narcotics and that the different risks and hazards of substances and preparations will only be taken into account at sentencing.²

Section 2 of the Narcotic Drugs Act defines substances and preparations. Substances are “chemical elements and chemical compounds, as well as their naturally occurring mixtures and solutions; plants, algae, fungi and lichens, as well as their parts and components in a processed or unprocessed state; bodies of animals, also live animals, as well as human and animal body parts, components and metabolites in a processed or unprocessed state; [and] microorganisms including viruses, as well as their components or metabolites.” Preparations are defined as “mixtures of substances or the solutions of one or several substances except the natural mixtures and solutions.”

In general, dealing in narcotics requires a license from the Federal Institute for Drugs and Medical Devices.³ For substances listed in Annex I, a license can only be granted for scientific

¹ Gesetz über den Verkehr mit Betäubungsmitteln (Betäubungsmittelgesetz - BtMG) [Narcotic Drugs Act], as promulgated on Mar. 1, 1994, BUNDESGESETZBLATT [BGBl.] [FEDERAL LAW GAZETTE] I at 358, § 1, para. 1, http://www.gesetze-im-internet.de/bundesrecht/btmg_1981/gesamt.pdf, archived at <http://perma.cc/7D9X-FJ7J>, unofficial English translation available at http://www.bmg.bund.de/fileadmin/dateien/Downloads/Gesetze_und_Verordnungen/GuV/N/Narcotic_Drugs_18_12_2009.pdf, archived at <http://perma.cc/6HRN-CHP6> (English translation only current to 2009).

² DEUTSCHER BUNDESTAG: DRUCKSACHEN UND PROTOKOLLE [BT-DRS.] 8/3551 at 24, <http://dipbt.bundestag.de/doc/btd/08/035/0803551.pdf>, archived at <http://perma.cc/TOB6-MEGJ>.

³ Narcotic Drugs Act § 3.

or other purposes in the public interest.⁴ Cannabis is listed as a plant in Annex I. Dealing in narcotics without a license or a prescription from a doctor is generally illegal and subject to punishment according to sections 29 to 30a of the Narcotic Drugs Act. Dealing includes cultivating, producing, trading, importing, exporting, distributing, selling, otherwise placing narcotics on the market, acquiring, or producing exempt preparations of narcotics.⁵

Exceptions from the obligation to obtain a license exist for pharmacies; veterinary practice dispensaries; anyone who acquires narcotic drugs listed in Annex III on the basis of a prescription; anyone who exports or imports narcotic drugs listed in Annex III as a physician, dentist, or veterinarian as part of cross-border services or as travel necessities; anyone who on a commercial basis is involved in the transport of narcotic drugs between authorized participants in the trade in narcotic drugs; or anyone who acquires narcotic drugs listed in Annex I, II, or III as a subject or patient in the context of a clinical trial or in hardship cases.⁶ Further exceptions are listed in the annexes for certain substances.

II. Drug Consumption Rooms

In 2000, the German legislature enacted a provision that authorized the German state governments to establish drug consumption rooms.⁷ Drug consumption rooms are facilities in which drug-addicted persons are allowed to use narcotic drugs that they bring with them and that have not been medically prescribed.⁸ Drug consumption rooms are supposed to further the goal of harm reduction, which had become part of the international and German drug policy in the preceding years. Thus far, only Berlin, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, and Saarland have enacted such regulations.⁹ The regulations must set minimum

⁴ *Id.* § 3, para. 2.

⁵ *Id.* § 3, para. 1.

⁶ *Id.* § 4.

⁷ *Id.* § 10a.

⁸ *Id.* § 10a, para. 1, sentence 1.

⁹ Berlin – Verordnung über die Erteilung einer Erlaubnis für den Betrieb von Drogenkonsumräumen [Berlin – Regulation on Licensing for the Operation of Drug Consumption Rooms], Dec. 10, 2002, GESETZ- UND VERORDNUNGSBLATT FÜR BERLIN [BLN GVBL.] [BERLIN GAZETTE OF LAWS AND ORDINANCES] 366; Hamburg – Verordnung über die Erteilung einer Erlaubnis für den Betrieb von Drogenkonsumräumen [Hamburg – Regulation on Licensing for the Operation of Drug Consumption Rooms], Apr. 25, 2000, GESETZ- UND VERORDNUNGSBLATT FÜR HAMBURG [HMB GVBL.] [HAMBURG GAZETTE OF LAWS AND ORDINANCES], No. 15, at 83, <http://www.luewu.de/gvbl/2000/15.pdf>, archived at <http://perma.cc/43ZS-6J9R>; Hesse – Verordnung über die Erteilung einer Erlaubnis für den Betrieb von Drogenkonsumräumen [Hesse – Regulation on Licensing for the Operation of Drug Consumption Rooms], Sept. 10, 2001, GESETZ- UND VERORDNUNGSBLATT FÜR HESSEN [HE GVBL.] [HESSE GAZETTE OF LAWS AND ORDINANCES] 387, <http://starweb.hessen.de/starweb/LIS/gvbl.htm> (select year 2001 and no. 21 from the menu), archived at <http://perma.cc/8TXW-H57V>; Niedersachsen – Verordnung über die Erlaubnisvoraussetzungen für den Betrieb von Drogenkonsumräumen [Lower Saxony – Regulation on the Requirements for the Operation of Drug Consumption Rooms], Mar. 6, 2002, NIEDERSÄCHSISCHES GESETZ- UND VERORDNUNGSBLATT [NDS. GVBL.] [LOWER SAXONY GAZETTE OF LAWS AND ORDINANCES] 82; Nordrhein-Westfalen – Verordnung über die Erteilung einer Erlaubnis für den Betrieb von Drogenkonsumräumen [North Rhine-Westphalia – Regulation on Licensing for the Operation of Drug Consumption Rooms], Sept. 26, 2000, GESETZ- UND VERORDNUNGSBLATT FÜR DAS LAND NORDRHEIN-WESTFALEN [GV. NW.] [NORTH RHINE-WESTPHALIA GAZETTE OF LAWS AND ORDINANCES] 646, https://recht.nrw.de/lmi/owa/br_vbl_detail_text?anw_nr=

standards to ensure security and control of the use of narcotics in drug consumption rooms.¹⁰ The law provides that the prosecutor cannot prosecute people who use drugs in drug consumption rooms.¹¹

III. Possession of Small Quantities for Personal Use

Prosecutors and courts have discretion to refrain from prosecution or punishment if the suspect cultivates, produces, imports, exports, carries in transit, acquires, otherwise procures, or possesses narcotic drugs merely in small quantities for his or her personal use.¹² The Act does not define what constitutes a small quantity. Instead, what constitutes a small quantity varies for the different types of narcotics and has been determined by the courts. The Federal Court of Justice held that in order to determine the threshold amount for a small quantity, the quantity of the active ingredient and not the weight is relevant. A small quantity of cannabis, for example, is a substance that contains 7.5 grams of THC or less.¹³

In 1994, the Federal Constitutional Court criticized the fact that the prosecutors' offices in the German states all had different approaches for the prosecution of the possession of small quantities of narcotics for personal use and demanded uniform implementation of the law.¹⁴ The Court suggested that the states should issue guidelines for prosecutors, which all states except for Bremen, Mecklenburg-West Pomerania, and Thuringia have done.¹⁵

[6&vd_id=2581&ver=8&val=2581&sg=0&menu=1&vd_back=N](http://perma.cc/9D34-5UW2), archived at <http://perma.cc/9D34-5UW2>; Saarland – Verordnung über die Erteilung einer Erlaubnis für den Betrieb von Drogenkonsumräumen [Saarland – Regulation on Licensing for the Operation of Drug Consumption Rooms], May 4, 2001, AMTSBLATT DES SAARLANDES [S AMTSBL.] [SAARLAND OFFICIAL JOURNAL] 1034.

¹⁰ Narcotic Drugs Act § 10a, para. 2.

¹¹ *Id.* § 31a, para. 1, sentence 2.

¹² *Id.* § 29, para. 5, § 31a, para. 1.

¹³ Bundesgerichtshof [BGH] [Federal Court of Justice], 33 ENTSCHIEDUNGEN DES BUNDESGERICHTSHOFS IN STRAFSACHEN [BGHST] [DECISIONS OF THE FEDERAL COURT OF JUSTICE IN CRIMINAL MATTERS] 8, 14 et seq.

¹⁴ Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court], 90 ENTSCHIEDUNGEN DES BUNDESVERRASSUNGSGERICHTS [BVERFGE] [DECISIONS OF THE FEDERAL CONSTITUTIONAL COURT] 145, 190.

