

FAQs ON THE NARCOTICS DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL) AMENDMENT BILL 2020

Q#1: What is the Narcotics Drugs and Psychotropic Substances (Control) Amendment Bill all about?

This Bill is an amendment of the Narcotics, Drugs and Psychotropic Substances (Control) Act No. 4 of 1994 that provides the framework for combating abuse of narcotics, drugs, and psychotropic substances in Kenya.

Q#2. Why are the amendments necessary?

As a legal framework, the Narcotics Drugs and Psychotropic Substances (Control) Act No. 4 of 1994 has several gaps which have made efforts to combat narcotics drugs and psychotropic substances difficult in several ways:

1. **Lenient Penalties** do not deter drug traffickers who quickly pay imposed fines and continue with their illicit activities. The current fines and imprisonment imposed on convicted persons were informed by the market value of the drugs in 1994 when it was enacted. The market value of narcotics is now higher, and these penalties are not deterrent to the perpetrators of the vice.
2. Due to some ambiguity in the current law and the uncertainty of the sentences prescribed under the law, over 12 years (2007- 2019), **2,480 cases** of convicted persons successfully appealed against fines and imprisonment sentences.
3. There are no provisions in the current law to punish the unlawful use of precursor chemicals for the manufacture of narcotic drugs.
4. The current law lacks provisions for punishing law enforcement officers who aid or conceal drug trafficking, which is now a global concern.
5. The current law does not have specific provisions to punish persons conspiring in Kenya or outside Kenya to commit offences related to trafficking. Cases of drug traffickers conspiring outside Kenya to commit drug trafficking offences in Kenya abound. not only a Kenyan concern but also a regional and global one.
6. The current law does not make provisions for securing crucial evidence through interception of communications amongst drug traffickers and conspirators; it also does not make provision for the request of information and evidence from foreigners who may have it.
7. The current law is lenient on people who conceal information or fail to disclose information to aid in the investigation and prosecution of offences related to drug trafficking; this has immensely contributed to the crime thriving.

Queries should be addressed to The Chief Executive Officer

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Q#3: How big is the problem of drugs and substance abuse in Kenya? (Drug trafficking and drug use)

The abuse of narcotic drugs and substances among the youth has impaired the potential of the youth to pursue education and to become responsible citizens. The adverse health impacts of drugs on the youth also impairs their health and ability to be fully functional members of society.

There has been an increase in cases heard and concluded by the Judiciary during the period 2016 to 2018 under the Narcotics Drugs and Psychotropic Substances (Control) Act No. 4 of 1994 that confirms the magnitude of the problem

Category of Offences	2016	2017	2018	% of the difference between 2017 and 2018
Dangerous Drugs	6160	5565	8021	44.1

Source: *State of the Judiciary and the Administration of Justice Annual Report 2018/2019 (p.319)*

The National Survey on Alcohol and Drug Abuse among Secondary School Students in Kenya (2016) conducted by the National Authority for Campaign against Alcohol and Drugs (NACADA) revealed that although heroin, mandrax, Rohypnol, and cocaine are illegal they are nonetheless available to school-going children.

Type of Narcotic Drug and Psychotropic	Available in school neighbourhood (Total number of interviewed Students- 3907)		Available and taken in school (Total number of interviewed Students- 3907)	
	Frequency	%	Frequency	%
Cocaine	521	13.3%	268	15.3%
Heroin	498	12.8%	244	6.2%
Mandrax	440	11.3%	253	6.5%
Rohypnol	305	7.8%	170	4.4%

Source NACADA: *Table 0.7 Drugs that are available and taken by students. (p.18)*

Q#4: How do the youth access drugs and psychotropic substances?

Source of drugs	%
1. Friends	32.2%
2. Home	29.3%
3. Students	25.7%
4. Bars near school	22%
5. Local brew den	19.1%
6. Kiosks/ shops near school	16.9%
7. Relatives	16.7%
8. Non-teaching school workers	7.4%
9. Parents	5.3%
10. Teachers	4.8%

Source NACADA

Q#5. When are the youth more likely to abuse drugs and psychotropic substances?

