

DANGEROUS DRUGS (AMENDMENT) BILL, 1999

EXPLANATORY NOTE

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

Clause 1 of the Bill contains the short title. **Clause 2** establishes that the Bill is inconsistent with Sections 4 and 5 of the Constitution. This Bill is therefore one for which a special majority is required in both Houses of Parliament. **Clause 3** contains the interpretation section.

Clause 4 of the Bill would provide for the definition of the words "Director of Public Prosecutions" which shall include "any person assigned by him for the purposes of this Act and would provide for the extension of the definition of the words "drug trafficking offence" to include sections 47 and 47A of the Act which are the money laundering sections. This clause would also provide for the definition of the words "Board of Inland Revenue". Clause 4 would also insert a new subsection (3A) which will ensure that under the Act possession of a thing will include control of a thing that is in another person's custody. The clause also defines "life" to mean "the natural life of a person".

Clause 5 would repeal section 5(3) of the Act and replace it with 5(3) and 5(3A). This amendment would separate the offence of cultivating, gathering or producing marijuana, from the offence of cultivating, gathering or producing opium and coca. The penalty for marijuana cultivation remains the same as provided for under the original section of the Act i.e., a fine of \$25,000 and imprisonment for five years if convicted summarily, and a fine of \$50,000 or three times the street value of the drug whichever is greater and imprisonment for a term not greater than 10 years but not less than 5 years if convicted on indictment. The penalty for the cultivation, gathering or producing of coca and opium, however, is significantly increased to a fine of \$100,000 or three times the street value of the drug (whichever is greater) and imprisonment for a term of twenty-five years to life.

Clause 6 would repeal subsections (5), (6) and (7) of section 5 and replace them with new subsections (5), (6), (7), (7A) and (7B). This amendment would increase the existing penalty for several offences. In the case of subsection 5(5) the penalty for trafficking in a dangerous drug or possession for the purpose of trafficking is, on conviction on indictment, changed from imprisonment for life to a fine of \$100,000 or three times the street value of the drugs (whichever is greater) and imprisonment for a term of twenty-five years to life.

In the case of 5(6), the penalty on conviction on indictment for trafficking in a substance other than a dangerous drug which is represented to be a dangerous drug, is increased from imprisonment for ten years to a fine of \$100,000 or three times the street value of the drug (whichever is greater) and imprisonment for a term of twenty-five years to life.

In the case of 5(7) the penalty on conviction on indictment for possession of a dangerous drug or a substance held out to be a dangerous drug within a certain distance of a school is increased and the requisite distance from a school is also increased to five hundred metres. The penalty is increased from imprisonment for life on conviction on indictment to a fine of \$100,000 or whether there is evidence of the street value of the drug, three times that street value (whichever is greater) and to imprisonment for a term of thirty-five years to life.

In the case of subsection (7A) of section 5, a person charged for any drug trafficking offence, notwithstanding the previous subsections (3A), (5), (6) and (7) may consent to proceed summarily with his matter if the Director of Public Prosecutions elects to do so at the preliminary enquiry. Under subsection (7B), a person who pleads guilty or is found guilty under (7A) is liable to a fine of \$25,000 and imprisonment for five years.

Clause 7 would repeal subsection (9) and replace it with a new subsection. This amendment would change the quantities that are to be deemed to be for the purpose of trafficking as follows: heroin - from 2 gms to 20 gms; cocaine - from 1gm to 10 gms; opium - from 55 gms to 500 gms; morphine - from 3 gms to 30 gms; cannabis - from 15 gms to 1 kg.

Clause 8 would repeal section 6A and replace it with a new section. This amendment would increase the penalty on conviction on indictment where a person manufactures or is in possession of precursor chemicals or transports such substances for use in the production of a dangerous drug, to a fine of \$100,000 or where there is evidence of the street value of the drug, three times that value (whichever is greater) and imprisonment for a term which shall not be less than twenty-five years. The penalty on summary conviction in the original section is removed since subsections (7A) and (7B) of section 5 now apply.