¹⁵ *See, e.g.*, guidelines issued in Rhineland Palatinate: Richtlinien zur Anwendung von § 31 a des Betäubungsmittelgesetzes in Betäubungsmittelsachen betreffend Haschisch und Marihuana [Guidelines to Implement § 31a of the Narcotic Drugs Act for Narcotics Cases Involving Hashish and Marijuana], Jan. 20, 2012, JUSTIZBLATT RHEINLAND-PFALZ [JBL. RHPF.] [OFFICIAL JOURNAL OF THE MINISTRY OF JUSTICE OF RHINELAND-PALATINATE] at 9, <https://jm.rlp.de/fileadmin/mjv/Justizblatt/2012/02-2012.pdf>, archived at <http://perma.cc/6PCL-SBKM>.

Israel

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SUMMARY Israeli law generally criminalizes the possession and use of narcotics listed as “dangerous drugs,” including cannabis. Although the law imposes severe penalties on offenders, as a matter of policy the prosecution is instructed to close criminal files involving offenders the law refers to as “normative persons.” Such files are to be closed with a warning and under specific requirements if such offenders do not have criminal records and were caught for the first time with a small amount of marijuana or hashish for personal consumption.

The Israel Anti-Drug Authority objects to legalization of all drugs and does not distinguish between “light” and “heavy” drugs. Several private member bills, however, have been introduced by Knesset Members in recent years with regard to offenses involving cannabis. These bills either call for reduction of penalties for certain offenders possessing or consuming cannabis for personal consumption, or call for decriminalization of certain types of cannabis products or strains, such as those containing natural cannabidiol (CBD) or tetrahydrocannabinol (THC) lower than 0.2%, or those considered medical cannabis. These bills are at the preliminary stage and have not been forwarded for further legislative consideration at this time.

I. Criminalization of Possession and Use of Dangerous Drugs

The possession and use of “dangerous drugs” in Israel are generally prohibited. Possession is permitted, however, for authorized pharmacists, physicians, veterinarians, and persons who received the drugs from authorized medical professionals.¹ The use of dangerous drugs is similarly permitted if used for medical reasons when the drugs were dispensed by authorized medical professionals.²

The Law defines “dangerous drugs” as any of the substances that are listed in its first schedule. The list currently includes, among others, “any type of the plant of cannabis and every part of it, including its roots, but excluding the oil that derives from its seeds.”³

The unauthorized possession or use of dangerous drugs constitutes a criminal offense punishable by twenty years’ imprisonment or a fine at a rate of 5,650,000 Israel Shekels (ILS) (about US\$1,468,646). Where possession or use is for personal consumption the penalty is reduced to three years’ imprisonment or a fine of 226,000 ILS (about US\$58,789).⁴ However, a minor

¹ Dangerous Drugs Ordinance (New Version), 5733-1973, § 11, 3 LAWS OF THE STATE OF ISRAEL 5 (1981), *as amended*.

² *Id.* § 12.

³ *Id.* First Schedule.

⁴ *Id.* § 7(c); Penal Law, 5733-1977, § 61(a)(4), SEFER HAHUKIM [SH] [BOOK OF LAWS] (official gazette) 5733 No. 864 p. 226, *as amended*.

under the age of sixteen convicted of possessing or using dangerous drugs on the premises of a school where he or she is not a student is subject to five years' imprisonment.⁵

II. Implementation Policy

Notwithstanding the Law's penalty structure, a directive issued by Israel's Attorney General states that cases involving use or possession of dangerous drugs by "normative persons" who do not otherwise have a criminal record, and who were caught for the first time possessing or using a small amount of marijuana or hashish for personal consumption, should not generally be subject to full enforcement of the Law.⁶ Files closed under these circumstances should be labeled as closed for lack of public interest in full implementation, considering the suspect's first-time drug offense perpetrated for personal consumption.⁷

To be authorized for closure the following conditions should be met:

- The suspect has confessed;
- The suspect has filed a request to close the file; has committed to not using any more dangerous drugs in the future; and declared that he/she is aware that if caught again he/she would be subject to the full force of the law also for the first offense, subject to the statute of limitations;
- There are no other criminal records of the suspect's involvement in drugs, property, or violent offenses, or "other relevant offenses;" and
- There are no aggravating circumstances, such as when the suspect was responsible for the safety of others.⁸

III. Anti-Drug Authority's Position on Decriminalization of Narcotics

The Israel Anti-Drug Authority (IADA) is a statutory corporation established by the National Authority for Fighting Drugs and Misuse of Alcohol Law, 5748-1988.⁹ According to its website, "IADA is a quasi-governmental agency, which operates under the aegis of the Prime Minister. In 2009, the Israel Knesset approved a decision granting the Ministry of Public Security responsibility for IADA."¹⁰

⁵ *Id.* § 7(d).

⁶ Attorney General Directive, Prosecution Policy – Drugs: Possession and Use for Personal Consumption § 7(b), Directive No. 4.1105 (51.056) (Dec. 1, 1985, updated on Sept. 14, 2003), <http://index.justice.gov.il/Units/YoezMespati/HanchayotNew/Seven/41105.pdf> (in Hebrew), archived at <https://perma.cc/B4US-V8V9>.

⁷ *Id.* § 7(c).

⁸ *Id.*

⁹ National Authority for Fighting Drugs and Misuse of Alcohol Law, 5748-1988, SH 5748 No. 1252 p. 90.

¹⁰ *Israel Anti-Drug Authority, IADA*, <http://www.antidrugs.org.il/english/template/default.aspx?catid=248> (last visited June 21, 2016), archived at <https://perma.cc/RJF8-Q3ZL>.

The IADA objects to legalization of all drugs and does not distinguish between “light” and “heavy” drugs. It specifically rejects the claim made by “a small, vocal, and noisy minority, which tries to convince youth that the use of cannabis products causes limited damage or no harm at all especially regarding marijuana.”¹¹ According to the IADA there are approximately two hundred types of marijuana currently available. The main difference among them, it states, is in the concentration of their active ingredient, tetrahydrocannabinol (THC). As compared with the 1960s, when the percentage of THC did not exceed 4%, there are currently types of marijuana with a 25% concentration of THC, the IADA’s website states. Consumption of THC, according to the IADA, disrupts brain activity and has a negative impact on memory, coordination, and the ability to concentrate.¹²

The IADA does recognize that in certain circumstances criminal prosecution may be replaced by other approaches. These include sending suspects caught for the first time to drug rehabilitation and treatment in lieu of being processed in the criminal justice system, and imposing lenient or delayed sentences on such offenders. The IADA also supports the distribution of clean syringes to addicts, to prevent the spread of AIDS and other contagious diseases.

IV. Bills for Decriminalization or Penalty Reduction for Cannabis Offenses

Several private member bills have been proposed by Knesset Members (KMs) in recent years addressing offenses involving cannabis.¹³ These bills can generally be divided into two types: bills that call for the reduction of penalties for certain offenders possessing or consuming cannabis for personal consumption, and bills that call for the decriminalization of certain types of cannabis products. The following is a brief summary of some recent draft bills from both groups.

A. Reduction of Penalties for Certain Offenders

The latest draft bill was introduced on May 23, 2016, by KMs Sharren Haskel¹⁴ and Dov Henin.¹⁵ The bill calls for a significant reduction in the severe penalties for adults over twenty-one years of age if, at the time of committing an offense involving possession or use of cannabis, they did not commit additional offenses punishable by three months’ imprisonment or a fine.

¹¹ *Legalization and Decriminalization*, IADA, <http://www.antidrugs.org.il/template/default.aspx?catid=109> (in Hebrew; last visited June 21, 2016), archived at <https://perma.cc/FY3B-CLTL> (translation by author).

¹² *Id.*

¹³ Private Member Bills for Preliminary Hearing, http://knesset.gov.il/privatelaw/Plaw_display.asp?lawtp=1 (in Hebrew; last visited June 22, 2016) (use סמים מסוכנים [dangerous drugs] as a search term in middle box at top of page; for text of bills, click on any listed bill), archived at <https://perma.cc/SZ6R-Q4T4>.

¹⁴ Sharren Haskel, THE KNESSET, http://www.knesset.gov.il/mk/eng/mk_eng.asp?mk_individual_id_t=950 (last visited June 22, 2016), archived at <https://perma.cc/B9UL-XTZF>.

¹⁵ Dov Khenin, THE KNESSET, http://www.knesset.gov.il/mk/eng/mk_eng.asp?mk_individual_id_t=780 (last visited June 22, 2016), archived at <https://perma.cc/A5ZD-DC66>.

