

**THE DANGEROUS DRUGS
(ADMENDMENT) BILL, 2019**

EXPLANATORY NOTE

(These notes form no part of the Bill but are
intended only to indicate its general purport)

This Bill seeks to decriminalise the possession of not more than thirty grammes of cannabis or not more than five grammes of cannabis resin and to create offences, which restricts the use of cannabis in specific instances. It also enables a person who has been convicted for the possession of not more than sixty grammes of cannabis or not more than ten grammes of cannabis resin to apply through his Attorney-at-law to the Commissioner of Police to have that offence expunged from his criminal record and to apply for a pardon. It seeks to increase the penalties for the possession of and trafficking in dangerous drugs. It also seeks to add new dangerous drugs, including, ecstasy, LSD and ketamine, where the possession of more than the specified amount would be deemed for the purpose of trafficking.

The Bill contains nine clauses.

Clause 1 of the Bill would provide for the short title of the Bill.

Clause 2 of the Bill would provide for the commencement of the proposed Act.

Clause 3 would provide for the interpretation of the word “Act”.

Clause 4 would provide definitions for “cannabis”, “cannabis resin”, “public place” and “smoke”.

Clause 5 would amend section 4(b) to delete the word “marijuana” and to replace with the words “plant of the genus cannabis”.

Clause 6 would amend section 5 to decriminalise the possession of not more than thirty grammes of cannabis or not more than five grammes of cannabis resin. It would also allow a person to cultivate or possess not more than four growing male plants of the genus cannabis. It would also increase the penalties for the possession of and trafficking in dangerous drugs. It would add new dangerous drugs, including ecstasy, LSD and ketamine, where possession of more than the specified amount would be deemed for the purpose of trafficking.

Clause 6 would insert new subsections (2A) and (2B). Proposed subsection (2A) would create an offence where a person has in his possession more than thirty grammes, but not more than sixty grammes of cannabis; or more than five grammes but not more than ten grammes of cannabis resin and that person shall be liable on summary conviction to a fine of fifty thousand dollars.

Proposed subsection (2B) would allow the Court to make a community service order, where a person who is convicted of an offence under subsection (2A) fails or is unable to pay any fine imposed on him, requiring him to perform thirty hours of community service.

Clause 6 also seeks to increase the penalties for the possession of and trafficking in dangerous drugs.

Clause 7 would insert new sections 5A, 5B, 5C and 5D. Proposed section 5A would create an offence where a person smokes or uses cannabis or cannabis resin in a public place and that person shall be liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for five years.

Proposed section 5B would create a fixed penalty system where a police officer has reason to believe that a person is committing or has committed an offence under section 5(2A). The proposed system would allow a person to pay a fixed penalty within the specified time in the notice. However, where the fixed penalty is not paid within the time specified in the notice, proceedings in respect of the offence specified in the fixed penalty notice shall proceed in the manner prescribed by the Summary Courts Act.

Proposed 5C would create an offence where a person who, whilst under the influence of cannabis, does anything which constitutes negligence, professional malpractice or professional misconduct and that person shall be liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for five years.

Proposed section 5C would also create an offence where a person has cannabis in his possession on a school bus or in or on any premises where children are present for the purposes of education or attending or participating in any sporting or cultural activity and that person shall be liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment of five years.

Proposed section 5C would also create an offence where a person operates, navigates, or is in actual physical control of any motor vehicle, aircraft, or ship whilst under the influence of alcohol and that person shall be liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment of five years.

Proposed section 5D would allow a person who was charged for the possession of not more than sixty grammes of cannabis or not more than ten grammes of cannabis resin

before the commencement of the Dangerous Drugs (Amendment) Act, 2019 to apply to the Court for a discharge of that offence.

It would also provide that any offence on the criminal record of a person prior to the commencement of the Dangerous Drugs (Amendment) Act, 2019, for the possession of not more than sixty grammes of cannabis or not more than ten grammes of cannabis resin shall be expunged by the Commissioner of Police.

Proposed section 5D would allow a person who has been convicted for the possession of not more than sixty grammes of cannabis or not more than ten grammes of cannabis resin to apply through his Attorney-at-law to the Commissioner of Police to have that offence expunged from his criminal record. A person who has had an offence expunged from his criminal record may, in respect of that offence, apply for a pardon under section 87 of the Constitution.

Clause 8 would insert the words “or prescription” to allow a person who has a licence under section 4 to deal in any dangerous drugs to receive not only a written order but a “prescription” as well.

Clause 9 would insert the words “order or” to allow a pharmacist to fill not only a prescription but an “order” as well.