Clause 9 would repeal section 10 and replace it with a new section. This amendment would increase the penalty on conviction on indictment for the illegal supply of dangerous drugs from a fine of \$50,000 and imprisonment for seven years to a fine of \$100,000 or three times the street value of the drug, whichever is greater and a period of imprisonment which shall not be less than twenty-five years.

Clause 10 would repeal section 11(3) and replace it with a new section. This amendment would increase the penalty on conviction on indictment for the illegal furnishing of a dangerous drug by a doctor, dentist or veterinarian from a fine of \$50,000 and imprisonment for seven years to a fine of \$100,000 or three times the street value of the drug and imprisonment for a period of not less than twenty-five years.

Clause 11 would repeal subsection 1 of section 17 and replace it with a new subsection. This amendment would introduce the element of knowledge to the offence of enclosing a dangerous drug in a letter or packet, making it necessary for the accused to "knowingly" enclose a dangerous drug with a letter or packet sent by post or courier. The penalty on conviction on indictment is increased from a fine of \$50,000 and imprisonment for a term not to exceed ten years but not to be more than five years to a fine of \$100,000 or three times the street value of the drug (whichever is greater) and a term of imprisonment which shall not be less than twenty-five years.

Clause 12 would repeal section 18 and replace it by a new section. This amendment would introduce by paragraph (c) an alternative imprisonment period of fifteen years where the fine imposed for a conviction under the Act exceeds \$25,000. A period of imprisonment in default of payment of a fine shall begin at the end of the term of imprisonment imposed by the Court.

Clause 13 would introduce new provisions and a new Part IVA by virtue of sections 29A and 29B of the Act. Section 29A would place the burden of proof on the defence where it attempts to rely on the existence of a licence or authorization, etc. as its defence to a charge under the Act. Section 29B prescribes the presumptions to be applied under the Act that - a) premises may be deemed to be used for a purpose even if used only once for that purpose, (b) a person shall be deemed to be the occupier of premises if he has care or management of the premises; (c) if an article is generally used for drug consumption and is found on premises then it will be presumed till proven otherwise that the premises are used for the consumption of drugs with the permission of the occupier; (d) a person is deemed to know the nature of a dangerous drug and be in possession of it if he has in his custody or under his control anything containing such a drug, until the contrary is proven; (e) a person who is in possession or control of any document of title relating to a dangerous drug shall, until proven otherwise, be deemed to have known the nature of the drug; (f) if a dangerous drug is found concealed in any ship or aircraft it shall be presumed, until proven otherwise that the drug is concealed with the knowledge of the master of the ship or aircraft and has been imported or is to be exported in such ship or aircraft; (g) if a dangerous drug is found concealed in any premises it shall be presumed until proven otherwise that it is concealed with the knowledge of the occupier of the premises; (h) if a dangerous drug is found concealed in any compartment in any vehicle, it shall be deemed, until proven otherwise, to have been concealed with the knowledge of the owner of the vehicle and of the person in charge of the vehicle at the time the drug is found; (i) evidence by a senior police or customs officer that a device is used for the preparation or consumption of a dangerous drug, unless proven otherwise, is sufficient evidence of the fact of such purpose; (j) when a substance suspected of being a dangerous drug has been seized and is contained in a number of packages when seized, it shall be enough to analyse samples of the contents of not less than ten percent of such packages. If those samples are all the same it shall be presumed until proven otherwise that the contents of all the packages are the same as the ones analysed and that if the analysis reveals a dangerous drug then all the packages contain or consist of the dangerous drug.

Clause 14 would amend section 53A(1) of the Act by inserting a definition of the words “archipelagic waters”.