The bill proposes to subject such offenders to a fine of up to 300 ILS (about US\$78), or up to 1,500 ILS if the offense was committed in a public place.¹⁶

Explanatory notes to the bill state that it was not designed to encourage cannabis use. Instead, it is designed “to prevent transforming normative adults over 21 into criminals in the eyes of the law.”¹⁷ According to the explanatory notes, the bill would save “huge amounts invested in law enforcement” and relieve the burden on the justice system, “which is required to handle thousands of criminal files for use and possession of cannabis for personal use every year.”¹⁸

B. Decriminalization of Certain Types of Cannabis Strains or Products

A draft bill submitted by KMs Sharren Haskel on March 30, 2016, calls for excluding cannabidiol (CBD) from the cannabis products the possession or consumption of which are criminal offenses.¹⁹ Noting the numerous, known medical advantages of CBD, the bill’s explanatory notes provide that many American and European companies have been investing in the development of synthetic CBD. Unlike natural CBD, synthetic CBD causes side effects for users. According to the explanatory notes, a unique strain of natural CBD has been developed and exists only in Israel. Calling for decriminalization of CBD, the explanatory notes state that natural CBD does not require patent registration, has many medical advantages, does not cause the feeling of floating otherwise caused by synthetic CBD, and represents the potential for significant income to the state.²⁰

Another draft bill introduced on March 28, 2016, calls for excluding medical cannabis from cannabis products that are considered dangerous drugs under the Law. Currently, the distribution of cannabis for medical purposes requires special authorization by the Medical Cannabis Unit in the Ministry of Health.²¹ The bill proposes facilitating the dispersion of medical cannabis by medical professionals and pharmacists, or other authorized persons.²² The draft bill defines “medical cannabis” as cannabis that underwent the necessary procedures for adjustment for medical use—either in the form of powder, oil, food, or in another way—including all the endocannabinoids that exist in it in a natural way.²³

¹⁶ Dangerous Drugs Ordinance (Possession or Use for Personal Consumption of a Drug Containing Cannabis or Cannabis Resin) Private Member Draft Bill No. 3020, 5776-2016, § 1, http://knesset.gov.il/privatelaw/Plaw_display.asp?lawtp=1, archived at <https://perma.cc/9ZUD-CR4X>.

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ Dangerous Drugs Ordinance (Definition of Cannabis Plant) Private Member Draft Bill No. 2874, 5776-2016, http://knesset.gov.il/privatelaw/Plaw_display.asp?lawtp=1, archived at <https://perma.cc/4B2E-BJ75>.

²⁰ *Id.*

²¹ See *Application for a Permit to Hold and Use Cannabis*, MINISTRY OF HEALTH, http://www.health.gov.il/English/Services/Citizen_Services/Pages/kanabis.aspx (last visited June 29, 2016), archived at <https://perma.cc/4PN2-UGJJ>.

²² Dangerous Drugs Ordinance (Definition of Medical Cannabis) Private Member Draft Bill No. 2855, 5776-2016, available at Private Member Bills for Preliminary Hearing, http://knesset.gov.il/privatelaw/Plaw_display.asp?lawtp=1, archived at <https://perma.cc/R2R6-JH2X>.

²³ *Id.* at 1 (translation by author).

A draft bill introduced by six Knesset Members on February 29, 2016, proposes to exclude industrial strains of cannabis from cannabis that is considered a dangerous drug. The draft bill defines “industrial strain of cannabis” as one with a THC level lower than 0.2% and which was approved by the Minister of Agriculture and Rural Development or recognized as an industrial strain by the European Union.²⁴ Similar draft bills legalizing the use of industrial strains of cannabis were submitted in the preceding session of the Knesset.²⁵

²⁴ Dangerous Drugs Ordinance (Industrial Strains of Cannabis) Private Member Draft Bill No. 2688, 5776-2016, http://knesset.gov.il/privatelaw/Plaw_display.asp?lawtp=1, archived at <https://perma.cc/ZHU9-84KW>.

²⁵ *Id.*

New Zealand

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SUMMARY New Zealand has not decriminalized possession or use of cannabis or other drugs, but has diversion programs that allow the police or prosecutors to divert minor offenders from the criminal justice system and into treatment or counseling. In addition, a drug court, the Alcohol and Other Drug Treatment Court, is currently operating in one major city under a five-year pilot program that commenced in 2012.

Where there has been a major shift in approach is in relation to new psychoactive substances, such as “party pills” and synthetic cannabis. Such substances were previously legal unless they had been criminalized under the Misuse of Drugs Act 1975. In 2013, legislation was enacted that enables for product approvals related to psychoactive substances, provided that an applicant can show that a particular substance is of a low risk to users. However, although the necessary regulations to implement the legislation are in effect, an amendment to the legislation in 2014 that prohibits consideration of the results of animal testing of substances means that there are currently no approved psychoactive substances or products. Personal possession of a psychoactive substance that has not been approved is an infringement offense, with a NZ\$300 fee imposed through infringement notices issued by police.

I. Introduction

New Zealand classifies various drugs and penalizes their cultivation, sale, possession, and use under the Misuse of Drugs Act 1975.¹ The following classifications in the Act are “based on the risk of harm the drug poses to individuals, or to society, by its misuse”:²

- Class A (very high risk of harm) includes methamphetamine, cocaine, heroin, LSD³
- Class B (high risk of harm) includes cannabis oil, hashish, morphine, opium, ecstasy, and many amphetamine-type substances⁴
- Class C (moderate risk of harm) includes cannabis seed, cannabis plant, codeine⁵

¹ Misuse of Drugs Act 1975, <http://www.legislation.govt.nz/act/public/1975/0116/latest/whole.html>, archived at <https://perma.cc/D94E-KNEC>.

² *Id.* s 3A.

³ *Id.* sch 1.

⁴ *Id.* sch 2.

⁵ *Id.* sch 3. See also *Illicit Drugs – Offences and Penalties*, NEW ZEALAND POLICE, <http://www.police.govt.nz/advice/drugs-and-alcohol/illicit-drugs-offences-and-penalties> (last visited June 27, 2016), archived at <https://perma.cc/XU8D-283N>.

Separate from the legislation, the National Drug Policy 2015 to 2020 is the “guiding document for policies and practices responding to alcohol and other drug issues.”⁶ It is used to prioritize resources and “assess the actions taken by agencies and front-line services.”⁷ The Inter-Agency Committee on Drugs oversees such actions and monitors progress against the objectives contained in the National Drug Policy.⁸

Some groups in the country have engaged in ongoing advocacy regarding decriminalizing recreational cannabis use. However, recent reports indicate that there is very little political support for such a change among the parties represented in Parliament.⁹ Although cannabis possession remains illegal, with an NZ\$500 fine (about US\$356) and/or three months of imprisonment applying to simple possession offenses,¹⁰ some offenders may be diverted from the criminal justice system.

One area where there has been a significant shift in approach has been in the regulation of new psychoactive substances, which are commonly referred to as “party pills, herbal highs, legal highs, synthetic cannabis or legal recreational drugs.”¹¹ In 2013, a statute was passed that established a new regulatory system for such substances.¹² The substances can be approved for sale where the distributors or producers prove that they present a low risk to users.

II. Diversion Programs

A young person under seventeen years of age who is reported for possessing or smoking cannabis, where it is his or her first offense and the amount of cannabis does not constitute enough for supply, will be dealt with using options that include a warning, alternative action (diversion), or family group conference techniques. More serious cases are addressed in the Youth Court.¹³

⁶ *National Drug Policy 2015 to 2020*, MINISTRY OF HEALTH, <http://www.health.govt.nz/publication/national-drug-policy-2015-2020> (last updated Sept. 7, 2015), archived at <https://perma.cc/5JVP-VS JL>.

⁷ *Id.*

⁸ INTER-AGENCY COMMITTEE ON DRUGS, NATIONAL DRUG POLICY 2015 TO 2012, at 3 (Ministry of Health, Aug. 2015), <http://www.health.govt.nz/system/files/documents/publications/national-drug-policy-2015-2020-aug15.pdf>, archived at <https://perma.cc/D72N-EENZ>.

⁹ Eric Frykberg, *Appetite for Cannabis Decriminalisation Limited*, RNZ (Mar. 30, 2016), <http://www.radionz.co.nz/news/political/300255/appetite-for-cannabis-decriminalisation-limited>, archived at <https://perma.cc/7XZW-C4GC>.

¹⁰ Misuse of Drugs Act 1975, s 7(2)(b).

¹¹ *Psychoactive Substances Regulatory Authority: Home*, PSYCHOACTIVE SUBSTANCES REGULATORY AUTHORITY, <http://psychoactives.health.govt.nz/home> (last updated Apr. 22, 2016), archived at <https://perma.cc/6495-DRHT>. See generally Kelly Buchanan, *New Zealand: Psychoactive Substances Bill Proposed*, GLOBAL LEGAL MONITOR (Law Library of Congress, Mar. 5, 2013), <http://www.loc.gov/law/foreign-news/article/new-zealand-psychoactive-substances-bill-proposed/>, archived at <https://perma.cc/2N33-A8LR>.

¹² Psychoactive Substances Act 2013, <http://www.legislation.govt.nz/act/public/2013/0053/latest/whole.html>, archived at <https://perma.cc/T8BV-L635>.

¹³ *Cannabis and the Law*, NEW ZEALAND POLICE, <http://www.police.govt.nz/advice/drugs-and-alcohol/cannabis-and-law> (last visited June 24, 2016), archived at <https://perma.cc/S7EA-92YH>.