THE DANGEROUS DRUGS (AMENDMENT) BILL, 2019

ARRANGEMENT OF CLAUSES

Clause

1. Short title
2. Commencement
3. Interpretation
4. Section 3 amended
5. Section 4 amended
6. Section 5 amended
7. Sections 5A, 5B, 5C and 5D inserted
8. Section 7 amended
9. Section 8 amended

A B I L L

AN ACT to amend the Dangerous Drugs Act, Chap. 11:25

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:

Short title **1.** This Act may be cited as the Dangerous Drugs (Amendment) Act, 2019.

Commencement **2.** This Act comes into operation on such date as is fixed by the President by Proclamation.

3. In this Act, “the Act” means the Dangerous Drugs Act.

4. Section 3(1) of the Act is amended by inserting in the appropriate alphabetical sequence, the following definitions:

“cannabis” means the plant of the genus cannabis, whether growing or not, including –

- (a) any part of the plant, whether growing or not;
- (b) its seeds;
- (c) any compound, salt, mixture, extraction, derivative, product, synthetic or other preparation of the plant, any part of the plant, its seeds or cannabis resin,

but does not include –

- (d) cannabis resin;
- (e) fiber produced from the stalk of the plant;
- (f) oil or cake made from the seeds of the plant;
- (g) sterilised seeds of the plant which are incapable of germination; or
- (h) any other ingredient –
 - (i) combined with the plant, any part of the plant, its seeds or cannabis resin, or
 - (ii) used in anything referred to in paragraph (c),

for the purposes of preparing any topical or oral administration, food, drink or other product;

“cannabis resin” means the separate resin, whether crude or purified, obtained from any plant of the genus cannabis;

“public place” means an indoor or outdoor area, whether privately or publicly owned, to which the public has access by right or by invitation, expressed or implied, whether by payment of money or not;

“smoke”, in relation to a substance, means –

- (a) to inhale, exhale, burn, combust or vaporize the substance;
- (b) to carry any lighted or heated device, pipe or other product, whether natural or synthetic, for the inhalation of the substance in any manner or in any form,

and includes the use of an electronic smoking device that creates an aerosol or vapour, in any manner or in any form, or the use of any orally used device, for the purpose of the inhalation of the substance;”.

Section 4
amended

5. Section 4(b) of the Act is amended by deleting the words “opium poppy, marijuana, or coca plant” and substituting the words “any opium poppy, coca plant or plant of the genus cannabis”.

Section 5
amended

6. Section 5 of the Act is amended –

- (a) in subsection (1) –
 - (i) in the chapeau, by deleting the words “subsection (2)” and substituting the words “subsection (2) and (2A)”;
 - (ii) in paragraph (a), by deleting the words “twenty-five’ and substituting the words “two hundred and fifty”; and
 - (iii) in paragraph (b), by deleting from the word “fifty” to the words “five years” and substituting the words “one million dollars and to imprisonment for fifteen years”;
- (b) in subsection (2) –
 - (i) by deleting the full stop and substituting a semicolon;
 - (ii) by inserting after paragraph (e), the following paragraphs:

“(f) a person who has in his possession not more than-

- (i) thirty grammes of cannabis; or
- (ii) five grammes of cannabis resin;

(g) a person who cultivates or has in his possession not more than four growing male plants of the genus cannabis.”;

(c) by inserting after subsection (2), the following subsections:

“(2A) Subject to section 5B(2), a person who has in his possession –

- (a) more than thirty grammes, but not more than sixty grammes, of cannabis; or
- (b) more than five grammes, but not more than ten grammes, of cannabis resin,

commits an offence and is liable on summary conviction to a fine of fifty thousand dollars.

(2B) Where a person who is convicted of an offence under subsection (2A) fails or is unable to pay any fine imposed on him under that subsection, the Court may make a community service order requiring him to perform thirty hours of community service in accordance with the provisions of the Community Service Orders Act.”;

Chap. 13:06

(d) in subsection (3)-

- (i) by deleting the word “A” and substituting the words “Subject to subsection (3A), a”;
- (ii) by deleting the word “marijuana” and substituting the words “plant of the genus cannabis”;
- (iii) by inserting after the words “section 4”, the words “or any other written law”;
- (iv) in paragraph (a), by deleting the word “fifty” and substituting the words “seven hundred and fifty”;
- (v) in paragraph (b)-