Clause 15 would repeal section 53B of the Act and replace it with a new section. The amendment would change the penalty imposed on a person found guilty under the section of having a dangerous drug in his possession on a ship or of knowingly carrying or concealing a dangerous drug on a ship. The penalty would be increased from a fine upon summary conviction of \$50,000 or three times the street value of the drug, whichever is greater and imprisonment for a term not greater than ten but not less than five years; and upon conviction on indictment to imprisonment for life—to a fine of \$100,000 or three times the street value of the drugs, whichever is greater and a term of imprisonment of not less than twenty-five years.

Clause 16 would amend section 53C(2) by deleting the words “territorial sea” and substituting the words “archipelagic waters”.

Clause 17 would insert a new section 53E in Part 1V which would provide for the Court to impose a lesser sentence on a convicted offender if he cooperates in the investigation or prosecution of a offence. The clause would also make the officers of companies who participate in an offence liable even if the company itself is not prosecuted or convicted of the offence.

Clause 18 would amend the Act by inserting a new clause 54A which provides for the destruction of drug exhibits before the completion of legal proceedings.

Clause 19 would amend the Fifth Schedule of the Act in section 1(1)(b) by deleting the words “an officer” and substituting the words “a member”.

Clause 20 would delete Item 12 from the Second Schedule to the Summary Courts Act.

BILL

AN ACT to amend the Dangerous Drugs Act, 1991

Act No. 38 of
1991.

[Assented to 1998]

WHEREAS it is enacted *inter alia* by subsection (1) of section 13 of the Constitution that an Act to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any such Act does so declare, it shall have effect accordingly:

Preamble

And whereas it is provided by subsection (2) of the said section 13 of the Constitution that an Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

ENACTED by the Parliament of Trinidad and Tobago as follows:

Enactment.

1. This Act may be cited as the Dangerous Drugs (Amendment) Act, 1999.

Short title.

2. This Act has effect even though inconsistent with sections 4 and 5 of the Constitution.

Act
inconsistent with
Constitution.

3. In this Act “the Act” means the Dangerous Drugs Act, 1991.

Interpretation

4. Section 3 of the Act is amended—
(a) in subsection (1)—

(i) by inserting after the definition of the word “dentist” the following:

““ Director of Public Prosecutions” means the Director of Public Prosecutions of Trinidad and Tobago or any person assigned by him for the purpose of this Act;”;

(ii) by inserting after the definition of the word “import” the following:

““life” means the natural life of a person;”;

and

(b) by inserting after subsection (2) the following:

“(2A) For the purposes of this Act possession of a thing shall include control of a thing which is in the custody of another.”.

Section 5(3)
repealed and
replaced.

5. Section 5(3) of the Act is repealed and the following subsections substituted:

“(3) A person who cultivates, gathers or produces any marijuana, except where he does so under a licence granted under section 4 or where he is acting under the supervision of a person having such a licence, commits an offence and is liable—

(a) upon summary conviction to a fine of twenty-five thousand dollars and to imprisonment for five years; or

(b) upon conviction on indictment to a fine of fifty thousand dollars and to imprisonment for a term which shall not exceed ten years but which shall not be less than five years.

(3A) A person who cultivates, gathers or produces any opium poppy, or coca plant, except where he does so under a licence granted under section 4 or where he is acting under the supervision of a person having such a licence, commits an offence and is liable upon conviction on indictment to a fine of one hundred thousand dollars or, where there is evidence of the street value of the dangerous drug, three times the street value of the dangerous drug, whichever is greater, and to imprisonment for a term of twenty-five years to life.”.

6. Subsection (5), (6) and (7) of section 5 of the Act are repealed and the following subsections substituted:

Section 5(5) (6)
and (7) repealed
and replaced.

“(5) Subject to subsection (7), a person who commits the offence of trafficking in a dangerous drug or of being in possession of a dangerous drug for the purpose of trafficking is liable upon conviction on indictment to a fine of one hundred thousand dollars or, where there is evidence of the street value of the dangerous drug, three times the street value of the dangerous drug, whichever is greater, and to imprisonment for a term of twenty-five years to life.