Young people over seventeen years of age will likely be offered diversion for minor cannabis possession or use, especially if it is their first offense. This may involve a donation and/or attending an approved counseling course in order to avoid the court process.¹⁴

The Police Adult Diversion Scheme may be used for first offenders in relation to a range of offenses, including minor drug offenses.¹⁵ Several criteria apply in determining whether to consider diversion, including whether there is “sufficient evidence and public interest in pursuing prosecution of the case.” Generally, this test is not met if it is the person’s first offense, the offense is not serious, the person has accepted full responsibility for the offenses, the person has received an explanation of his or her legal rights, and the person agrees to the conditions of diversion.¹⁶ Consideration of whether or not a person is eligible for diversion is undertaken by the Police Prosecution Service, and the prosecutor will advise the court and the offender if the case may be suitable for diversion.

If the offender wishes to be considered for diversion, he or she will be interviewed about the offense and must take responsibility for it. If approved for diversion, a written agreement will be prepared and signed. Such agreements, and their conditions, are tailored to each individual. For example, they may include a requirement to attend addiction treatment or counseling. Once the requirements have been fulfilled, the prosecutor will “advise the court that diversion has been successfully completed and that the charges have been dismissed.”¹⁷

In 2011, the New Zealand Law Commission completed a report on its review of the Misuse of Drugs Act 1975. Among its recommendations for reforming drug law in New Zealand was the establishment of a mandatory cautioning program for personal possession and use offenses.¹⁸ The report provides information on the key components of such a program, which would essentially replace the Police Adult Diversion Scheme for these offenses. The Law Commission also stated that, if such a program is not implemented, “further consideration should be given to widening the application of the Diversion Scheme to a greater range of personal possession and use offences, including those for Class A and B drugs.”¹⁹ There does not appear to be any current proposals to implement either the new caution system or an expansion of the diversion program.

¹⁴ *Id.*

¹⁵ NEW ZEALAND POLICE, POLICE ADULT DIVERSION SCHEME POLICY 13 (Jan. 2016), <http://www.police.govt.nz/sites/default/files/publications/adult-diversion-scheme-policy.pdf>, archived at <https://perma.cc/X7F6-P6BW>.

¹⁶ *About the Adult Diversion Scheme*, NEW ZEALAND POLICE, <http://www.police.govt.nz/about-us/programmes-initiatives/adult-diversion-scheme/about> (last visited June 27, 2016), archived at <https://perma.cc/6WN8-XEKW>.

¹⁷ *Id.*

¹⁸ NEW ZEALAND LAW COMMISSION, CONTROLLING AND REGULATING DRUGS: A REVIEW OF THE MISUSE OF DRUGS ACT 1975, at 30 (R73) (NZLC R122, Apr. 2011), <http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R122.pdf>, archived at <https://perma.cc/G2PP-F6CG>.

¹⁹ *Id.* at 31 (R79).

III. Drug Court Pilot

A further recommendation in the Law Commission's report was that the government should consider establishing a drug court pilot.²⁰ This recommendation was accepted by the government²¹ and the five-year Alcohol and Other Drug Treatment (AODT) Court pilot commenced in Auckland in November 2012.²² According to the Ministry of Justice,

[p]eople who are selected for the AODT Court and agree to take part will have their case put on hold prior to sentencing to allow them to enter an intensive treatment programme for their AOD dependency (or moderate to severe addiction). This is not an easy option – the programme takes commitment and the defendant will still be sentenced for their crime. If their participation in the addiction treatment programme is successful, this can be taken into account when they are sentenced.²³

IV. Regulation of Psychoactive Substances

Prior to the passage of the Psychoactive Substances Act 2013, psychoactive substances could be sold in New Zealand without restriction.²⁴ Due to concerns emerging regarding the adverse effects of such substances on users, the government decided to regulate the substances in a way that allows products to be developed and sold following approval from a government regulatory agency, the Psychoactive Substances Regulatory Authority (the Authority).

A. Background

The first new psychoactive substance introduced in New Zealand was Benzylpiperazine (BZP) in 2000.²⁵ This substance could be sold legally in the country until 2008, when it was brought under the Misuse of Drugs Act 1975 as a Class C controlled drug.²⁶ Prior to this, in 2005, synthetic cannabis products had also started being sold. Following the BZP ban, other products

²⁰ *Id.* at 37 (R141 & R141).

²¹ Press Release, Simon Power & Georgina te Heuheu, Drug Court Pilot Announced for Auckland (Oct. 19, 2011), <https://www.beehive.govt.nz/release/drug-court-pilot-announced-auckland>, archived at <https://perma.cc/6A5V-D46X>.

²² *Alcohol and Other Drug Treatment (AODT) Court Pilot*, MINISTRY OF JUSTICE, <http://www.justice.govt.nz/courts/district-court/alcohol-and-other-drug-treatment-aodt-court-pilot-1> (last visited June 27, 2016), archived at <https://perma.cc/Q3ML-E5TR>.

²³ *Id.* See also *Information for Participants: Alcohol and Other Drug Treatment Court Te Whare Whakapiki Wairua*, MINISTRY OF JUSTICE, <http://www.justice.govt.nz/courts/district-court/alcohol-and-other-drug-treatment-aodt-court-pilot-1/information-for-participants> (last visited June 27, 2016), archived at <https://perma.cc/3TPA-4LBL>.

²⁴ *Background to the Act and the Regime*, PSYCHOACTIVE SUBSTANCES REGULATORY AUTHORITY, <http://psychoactives.health.govt.nz/psychoactive-substances-act-2013/background-act-and-regime> (last updated Jan. 20, 2015), archived at <https://perma.cc/PG6X-NAY4>.

²⁵ *Psychoactive Substances Act: Overview*, NZ DRUG FOUNDATION (May 7, 2014), <http://www.drugfoundation.org.nz/psychoactive-substances-bill/history>, archived at <https://perma.cc/9624-655P>.

²⁶ Misuse of Drugs Act 1975, sch 3, pt 1, cl 2, inserted by the Misuse of Drugs (Classification of BZP) Amendment Act 2008.

started entering the market, leading the government to place “a series of temporary bans on products that had come to its attention.”²⁷ This process involved identifying the product by its specific chemical structure and led to temporary bans on thirty-five such structures. However, once a substance would be banned, others with different chemical structures would be manufactured, creating a “cat and mouse” game between the government and the “legal high” industry.²⁸

The Law Commission’s 2011 report on its review of the Misuse of Drugs Act 1975 recommended that “[t]here should be a new regime with its own criteria and approval process for regulating new psychoactive substances.”²⁹ The Psychoactive Substances Bill, which was based on the Law Commission’s recommendations, was subsequently introduced in early 2013 and was passed by the Parliament in July 2013, with a near-unanimous vote (119–1).³⁰

B. Psychoactive Substances Act 2013

The Act reverses the onus of proof for psychoactive substances,³¹ requiring importers and manufacturers, rather than the government, to show that a substance is safe in order for it to be approved. It states that any substance that has not been approved “should be prohibited, on a precautionary basis, until it has been assessed by the Authority and the Authority is satisfied that it poses no more than a low risk of harm to individuals who use it.”³² The Authority explains that

[L]icences must be obtained by people or businesses who wish to import, research, manufacture, wholesale and retail psychoactive substances and products.

The Act also restricts the sale of these products (when approved) to persons aged 18 years and above.

Before a product can be approved for use, the degree of harm must be assessed by the Authority on the advice of an expert advisory committee and evidence.³³

²⁷ *Psychoactive Substances Act: Overview*, *supra* note 25.

²⁸ *Id.*

²⁹ NEW ZEALAND LAW COMMISSION, *supra* note 18, at 23 (R2).

³⁰ *Psychoactive Substances Bill*, NEW ZEALAND PARLIAMENT, https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/00DBHOH_BILL12021_1/psychoactive-substances-bill (last visited June 28, 2016), archived at <https://perma.cc/DHW8-5Q84>.

³¹ A “psychoactive substance” is defined as a “substance, mixture, preparation, article, device, or thing that is capable of inducing a psychoactive effect (by any means) in an individual who uses the psychoactive substance.” Psychoactive Substances Act 2013, s 9(1). Controlled drugs specified under the Misuse of Drugs Act 1975 are excluded. *Id.* s 9(3)(a).

³² Psychoactive Substances Act 2013, s 4(e).

³³ *Psychoactive Substances Act 2013*, PSYCHOACTIVE SUBSTANCES REGULATORY AUTHORITY, <http://psychoactives.health.govt.nz/psychoactive-substances-act-2013> (last updated Oct. 21, 2014), archived at <https://perma.cc/3UAR-6NUT>.