- (A) by deleting the words “one hundred thousand” and substituting the words “two million”;
 - (B) by deleting the word “marijuana” in both places where it occurs and substituting in each place the word “plant”; and
 - (C) by deleting the words “twenty-five years to”;
- (e) by inserting after subsection (3), the following subsection:
- “(3A) Subsection (3) does not apply to a person who cultivates or has in his possession not more than four growing male plants of the genus cannabis.”;
- (f) in subsection (5)-
- (i) by deleting the words “one hundred thousand” and substituting the words “three million”;
 - (ii) by deleting the word “three” and substituting the word “ten”; and
 - (iii) by deleting the words “a term of twenty-five years to”;
- (g) in subsection (6)-
- (i) by deleting the words “one hundred thousand” and substituting the words “three million”;
 - (ii) by deleting the word “three” and substituting the word “ten”; and
 - (iii) by deleting the words “a term of twenty-five years to”;
- (h) in subsection (7)-
- (i) by deleting the words “one hundred and fifty thousand” and substituting the words “three million”;
 - (ii) by deleting the word “three” and substituting the word “ten”; and
 - (iii) by deleting the words “a term of thirty-five years to”;

- (i) in subsection (7B), by deleting the word “fifty” and substituting the words “seven hundred and fifty”; and
- (j) in subsection (9)-
 - (i) in paragraph (d), by deleting the word “or”;
 - (ii) in paragraph (e), by deleting the words “cannabis resin” and substituting the words “one hundred and sixty-five grammes of cannabis resin; or”; and
 - (iii) by inserting after paragraph (e), the following paragraphs:
 - “(f) five grammes or twenty tablets of 3,4 methylenedioxymethamphetamine (ecstasy) or any drug listed in Schedule I or Schedule II of the Second Schedule of the Act;
 - (g) ten grammes or one hundred and seventy squares of lysergic acid diethylamide (LSD); or
 - (h) five grammes of ketamine.”.

Sections 5A, 5B,
5C and 5D
inserted

7. The Act is amended by inserting after section 5, the following sections:

Smoking in a
public place

“**5A.** (1) A person who smokes or uses cannabis or cannabis resin in a public place commits an offence and is liable, on summary conviction, to a fine of two hundred and fifty thousand dollars and to imprisonment for five years.

(2) An owner of, or any person who has the sole or shared responsibility for managing, supervising, or regulating the use of, a public place shall ensure that any person who smokes or uses cannabis or cannabis resin in that public place cease and desist from such smoking or use and may remove or evict that person from the public place.

(3) Notwithstanding anything contained in this section, the Minister may, by Order subject to affirmative resolution of Parliament, prescribe a list of approved public places where the smoking of cannabis or cannabis resin may be allowed.

Fixed penalty

5B. (1) In this section-

system

Chap. 4:20

“Clerk” and “Court” have the meanings respectively assigned to those expressions by section 2 of the Summary Courts Act;

“fixed penalty” means the penalty prescribed under subsection (2);

“fixed penalty notice” means a notice issued under subsection (3) and includes a duplicate of such notice.

“proceedings” means proceedings by complaint before a Magistrate;

“Rules of Court” means rules by the Rules Committee under section 23 of the Summary Courts Act”.

(2) Where a police officer has reason to believe that a person is committing or has committed an offence under section 5(2A), he shall issue to the person a fixed penalty notice charging him with the commission of such offence, and requiring him to either pay the fixed penalty within the time specified in the fixed penalty notice.

(3) The police officer shall send to the Clerk, in the district in which the offence is alleged to have been committed, a duplicate of the fixed penalty notice.

(4) The fixed penalty notice issued or sent under this section shall be deemed to be a complaint within the meaning of section 33 of the Summary Courts Act.

(5) Notwithstanding any written law to the contrary, the fixed penalty notice referred to in subsection (4) is, from the expiration of the time thereon specified for the payment of the fixed penalty, deemed to be a summons issued in accordance with section 42 and served in accordance with section 43, respectively, of the Summary Courts Act.

(6) Notwithstanding any provisions of

this Act or any written law to the contrary, a person who pays a fixed penalty before the expiration of the time specified for the payment thereof, may in the prescribed form, appeal to the Magistrate in the district in which he paid the fixed penalty in respect of the offence for which he was charged.

(7) Where, in an action referred to in subsection (6), the Court decides in favour of the appellant, the amount representing the fixed penalty paid by the appellant shall be refunded to him.