(6) A person who commits the offence of trafficking in a substance other than a dangerous drug, which he represents or holds out to be a dangerous drug is liable upon conviction on indictment to a fine of one hundred thousand dollars or, where there is evidence of the street value of the dangerous drug, three times the street value of the dangerous drug, whichever is greater, and to imprisonment for a term of twenty-five years to life.

(7) A person other than a person referred to in subsection (2) found in possession of a dangerous drug or a substance other than a dangerous drug which he represents or holds out to be a dangerous drug, on any school premises or within five hundred metres thereof is deemed to have the dangerous drug or substance for the purpose of trafficking, unless the contrary is proved, the burden of proof being on the accused, and such person commits an offence and is liable upon conviction on indictment to a fine of one hundred and fifty thousand dollars or, where there is evidence of the street value of the dangerous drug, three times the street value of the dangerous drug, whichever is greater, and to imprisonment for a term of thirty-five years to life.

(7A) Notwithstanding subsections (3A), (5), (6) and (7), where a person is charged for a drug trafficking offence under this Act, the Director of Public Prosecutions may, at the preliminary enquiry, elect to proceed with the matter summarily and if the accused so consents, the Court may adjourn the matter to be dealt with accordingly.

(7B) A person who pleads guilty to, or is found guilty of an offence tried pursuant to subsection (7A) is liable to a fine of twenty-five thousand dollars and to imprisonment for five years.”.

Section 5(9)
repealed and
replaced.

7. Subsection 5(9) of the Act is repealed and the following subsection substituted:

“(9) A person, other than a person referred to in subsection (2) found in possession of more than—

- (a) twenty grams of *diacetylmorphine* (heroin);
- (b) ten grams of cocaine;
- (c) five hundred grams of opium;
- (d) thirty grams of morphine; or
- (e) one kilogram of cannabis or cannabis resin,

is deemed to have the dangerous drug for the purpose of trafficking unless the contrary is proved, the burden of proof being on the accused.”.

8. Section 6A of the Act is repealed and the following section substituted:

Section 6A
repealed and
replaced.

“6A. A person who—

- (a) manufactures or is in possession of a substance referred to in the Fourth Schedule; or
- (b) transports such a substance or supplies it to another person,

Fourth Schedule.

knowing or having reasonable grounds to suspect that the substance is to be used in or for the unlawful production of a dangerous drug commits an offence and is liable upon conviction on indictment to a fine of one hundred thousand dollars or, where there is evidence of the street value of the dangerous drug, three times the street value of the dangerous drug, whichever is greater, and to imprisonment for a term which shall not be less than twenty-five years.”.

9. Section 10 of the Act is repealed and the following section substituted:

Section 10
repealed and
replaced.

“ 10. A person who contravenes section 7, 8 or 9 commits an offence and is liable upon conviction on indictment to a fine of one hundred thousand dollars or, where there is evidence of the street value of the dangerous drug, three times the street value of the dangerous drug, whichever is greater, and to imprisonment for a term which shall not be less than twenty-five years.”.

“Contravention
of sections 7, 8
or 9 -
offence and
penalty.

10. Section 11(3) of the Act is repealed and the following subsection substituted:

Section 11(3)
repealed and
replaced.

“(3) A person who commits an offence under this section is liable upon conviction on indictment to a fine of one hundred thousand dollars or, where there is evidence of the street value of the dangerous drug, three times the street value of the dangerous drug, whichever is greater, and to imprisonment for a term which shall not be less than twenty-five years.”.

Section 17(1)
repealed and
replaced.

11. Subsection (1) of section 17 of the Act is repealed and the following subsection substituted:

“(1) Except as otherwise specifically provided, a person who knowingly encloses a dangerous drug in or with any letter, packet or other matter sent by post or courier, commits an offence and is liable upon conviction on indictment to a fine of one hundred thousand dollars or, where there is evidence of the street value of the dangerous drug, three times the street value of the dangerous drug, whichever is greater, and to imprisonment for a term which shall not be less than twenty-five years.”.