In addition to age restrictions,³⁴ psychoactive products are subject to place-of-sale restrictions,³⁵ advertising and packaging restrictions and requirements;³⁶ health-warning requirements;³⁷ and signage, storage, and display restrictions and requirements.³⁸ The Authority may, when approving a product, impose any conditions on the approval as it thinks fit.³⁹

As required by the Act, the Authority issued a Code of Manufacturing Practice, which came into force in January 2014 and “outlines the quality control requirements for manufacturers of psychoactive substances.”⁴⁰

C. Offenses Under the Act

The legislation contains three infringement offenses⁴¹ related to a person under the age of eighteen buying or possessing a psychoactive substance, including an approved product;⁴² supplying an approved product to a person under eighteen in a public place;⁴³ and personal possession of a psychoactive substance that is not an approved product.⁴⁴ These offenses may be subject to an infringement fee, prescribed in regulations, that does not exceed NZ\$500 (about US\$356).⁴⁵ The fees are imposed by police through the issuing of infringement notices.⁴⁶

Other offenses in the legislation are subject to criminal sanctions. These include knowingly providing false or misleading information in an application for approval of a product, or failing to provide relevant information relating to the ingredients of the product or the effect of the product on those who use it;⁴⁷ breaching a condition that has been imposed on an approval;⁴⁸ knowingly providing false or misleading information in a license application;⁴⁹ importing,

³⁴ Psychoactive Substances Act 2013, ss 48–51.

³⁵ *Id.* ss 52 & 53.

³⁶ *Id.* ss 54–59.

³⁷ *Id.* s 60.

³⁸ *Id.* ss 61 & 62. *See generally id.* s 6 (“Overview”).

³⁹ *Id.* s 38.

⁴⁰ *Code of Manufacturing Practice*, PSYCHOACTIVE SUBSTANCES REGULATORY AUTHORITY, <http://psychoactives.health.govt.nz/industry/code-manufacturing-practice> (last updated Oct. 31, 2014), archived at <https://perma.cc/BM8B-V33G>.

⁴¹ *See* Psychoactive Substances Act 2013, s 72.

⁴² *Id.* s 48.

⁴³ *Id.* s 50.

⁴⁴ *Id.* s 71.

⁴⁵ *Id.* s 72.

⁴⁶ *Id.* s 74.

⁴⁷ *Id.* s 41.

⁴⁸ *Id.* s 42.

⁴⁹ *Id.* s 24.

manufacturing, or selling an approved product without a license;⁵⁰ breaching a license condition;⁵¹ importing, manufacturing, or selling an approved product in breach of any conditions imposed by the Authority;⁵² and selling or supplying (or offering to sell or supply) a psychoactive substance that is not an approved product, or possessing such a substance with the intent to sell or supply it to any person.⁵³

D. Implementation of the Act

Following the passage of the Act, there was an interim phase during which “a number of importers, manufacturers, wholesalers and retailers were granted interim licences, and some products were given interim approvals, and were subsequently followed up to see if they were meeting their licence conditions and that their products were not causing adverse reactions.”⁵⁴ In May 2014, amendment legislation⁵⁵ was passed that resulted in all approvals and licenses being revoked, and placed a moratorium on processing applications for approvals and licenses until regulations came into force.⁵⁶ Therefore, it became illegal to possess and supply all psychoactive products.⁵⁷

Three sets of regulations under the Act came into force in November 2014. The Psychoactive Substances Regulations 2014⁵⁸ allow for “product approvals and licences for importing, research, manufacturing, and sale of unapproved psychoactive substances.”⁵⁹ The Psychoactive Substances (Fees and Levies) Regulations 2014⁶⁰ contain the fees for product approvals and license applications, as well as annual levies for holding such approvals and licenses. This includes, for example, an application fee for approval of a psychoactive product of NZ\$175,000

⁵⁰ *Id.* ss 25–27.

⁵¹ *Id.* s 28.

⁵² *Id.* s 42.

⁵³ *Id.* s 70.

⁵⁴ *Background to the Act and the Regime*, *supra* note 24.

⁵⁵ Psychoactive Substances Amendment Act 2014, sch, <http://www.legislation.govt.nz/act/public/2014/0024/latest/whole.html>, archived at <https://perma.cc/88DN-GT2A>.

⁵⁶ *Id.* See also *Additional Revoked Interim Product Approvals Information*, PSYCHOACTIVE SUBSTANCES REGULATORY AUTHORITY, <http://psychoactives.health.govt.nz/industry/licensees-approved-products/additional-revoked-interim-product-approvals-information> (last updated Feb. 4, 2015), archived at <https://perma.cc/3E4N-FD7P>. For a list of interim product approvals that have been revoked or refused, see *Interim Product Approvals*, PSYCHOACTIVE SUBSTANCES REGULATORY AUTHORITY, <http://psychoactives.health.govt.nz/licensees-approved-products/product-approvals-refused-and-revoked> (last updated Mar. 5, 2015), archived at <https://perma.cc/CJE8-TC9Q>.

⁵⁷ Press Release, Tony Ryall, Psychoactive Substances Amendment Act Passed (May 6, 2014), <https://www.beehive.govt.nz/release/psychoactive-substances-amendment-act-passed>, archived at <https://perma.cc/AY4F-FVBM>.

⁵⁸ Psychoactive Substances Regulations 2015, <http://www.legislation.govt.nz/regulation/public/2014/0243/latest/whole.html>, archived at <https://perma.cc/X8EZ-YSTD>.

⁵⁹ *Psychoactive Substances Act 2013*, *supra* note 33.

⁶⁰ Psychoactive Substances (Fees and Levies) Regulations 2014, <http://www.legislation.govt.nz/regulation/public/2014/0244/latest/whole.html>, archived at <https://perma.cc/RG7Q-UM3Y>.

(about US\$124,675), an annual levy of NZ\$88,000 (about US\$62,710) for a successful applicant, and a fee of NZ\$19,000 (about US\$13,540) for an application for a license to manufacture psychoactive substances.⁶¹

Finally, the Psychoactive Substances (Infringement Fees and Form of Notices) 2014⁶² “set out the fee for infringements of the Act (specifically for breaking the age restrictions when supplying, buying and possessing of psychoactive substances, and for personal possession of a psychoactive substance that is not an approved product).”⁶³ This instrument includes a requirement that the infringement notices state that the fee must be paid within twenty-eight days, and for a reminder notice to be sent out that requires payment within twenty-eight days after service of that notice. If the fee is not paid the person becomes liable to pay a fine and court costs.⁶⁴ The infringement fee specified for each of the three infringement offenses listed above is NZ\$300 (about US\$214).⁶⁵

There are currently no approved psychoactive products. In fact, no applications for product approvals have been received since the full regulatory regime came into effect in November 2014.⁶⁶ The Authority’s website indicates that this is due to new rules, contained in the 2014 amendment legislation,⁶⁷ that “prohibit the use of animal testing for the purposes of assessing whether a psychoactive substance should be approved.”⁶⁸ The Authority further states that, for this reason, “it is unlikely that there will be any approved products for at least the next three years.”⁶⁹

⁶¹ *Id.* sch 1.

⁶² Psychoactive Substances (Infringement Fees and Form of Notices) Regulations 2014, <http://www.legislation.govt.nz/regulation/public/2014/0245/latest/whole.html>, archived at <https://perma.cc/JNF9-EAY8>.

⁶³ *Psychoactive Substances Act 2013*, *supra* note 33.

⁶⁴ Psychoactive Substances (Infringement Fees and Form of Notices) Regulations 2014, sch (Form 1 & Form 2).

⁶⁵ *Id.* cl 4.

⁶⁶ *Product Approvals*, PSYCHOACTIVE SUBSTANCES REGULATORY AUTHORITY, <http://psychoactives.health.govt.nz/industry/licensees-approved-products/product-approvals> (last updated Feb. 4, 2015), archived at <https://perma.cc/GPR8-GSWG>.

⁶⁷ Psychoactive Substances Amendment Act 2014, ss 4, 6 & 7.

⁶⁸ *Psychoactive Substances Regulatory Authority: Home*, *supra* note 11.

⁶⁹ *Id.*

Norway

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I. Narcotics Legislation

Norway criminalizes the possession and use of narcotics.¹ Norwegian law provides a list of regulated narcotics that includes specific known drugs and unspecified drugs of “similar” effect.² Cannabis (marijuana) is on the list of prohibited narcotics.³ It is currently legal to import drugs containing regulated narcotics for personal medicinal use in limited quantities provided that the person importing the drug has a prescription from a doctor.⁴ A prescription drug containing cannabinoids used for the treatment of multiple sclerosis (MS) symptoms is legally available in Norway.⁵

II. Drug Treatment Programs

Violations of drug laws typically result in fines or prison sentences depending on the severity of the crime.⁶ However, Norwegian authorities have instituted a program whereby a person can opt to enroll in a drug treatment program instead of going to prison.⁷ The program does not make the use of drugs legal, nor is it meant as a legalization effort; rather, it is intended as a program to prevent relapse and additional criminality while improving the health of the person convicted.⁸ The program is only available for those convicted of drug-related crimes, such as violations of sections 231 and 232 of Straffeloven (the Criminal Act) or section 31 of Legemiddeloven (the Prescription Drugs Act), or crimes committed while under the influence of illegal drugs or to finance drug use.⁹

¹ Forskrift om narkotika (narkotikaforskriften) [Regulation on Narcotics (Narcotics Regulation)] [FOR 2013-02-14-199], <https://lovdata.no/dokument/SF/forskrift/2013-02-14-199>, archived at <https://perma.cc/U889-X3BB>.