(8) A fixed penalty notice issued under subsection (2) shall bear the signature of the police officer and shall specify-

- (a) the date, time and place that the fixed penalty notice was issued;
- (b) the section of the written law creating the offence alleged and such particulars of the offence as are required for proceedings under the Summary Courts Act;
- (c) the time within which the fixed penalty may be paid in accordance with subsection (2);
- (d) the amount of the fixed penalty;
- (e) the Clerk to whom, and the address at or to which the fixed penalty may be paid or remitted;
- (f) the address of the Court at which the person is required to appear in the event of his failure to pay the fixed penalty within the specified time, and the date and time of such

appearance.

(9) Where a notice has been given under subsection (2), the person to whom the notice applies may, subject to subsection (10), pay the fixed penalty in accordance with the notice.

(10) Payment of the fixed penalty shall be made-

(a) to the Clerk, having jurisdiction in the district in which the offence is alleged to have been committed; or

(b) in accordance with the Electronic Payments into and out of Court Act, 2018.

Act No. 14 of
2018

(11) Where a fixed penalty is paid in accordance with a fixed penalty notice, a person shall not be liable to any sanction for the offence in respect of which the fixed penalty notice was issued.

(12) The time within which the fixed penalty is payable shall be fourteen days, or such other period as may be prescribed by Rules of Court, from the date of the fixed penalty notice, and where payment reaches the Clerk after that time, it shall not be receivable and shall be returned to the payer.

(13) Payment of the fixed penalty shall be accompanied by the fixed penalty notice completed by the person to whom the fixed penalty notice applies, in the manner prescribed.

(14) Where the fixed penalty is duly paid in accordance with the fixed penalty notice, no person shall then be liable to be convicted of the offence in respect of which the fixed penalty notice was given.

(15) A fixed penalty paid under this Act shall be dealt with in the same manner as payment of

a fine imposed for an offence under the Summary Courts Act.

(16) The fixed penalty for an offence under section 5(2A) shall be two thousand dollars or such other amount as the Minister may, by Order subject to negative resolution of Parliament, prescribe.

(17) Proceedings in respect of an offence deemed to be instituted by a fixed penalty notice under this Act shall not be listed for hearing in Court unless—

- (a) a period of two months, or such other period as may be prescribed by Rules of Court, has elapsed from the last day on which the penalty is payable and the Clerk has no record that the fixed penalty was paid in accordance with subsection (7); and
- (b) the Clerk has been furnished by the police officer with such information on the person to whom the fixed penalty notice has been issued under subsection (2).

(18) In any proceedings, a certificate that payment of a fixed penalty was or was not made to the Clerk by a date specified in the certificate shall, if the certificate purports to be signed by the Clerk, be sufficient evidence of the facts stated, unless the contrary is proved.

(19) Where the fixed penalty is not paid within the time specified in the notice, proceedings in respect of the offence specified in the fixed penalty notice shall proceed in the manner prescribed by the Summary Courts Act.

Offences

5C. A person who-

- (a) whilst under the influence of cannabis, does anything which constitutes negligence, professional malpractice, or professional misconduct;

(b) has cannabis or cannabis resin in his possession-

(i) on a school bus; or

(ii) in or on any premises where children are present for the purposes of education or attending or participating in any sporting or cultural activity; or

(c) operates, navigates, or is in actual physical control of any motor vehicle, aircraft, or ship whilst under the influence of cannabis,

commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for five years.

Possession of not more than sixty grammes of cannabis

5D. (1) A person who was charged for the possession of not more than sixty grammes of cannabis or not more than ten grammes of cannabis resin before the commencement of the Dangerous Drugs (Amendment) Act, 2019, may apply to the Court for a discharge of that offence.

(2) Notwithstanding the provisions of section 50K of the Police Service Act, any offence on the criminal record of a person prior to the commencement of the Dangerous Drugs (Amendment) Act, 2019, for the possession of not more than sixty grammes of cannabis or not more than ten grammes of cannabis resin shall be expunged by the Commissioner of Police.

(3) A person who has been convicted for the possession of not more than sixty grammes of cannabis or not more than ten grammes of cannabis resin may apply through his Attorney-at-law to the Commissioner of Police to have that offence expunged from his criminal record.

(4) A person who has had an offence expunged from his criminal record under subsection (2) or (3) may, in respect of that offence,

apply for a pardon under section 87 of the Constitution.”.

Section 7
amended

8. Section 7(2) of the Act is amended by inserting after the word “order” in each place where it occurs, the words “or prescription”.

Section 8
amended

9. Section 8(1) of the Act is amended by inserting after the words “before the”, the words “order or”.

Passed in the House of Representatives this day of , 2019.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2019.

Clerk of the Senate

I confirm the above.

President of the Senate