Section 18
repealed and
replaced.

12. Section 18 of the Act is repealed and the following section substituted:

“Liability for
imprisonment
for non-payment
of fine.

18. Where a person is convicted under this Act, other than for an offence under section 14, and the conviction adjudges imprisonment and the payment of a fine, the sentence shall direct that in default of payment of the fine, the person so convicted shall, notwithstanding any other law, be imprisoned—

- (a) for a period of nine months where the fine does not exceed five thousand dollars;
- (b) for a period of three years, where the fine exceeds five thousand dollars but does not exceed twenty-five thousand dollars; or
- (c) for a period of fifteen years where the fine exceeds twenty-five thousand dollars,

which period shall commence at the end of the term of imprisonment imposed by the Court.”.

Act amended by including new Part IVA.

13. The Act is amended by inserting after section 29 the following Part as Part IVA:

“PART IV A

BURDEN OF PROOF AND PRESUMPTIONS

29A. It shall not be necessary in any proceedings against any person for an offence against this Act to negative by evidence any licence, authorization, authority, or other matter of exception or defence, and the burden of proving any such matter shall be on the person seeking to avail himself thereof.

Burden of Proof.

29B. In all proceedings under this Act or any Regulations made thereunder—

Presumptions.

- (a) premises shall be deemed to be used for a purpose even if they are used for that purpose on one occasion only;
- (b) a person, until the contrary is proven, shall be deemed to be the occupier of premises, if he has, or appears to have, the care, control or management of such premises;

- (c) if a dangerous drug or device, article or apparatus designed or generally used for the administration or consumption of a dangerous drug, is found in any premises, those premises shall be presumed, until the contrary is proven, to be used for the purpose of the administration of a dangerous drug to, or consumption of a dangerous drug by a person and the occupier shall be presumed to permit such premises to be used for such purpose;
- (d) a person who is found to have had in his custody or under his control anything containing a dangerous drug shall, until the contrary is proven, be deemed to have been in possession of such drug and shall, until the contrary is proven, be deemed to have known the nature of such drug;
- (e) a person who is found to have had in his possession or under his control or subject to his order, any document of title relating to a dangerous drug shall, until the contrary is proven, be deemed to have known the nature of such drug;
- (f) if a dangerous drug is found to be concealed in a ship or aircraft it shall be presumed, until the contrary is proven, that the said drug is so concealed with the knowledge of the master of the ship or aircraft and has been imported or is to be exported in such ship or aircraft;
- (g) if a dangerous drug is found to be concealed in any premises, it shall be presumed, until the contrary is proven, that the said drug is so concealed with the knowledge of the occupier of the premises;

- (h) if a dangerous drug is found to be concealed in any compartment, in any vehicle, it shall, until the contrary is proven, be deemed to have been so concealed with the knowledge of the owner of the vehicle and of the person in charge of the vehicle at the time the drug is found;
- (i) evidence by a police officer above the rank of Sergeant or by a senior Customs Officer that any device, article or apparatus is for use in the consumption of a dangerous drug, or in the preparation of a dangerous drug for consumption, shall until the contrary is proven, be deemed to be sufficient evidence of that fact, and for the purposes of this paragraph “consumption” means eating, chewing, smoking, swallowing, drinking, inhaling or introducing a dangerous drug into the body in any manner or by any means whatsoever;
- (j) when any substance suspected of being a dangerous drug has been seized and such substance is contained in a number of packages, it shall be sufficient to analyse samples of the contents of a number not less than ten per cent of such packages and if such analysis establishes that such samples are all of the same nature and description, it shall be presumed, until the contrary is proved, that the contents of all the packages were of the same nature and description as the samples so analysed and if such analysis establishes that such samples consist of or contain a dangerous drug, it shall be presumed, until the contrary is proved, that the contents of all the packages consist of or contain the same proportion of such drug.”.