² *Id.* § 3.

³ *Id.* (scroll down to *Narkotikelisten*, cannabis).

⁴ *Id.* § 19.

⁵ Press Release, Legemiddelverket [Norwegian Medicines Agency], Cannabislegemiddelet Sativex godkjent i Norge [Cannabis Medicine Sativex Approved in Norway] (Nov. 28, 2012), <http://legemiddelverket.no/Nyheter/Andre/Sider/Cannabislegemiddelet-Sativex-godkjent-i-Norge.aspx>, archived at <https://perma.cc/855U-Y7RS>.

⁶ § 162 STRAFFELOVEN [CRIMINAL ACT] [LOV 1903-05-22-10], https://lovdata.no/dokument/NLO/lov/1902-05-22-10/KAPITTEL_2#KAPITTEL_2, archived at <https://perma.cc/WQQ8-YYAY>.

⁷ Forskrift om forlengelse av prøveordning med narkotikaprogram med domstolskontroll [Regulation on Extension of Trial Period for Narcotics Program with Judicial Controls] [FOR 2016-02-15-152], <https://lovdata.no/dokument/SF/forskrift/2016-02-12-152?q=narkotika>, archived at <https://perma.cc/FS5V-ESX2>.

⁸ *Id.* § 1.

⁹ *Id.* § 3.

The program was first introduced in 2006 and piloted in two Norwegian districts.¹⁰ The project became national on January 1, 2016, and is intended to run at least until December 31, 2016.¹¹ It provides for routine and unscheduled urine tests¹² and an individualized four-phase program (introductory, stabilization, responsibility, and continuation/transfer phases).¹³ Violators of the program are sent to jail.¹⁴

The program has been criticized by organizations favoring reform of drug laws such as the Norwegian branch of the National Organization for the Reform of Marijuana Laws (NORML) for not going far enough.¹⁵

¹⁰ *Id.* § 1.

¹¹ *Id.*

¹² *Id.* § 7.

¹³ *Id.* § 7, para. 4.

¹⁴ *Id.* § 11.

¹⁵ Ester Nafstad, Op-ed., *Norway: The Emperor's New Drug Policies*, HUFFINGTON POST (Jan. 21, 2016), http://www.huffingtonpost.com/ester-nafstad/norway-the-emperors-new-drug-policies_b_9040746.html, archived at <https://perma.cc/4NFB-5EE4>.

Countries with Pending Proposals for Decriminalization

Canada

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SUMMARY The Controlled Drugs and Substances Act (CDSA), which is Canada's main drug-control legislation, criminally prohibits the possession, cultivation, production, importing, and exporting of certain scheduled substances, including cannabis, cocaine, heroin, amphetamines, LSD, and other narcotics. The use of cannabis (marijuana) for recreational purposes is currently illegal and prohibited. In the early 2000s, bills aiming to decriminalize minor offenses related to marijuana had been introduced but were never passed. The current Liberal government of Canada plans on introducing legislation legalizing and regulating recreational marijuana at the federal level in the spring of 2017.

I. Introduction

Presently, the Controlled Drugs and Substances Act (CDSA) is Canada's main drug-control legislation, with criminal offenses involving possession, cultivation, production, importing, and exporting of certain scheduled substances, including cannabis, cocaine, heroin, amphetamines, LSD, and other narcotics.¹ Certain other drug-related regulations and offenses can be found in the Food and Drugs Act² and the Criminal Code.³

During the 2015 federal elections, the Liberal Party, which subsequently won the election, pledged that it would legalize, regulate, and restrict access to marijuana.⁴ The possession, production, and trafficking of other narcotics will remain illegal. On April 20, 2016, federal Health Minister Philpott announced at a United Nations General Assembly special session on drugs that Canada would introduce legislation on the legalization of the recreational use of cannabis in the spring of 2017.⁵

Currently, regardless of the quantity, possession of cannabis is a criminal offense that results in a criminal record and is punishable by imprisonment and/or a fine.⁶ Possession of up to 30 grams

* This report was prepared with the assistance of Law Library Intern Cynthia Chen.

¹ Controlled Drugs and Substances Act, S.C. 1996, c.19, <http://laws-lois.justice.gc.ca/eng/acts/c-38.8/FullText.html>, archived at <https://perma.cc/55U6-EKBN>.

² Food and Drugs Act, S.C. 1985, c. F-27, <http://laws.justice.gc.ca/eng/acts/F-27/FullText.html>, archived at <https://perma.cc/FTW7-WBY8>.

³ Criminal Code, S.C. 1985, c. C-46, <http://laws-lois.justice.gc.ca/eng/acts/C-46>, archived at <https://perma.cc/BA3Y-4KUN>.

⁴ *Marijuana*, LIBERAL PARTY OF CANADA, <https://www.liberal.ca/realchange/marijuana> (last visited June 29, 2016), archived at <https://perma.cc/HUK9-6RGY>.

⁵ *Canadian Marijuana Legalization Bill Coming in Spring 2017, Jane Philpott Announces*, HUFFINGTON POST (Apr. 20, 2016), http://www.huffingtonpost.ca/2016/04/20/canada-marijuana-legaliza_n_9738222.html, archived at <https://perma.cc/59DY-53ZN>.

⁶ Controlled Drugs and Substances Act § 4(1).

of marijuana or up to 1 gram of cannabis resin (hashish) is punishable on summary conviction with up to six months' imprisonment or up to a Can\$1,000 (about US\$771⁷) fine, or both.⁸ Otherwise the possession of cannabis or hashish and other cannabis-related derivatives found under Schedule II of the Act are punishable on summary conviction with up to six months' imprisonment or up to a Can\$1,000 fine, or both, for the first offense, and up to one year of imprisonment or up to a Can\$2,000 fine (about US\$1540), or both, for a subsequent offense.⁹ If found guilty on an indictable offense, the person "is liable to imprisonment for a term not exceeding five years less a day."¹⁰ The production of cannabis plants is also prohibited; punishments and minimum punishments depend on the number of plants and whether production is for the purpose of trafficking or if certain factors apply.¹¹

Despite these criminal penalties, Canada's youth still have the highest rate of cannabis use among developed countries.¹²

II. Past Proposals

Various bills aiming to lessen the consequences of minor offenses related to marijuana were introduced in the early 2000s. In 2003 and 2004, the Canadian government introduced multiple versions of a bill to amend the Contraventions Act and the Controlled Drugs and Substances Act.¹³ In 2003, the Liberal government of Jean Chretien introduced Bill C-38, which sought to decriminalize "simple possession of marijuana."¹⁴ The bill treated the possession of minor and intermediate amounts of marijuana as contraventions under the Contraventions Act rather than criminal offenses under the CDSA.¹⁵ Under the proposal, "[v]iolation tickets would be issued, and existing provincial and territorial systems would be used to process the tickets";¹⁶ an adult possessing less than 1 gram of cannabis resin would be subject to a Can\$300 fine (about US\$231) while a young person under the age of eighteen would be fined Can\$200 (about

⁷ Exchange rate as of June 3, 2016: Can\$1.00 = US\$0.77, <http://www.bankofcanada.ca/rates/exchange/daily-converter>.

⁸ Controlled Drugs and Substances Act § 4(5).

⁹ *Id.* § 4(4)(b).

¹⁰ *Id.* § 4(4)(a).

¹¹ *Id.* § 7(2)(b).

¹² PETER ADAMSON, UNICEF OFFICE OF RESEARCH, CHILD WELL-BEING IN RICH COUNTRIES: A COMPARATIVE OVERVIEW 26 (Innocenti Report Card 11, 2013), http://www.unicef.ca/sites/default/files/imce_uploads/DISCOVER/OUR%20WORK/ADVOCACY/DOMESTIC/POLICY%20ADVOCACY/DOCS/unicef_report_card_11.pdf, archived at <https://perma.cc/2BBU-7LZV>.

¹³ WADE RAAFLAUB, LIBRARY OF PARLIAMENT, CANADA'S PROPOSED DECRIMINALIZATION OF MARIJUANA: INTERNATIONAL IMPLICATIONS AND VIEWS, PRB 04-33E (Dec. 17, 2004), <http://www.lop.parl.gc.ca/content/lop/researchpublications/prb0433-e.pdf>, archived at <https://perma.cc/3TK8-F2T7>.