14. Section 53A(1) of the Act is amended by inserting before the definition of the word “ship” the following definition -

Section 53A
amended

“archipelagic waters” has the meaning assigned to it in section 1 of the Archipelagic Waters and Exclusive Economic Zone Act, 1986;”.

Act No.24
of 1986

15. Section 53B of the Act is repealed and the following section substituted:

Section 53B
repealed and
replaced.

53B. (1) This section applies to a Trinidad and Tobago ship, a ship registered in any other State and a ship not registered in any country or territory.

“Ships used
for illicit trading.

(2) A person commits an offence if on a ship to which this section applies, wherever it may be, he—

(a) has a dangerous drug in his possession or

(b) is in any way, knowingly concerned in the carrying or concealing of a dangerous drug on the ship,

knowing or having reasonable grounds to suspect that the drug is intended to be imported or has been exported contrary to section 5 of the Act or the law of any State other than Trinidad and Tobago.

(3) A certificate purporting to be issued by or on behalf of the government of any State to the effect that the importation or exportation of a dangerous drug is prohibited by the law of that State shall be evidence of the matters stated.

(4) A person found guilty of an offence under this section is liable upon conviction on indictment to a fine of one hundred thousand dollars or, where there is evidence of the street value of the dangerous drug, three times the street value of the dangerous drugs, whichever is greater and to imprisonment for a term which shall not be less than twenty-five years.”.

16. The Act is amended in section 53C(2), by deleting the words “territorial sea” and substituting the words “archipelagic waters”.

17. The Act is amended by inserting in Part IX, after section 53D, the following:

Offences and
penalties.

“53E. (1) Notwithstanding any sentence of imprisonment prescribed under this Act, the court may, on the application of the Director of Public Prosecutions, impose a lesser sentence upon a defendant who at any time prior to conviction, cooperates in the investigation or prosecution of a drug trafficking offence.

(2) Where a company commits an offence under this Act, any officer, director or agent of the company who directed, authorised, assented to, acquiesced in or participated in the commission of the offence is a party to, and guilty of the offence, and is liable on conviction to the punishment provided for the offence, whether or not the company has been prosecuted or convicted.”.

18. The Act is amended by inserting after section 54 the following:

New section
54A inserted.

54A. (1) Where, under this Act, a person has been charged with an offence and a substance which is believed to be a dangerous drug has been seized as evidence of the offence—

“Destruction
of drug
exhibits.

(a) if photographic or video evidence exists which illustrates the nature, quantity, size, packaging and location of the drug; and

(b) the defendant fails to show reasonable cause why the substance should not be destroyed,

the Court may order the destruction of the substance before the completion of legal proceedings against the defendant.

(2) An application under subsection (1) for the destruction of the substance shall be made by the Director of Public Prosecutions to the Court after—

(a) the scientific analysis of the substance has been completed; and

(b) the defendant has been given seven days notice of the intention to make an application under this section.”.

New section 61 inserted.

17. The Act is amended by inserting after section 60 the following new section:

“Section 68 of the Interpretation Act, Chap. 3:01 not applicable.

61. The provisions of section 68(2) and (3) of the Interpretation Act shall not apply to the penalties prescribed under this Act.”.

Second V amended.

19. The Act is amended in section 1(1)(b) of the Fifth Schedule by deleting the words “ an officer” and substituting the words “a member”.

Second Schedule amended. Chap. 4:20.

20. The Second Schedule to the Summary Courts Act is amended by deleting therefrom Item 12.

Passed in House of Representatives this day of , 1999.

Clerk of the House.

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say by the votes of members of the House.

Clerk of the House

I confirm the above.

Speaker.

Passed in the Senate this day of , 1999.

Clerk of the Senate.

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that it to say by the votes of Senators.

Clerk of the Senate

I confirm the above.

President of the Senate.