¹⁴ Kathleen McIntosh, *Recent Developments in Marijuana Possession Law*, 10 APPEAL: REV. CURRENT L. & L. REFORM 40, 50 (2005), <https://journals.uvic.ca/index.php/appeal/article/viewFile/5682/3500>, archived at <https://perma.cc/83B3-HPTY>.

¹⁵ *Id.* at 51.

¹⁶ *Id.*

US\$154);¹⁷ and the possession of less than 15 grams of marijuana would only be punishable with a fine of Can\$150 (about US\$116) for an adult and Can\$100 (about US\$77) for a person under eighteen.¹⁸

The proposed legislation would require larger fines if certain aggravating circumstances were present, such as “operating a motor vehicle, committing an indictable offence, and being in, or near, a school.”¹⁹ Under those circumstances, adults would be fined Can\$400 (about US\$309) and youth Can\$250 (about US\$193).²⁰ Also according to the bill, the possession of more than 15 but not more than 30 grams of marijuana could either be treated as a contravention liable to a fine of Can\$300 (about US\$231) or, in the case of a young person, Can\$200, or as a criminal offense at the discretion of a police officer.²¹ The proposed legislation would also make producing up to three plants punishable by a fine of only Can\$500 (about US\$386) for adults and Can\$250 for young persons.²²

In February 2004 an identical bill was introduced as Bill C-10 but, like its predecessor, it also died on the order paper without a vote in May 2004, due to the federal election.²³ Another identical bill was introduced in November 2004 as Bill C-17²⁴ by the minority Liberal government of Paul Martin, but it too died on the order paper.²⁵ In 2006, the Conservative Party won the election and these bills were not revisited. Therefore, none of these bills have been adopted.

III. Current Proposal

In his 2015 election campaign, current Prime Minister Justin Trudeau pledged to legalize, regulate, and restrict access to marijuana at the federal level in order to “keep marijuana out of the hands of children, and the profits out of the hands of criminals.”²⁶ He promised to “remove marijuana consumption and incidental possession from the Criminal Code, and create new, stronger laws to punish more severely those who provide it to minors, those who operate a motor

¹⁷ Bill C-38, An Act to Amend the Contraventions Act and the Controlled Drugs and Substances Act, HC 2d Session, 37th Parliament, introduced May 27, 2003, § 5(2) (amending and replacing CDSA § 4(5) with § 5), <http://www.parl.gc.ca/HousePublications/Publication.aspx?doc=C-38&language=E&parl=37&pub=bill&ses=2&File=16#1>, archived at <https://perma.cc/3GZ6-SSSK>. References to Schedule VIII in the provisions can be found here: <http://www.parl.gc.ca/HousePublications/Publication.aspx?doc=C-38&language=E&parl=37&pub=bill&ses=2&File=30>.

¹⁸ Bill C-38, § 5(2) (adding CDSA § 5.1).

¹⁹ *Id.* § 5(2) (adding CDSA § 5.3).

²⁰ McIntosh, *supra* note 14, at 51.

²¹ Bill C-38, § 5(2) (adding CDSA § 5.4).

²² *Id.* § 6(2) (amending CDSA § 7 by adding § 7(3)).

²³ RICK CSIERNIK & ROBIN KOOP-WATSON, MANY PATHS TO PROHIBITION: DRUG POLICY IN CANADA, *in* RESPONDING TO THE OPPRESSION OF ADDICTION 320 (Rick Csiernik & William S. Rowe eds., 2d ed. 2010).

²⁴ *Id.*

²⁵ NEIL BOYD, CANADIAN LAW: AN INTRODUCTION 55 (2011).

²⁶ LIBERAL PARTY OF CANADA, *supra* note 4.

vehicle while under its influence and those who sell it outside of the new regulatory framework.”²⁷ He also aimed to “create a federal/provincial/territorial task force, and with input from experts in public health, substance abuse, and law enforcement . . . design a new system of strict marijuana sales and distribution, with appropriate federal and provincial excise taxes applied.”²⁸

Although legislation concerning the legalization and the regulation of marijuana will not be introduced until the spring of 2017, Trudeau reiterated in June 2016 that such legislation will focus on the dual purpose of restricting underage access to cannabis and diminishing the profits of organized crime earned through the illicit marijuana market.²⁹ The Canadian government has launched a nine-member task force to advise the government on the regulation and legalization of marijuana. In the upcoming months, the task force will consult provincial, territorial, and indigenous governments as well as “youth and experts in relevant fields like healthcare, criminal justice, economics, industry and law enforcement.”³⁰ Companies with expertise in the sale, production, and distribution of marijuana will also be consulted.³¹

The New Democratic Party of Canada had introduced a motion for the immediate decriminalization of recreational marijuana. However, this motion was rejected by the government. Prime Minister Trudeau argues that without regulations in place, the decriminalization of marijuana will result in giving a “legal stream of income to criminal organizations.”³² Until the new law is in place, recreational marijuana will remain illegal.

Plans to legalize marijuana are being complicated by Canada’s international treaty obligations.³³ Because the legalization of marijuana may violate such treaties, Canada will have to demonstrate how it plans to conform to its treaty obligations. In some cases, Canada may either have to renegotiate the treaties or formally withdraw from them.³⁴

²⁷ *Id.*

²⁸ *Id.*

²⁹ Tory Floyd, *Why Justin Trudeau Wants to See Marijuana Legalized in Canada*, YAHOO CANADA (June 10, 2016), <https://ca.finance.yahoo.com/blogs/insight/why-justin-trudeau-wants-to-see-pot-legalized-in-canada-163350140.html>, archived at <https://perma.cc/5ZUZ-WEDJ>.

³⁰ Monique Muise, *Canada One Step Closer to Marijuana Legalization*, GLOBAL NEWS (June 30, 2016), <http://globalnews.ca/news/2796430/watch-live-feds-to-make-announcement-regarding-marijuana>, archived at <https://perma.cc/FY2P-WJUF>.

³¹ *Id.*

³² Joanna Smith, *NDP Urges Liberals to Decriminalize Pot Before Legalizing It*, THE STAR (June 12, 2016), <https://www.thestar.com/news/canada/2016/06/12/ndp-urges-liberals-to-decriminalize-pot-before-legalizing-it.html>, archived at <https://perma.cc/9CJR-KY56>.

³³ Mike Blanchfield, *Legalizing Pot in Canada Will Run Afoul of Global Treaties, Trudeau Warned*, CBC (Jan. 5, 2016), <http://www.cbc.ca/news/politics/trudeau-legalizing-pot-global-treaties-1.3390745>, archived at <https://perma.cc/UNH9-G7Q2>.

³⁴ *Canada’s Marijuana Legalization Plan Flouts 3 UN Drug Conventions*, CBC (May 16, 2016), <http://www.cbc.ca/news/health/marijuana-legalization-canada-un-drug-conventions-1.3584148>, archived at <https://perma.cc/8A2Y-3D6Q>.

Ireland

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SUMMARY Ireland has announced that it intends to take measures to decriminalize the possession of small quantities of illegal drugs as part of its drug strategy. The aim is to remove users, who are typically addicts in need of medical attention, from the criminal justice system. The distribution and sale of illegal drugs will remain an offense. Medically supervised injecting centers are soon to be tested in Dublin, with the aim of taking users off the streets and reducing the incidence of infections among users.

I. Introduction

In November 2015, Irish Minister Aodhán Ó Ríordáin announced that Ireland, as part of its strategy to deal with the country's drug problem, would take measures toward decriminalizing possession, for personal use, of small quantities of such illegal drugs as heroin, cocaine, and cannabis.¹

Alongside decriminalizing small quantities of drugs for personal use, specially designated, medically supervised facilities would be created for users to inject drugs. The Minister emphasized that the move to decriminalize the use of drugs is a technique to help addicts, in contrast with existing legislation that focuses on shaming them. The Minister stated that he was “firmly of the view that there needs to be a cultural shift in how we regard substance misuse if we are to break this cycle and make a serious attempt to tackle drug and alcohol addiction.”²

The measures would decriminalize, not legalize, drugs, and the crimes of distributing and selling illegal drugs would continue in force. The shift in focus for individual drug users would be to treat drug addiction primarily as a health issue and remove it from the criminal justice area, which would consequently allow the focus of police resources and court proceedings previously dedicated to users to be focused on drug dealers and traffickers.³

¹ Aodhán Ó Ríordáin, Minister of State for Drugs Strategy and Member of Irish Parliament, Address to the London School of Economics IDEAS Forum (Nov. 2, 2015), available on Ireland's Department of Health website at <http://health.gov.ie/blog/speeches/address-by-minister-aodhan-o-riordain-t-d-to-the-london-school-of-economics-ideas-forum>, archived at <https://perma.cc/RMT6-RRMJ>; Rose Troup Buchanan, *Ireland to “Decriminalise” Small Amounts of Drugs, Including Heroin, Cocaine and Cannabis, for Personal Use*, INDEPENDENT (London) (Nov. 3, 2015), www.independent.co.uk/news/world/europe/ireland-to-decriminalise-small-amounts-of-drugs-including-heroin-cocaine-and-cannabis-for-personal-a6719136.html, archived at <http://perma.cc/J5B6-8HR6>.

² Buchanan, *supra* note 1.

³ Ó Ríordáin, *supra* note 1.

II. Legislative Process to Decriminalize Drugs

No legislative proposal or regulations have yet been put forward to decriminalize the possession of small quantities of restricted drugs. One alternative would be a bill to amend the provisions of the Misuse of Drugs Act 1977 that criminalize the possession of controlled substances. Alternatively, regulations could be issued under sections 4 or 5 of the Misuse of Drugs Act to permit individuals to possess small quantities of illegal drugs.⁴ Any bill or regulations put forward would have to go through the regular legislative procedure.⁵

III. Policy Considerations

Ireland has studied the system in Portugal, which is understood to have had considerable success since it decriminalized low-level possession of all drugs in 2001.⁶ Rising and continual use of illegal narcotics, with little success of addiction treatment under the current system, has led the Irish government to consider other ways to tackle the abuse of illegal drugs. The aim in decriminalizing small quantities of drugs is to remove the stigma from drug users, facilitate the medical treatment and care of these individuals, and reduce the risks posed to them and members of the public when drugs are used on the streets.⁷

In October 2015, Ireland's Joint Committee on Justice, Defence and Equality considered the decriminalization of drugs in small quantities and concluded that drug possession could be handled with civil penalties rather than through the criminal justice system, with the Gardaí (Irish national police service) and health providers having discretion whether to implement these penalties. The Committee also recommended that individuals found in possession of small quantities of drugs be required to attend counseling and treatment sessions to help them stop using drugs, and concluded that further research was needed to ensure that the measures are appropriate to Ireland.⁸

⁴ Misuse of Drugs Act 1977, No. 12 of 1977, <http://www.irishstatutebook.ie/eli/1977/act/12/enacted/en/print>, archived at <https://perma.cc/KU7P-MK7B>.

⁵ *A Brief Guide to the Legislative Process*, HOUSE OF THE OIREACHTAS, <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/guide.htm> (last visited June 28, 2016), archived at <https://perma.cc/26XC-X9ZD>.

⁶ Órla Ryan, *Where Do Ireland's Political Parties Stand on Decriminalising Cannabis?*, THE JOURNAL (Ireland) (Feb. 13, 2016), <http://www.thejournal.ie/decriminalisation-of-cannabis-ireland-2595145-Feb2016>, archived at <https://perma.cc/ML6Q-KUHX>.

⁷ Joint Committee on Justice, Defence and Equality Deb., Submissions on Drugs Review: Discussion, Houses of the Oireachtas – Committee Debates (Oct. 14, 2015), <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/JUJ2015101400002?opendocument#B00100>, archived at <https://perma.cc/GH23-66VW>.

⁸ *Id.*

IV. Injecting Centers

As part of a “suite of harm reduction measures,” in November 2015 the government announced its intention to create injecting centers where users can take drugs.⁹ These facilities would first be established in Dublin,¹⁰ with the aim of opening more in Cork, Galway, and Limerick. The facilities would be “clinically controlled environments” and users would be medically supervised to help minimize the risks of infection and other diseases.¹¹ The aim of these centers is to reduce drug use on the streets and its related risks. The government cited research indicating the rooms are “effective in engaging difficult-to-reach populations of drug users. This is especially the case for marginalised groups, such as the homeless, and those who use drugs on the streets or in other risky and unhygienic conditions.”¹²

Proponents for these measures believe that these facilities will not only minimize the risks of injecting drugs on the street, but also provide a pathway for treatment, including medical and social care and counseling services.¹³ The government hopes that the centers will also allow the government to identify new drug use patterns; the centers “thus could have a role to play in the early identification of new and emerging trends among the high-risk populations using their services.”¹⁴

⁹ Aodhán Ó Ríordáin, Minister of State for Drugs Strategy and Member of Irish Parliament, Address to the CityWide 20th Anniversary Conference: The Way Forward for Irish Drugs Policy – Key Issues for the Next National Drugs Strategy (Nov. 12, 2015), available at http://health.gov.ie/blog/s_peeches/address-by-minister-aodhan-o-riordain-t-d-to-the-citywide-20th-anniversary-conference, archived at <https://perma.cc/6NJA-B4GV>.

¹⁰ Paul Hosford, *Dublin Will Be Getting Its First Drug Injection Centre Within 18 Months*, THE JOURNAL (Ireland) (Dec. 15, 2015), <http://www.thejournal.ie/drugs-heroin-injection-centres-2502999-Dec2015>, archived at <https://perma.cc/YRZ7-RQ2B>.

¹¹ Ó Ríordáin, *supra* note 1.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

South Africa

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I. Introduction

South African law criminalizes three categories of what are known as “dependence-producing drugs”: dependence-producing substances, dangerous dependence-producing substances, and undesirable dependence-producing substances.¹ Offenses relating to “dangerous drugs” (including fentanyl and methadone) and “undesirable drugs” (including cannabis, known as *dagga*, and heroin) are subject to harsh penalties depending on the form of the offense involved.² Dealing in any such substances is, on conviction, punishable by a fine and/or a prison term of up to twenty-five years.³ Use or possession is, on conviction, subject to a fine and/or imprisonment not exceeding fifteen years.⁴ Some exceptions apply in both instances.⁵

II. Proposed Changes

South Africa’s Parliament is currently considering a proposal to reform the ban on certain uses of cannabis. Legislation introduced in September 2014 seeks to legalize cannabinoids⁶ for medical and other uses.⁷ The bill specifically states that “no one shall be liable or guilty of any offence for growing, processing, distributing, using, prescribing, advertising or otherwise dealing with or promoting cannabinoids for purposes of . . . treatment . . . and . . . commercial or industrial uses or products”⁸ The bill lacks clarity with regard to the circumstances and extent to which commercial or industrial use would be permitted. Currently before the Portfolio Committee on Health, if enacted in its current form, the bill would accord complete authority to the Department of Trade and Industry to determine terms for the commercial or industrial use of cannabinoids

¹ Drugs and Drug Trafficking Act No. 140 of 1992, §§ 1, 4 & 5, 8 BUTTERWORTHS STATUTES OF SOUTH AFRICA (updated through 2015), version updated through 2010 available on the South Africa Department of Justice website, at <http://www.justice.gov.za/legislation/acts/1992-140.pdf>, archived at <https://perma.cc/7R3W-KTFP>.

² *Id.* § 1.

³ *Id.* §§ 5, 13 & 17.

⁴ *Id.* §§ 4, 13 & 17.

⁵ *Id.* §§ 4 & 5.

⁶ “Cannabinoids” have been defined as “any part or chemical constituent of the plant known as cannabis, marijuana or dagga, any genetic modification thereof, and any extract thereof or product containing it or resulting from processing thereof.” Medical Innovation Bill § 1, PMP1-2014, GOVERNMENT GAZETTE No. 37349 (Feb. 18, 2014), available on the South Africa government website at http://www.gov.za/sites/www.gov.za/files/37349_gen100.pdf, archived at <https://perma.cc/2MNY-NS8Q>.

⁷ *Portfolio Committee on Health*, PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA, http://www.parliament.gov.za/live/content.php?Item_ID=215&CommitteeID=91 (last visited June 29, 2016), archived at <https://perma.cc/FE3U-UUJ3>.

⁸ Medical Innovation Bill § 7.

through proclamations.⁹ This is reportedly widely seen as a path to legalization and some have called for changes to be made to the bill so that its application is limited to medical use.¹⁰

⁹ Medical Innovation Bill § 7 & Memorandum on Objectives at 8.

¹⁰ Tamar Kahn, *Weed Out Commercial Use of Dagga, Say IFP*, BUSINESS DAY LIVE (Aug. 13, 2015), <http://www.bdlive.co.za/national/health/2015/08/13/weed-out-commercial-use-of-dagga-says-ifp1>, archived at <https://perma.cc/LG4V-NYT9>; Russ Belville, *South African Marijuana Legalization May Become Medical-Only*, MARIJUANA POLITICS (Aug. 18, 2015), <http://marijuanapolitics.com/south-african-marijuana-legalization-may-become-medical-only>, archived at <https://perma.cc/3VCH-6CCC>; Press Release, The South African Medical Research Council (SAMRC) Responds to the Medical Innovation Bill (May 28, 2015), <http://www.mrc.ac.za/Media/2015/12press2015.htm>, archived at <https://perma.cc/JD4H-KKV4>; Sipokazi Fokazi, *Dagga Bill 'Would Add to Social Problems'*, IOL (Aug. 13, 2015), <http://www.mrc.ac.za/Media/2015/12press2015.htm>, archived at <https://perma.cc/97RR-TXHJ>.