Period	%
School holidays	48.5%
Students' way to home	35.1%
Weekends in school	30.4%
Inter-school meetings	27.8%
School outings	27.3%
Entertainment in school	24.4%
Games time	23.7%
School trips	21.8%

Source NACADA

Q#6. What efforts are being done to curb the drug and substance abuse menace?

The Narcotic Drugs and Psychotropic Substances (Control) (Amendment) Bill, 2020 is timely as it responds to governance, social, economic, and criminal justice sector concerns, which include calls by Kenyans at large:

1. The National Committee on Criminal Justice under the auspices of the Judiciary of Kenya has recommended for the amendment of the Narcotics Drug and Psychotropic Substances (Control) Act No. 4 of 1994 to enable effective enforcement of the Act and to streamline the criminal justice system. The Committee comprises the National Police Service, Office of the Director of Public Prosecution, the Judiciary, and civil society organisations that provide legal aid to vulnerable and marginalised groups.
2. The Institute for Security Studies has undertaken vast research on the narcotics drug and psychotropic substances revealed in its 2019 research that better policing is one of the measures that would deter criminal gangs from filling up the vacuum following successful prosecution and sentencing of drug lords.
3. The Building Bridges Report recommends the appointment of special magistrates and judges to deal with the most grievous cases of drug trafficking; protection of consumers of medicine from dangerously procured, grown, or developed products that harm their health and well-being and rationalisation of the mandates of institutions that regulate drugs so that their operations are more effective.

Q#7: What proposed changes does the draft bill make?

- Enhance penalties on the offences relating to possession and trafficking in narcotics and psychotropic substances as follows:

Offense	Proposed penalties	Current penalties
a. Possession of narcotic drugs	A fine of between Kshs. 5 million to Kshs. 20 million	A fine of not less than Kshs. 1 million
b. trafficking of narcotic drugs and substances range from a minimum of that is an increase of the current fines that range from	Kshs. 500,000 to Kshs. 1 million- or 3-times market value of the drugs.	A fine of not less than Kshs. 10 million to Kshs. 50 million
c. Owners or persons occupying or managing premises who permit the premises to be used to prepare opium, cannabis, heroin, or other narcotic drug and psychotropic substances for smoking, manufacturing, sale, or distribution	A fine of Kshs. 20 million or an imprisonment term of not less than 10 years or both	A fine of Kshs. 250,000 or imprisonment of not more than 10 years or both.
d. Contravening regulations made by the Minister on possession, sale, supply, destruction, management, and destruction of narcotic drugs and psychotropic substances; or on the regulations on administration and management of Rehabilitation Centres	A fine of not less than Kshs. 5 million or imprisonment of not less than 5 years. This penalty is enhanced from current	A fine not exceeding Kshs. 250,000 or imprisonment of not more than 5 years or both.

- The Bill has defined precursors and chemical substances that could be used in the manufacture of narcotics. Severe penalties will be handed to persons who manufacture, possess, or transport precursor chemicals for unlawful production of a narcotic drug.
- The Bill prescribes offences for law enforcement officers who aid or collude with persons suspected of committing offences under the law.
- It introduces the offence of conspiring with persons outside or inside Kenya to commit offences related to drug manufacturing, possession, and trafficking in or outside Kenya.
- The Bill introduces the offence of collecting, generating, or transmitting information for use in committing offences under the law.
- The Bill enhances the effective prosecution of offences. It proposes to mandate the Director of Public Prosecution to request for information or evidence where a person including foreign governments or an entity alleges or have information that person has committed offences under the Narcotic, Drugs and Psychotropic Substances (Control) Act.
- The Bill provides for the interception of communication and production of that communication in court as evidence. This is because drug traffickers have resorted to using an encrypted communication system to avoid detections. The draft Bill, therefore, proposes that a police officer above the rank of Chief Inspector of Police may apply to the High Court for an order to intercept communication. Before applying for the order to intercept the communication, the police officer has to seek written consent

from the Director of Public Prosecution. Based on the application by the police officer, the court may order for a communication service provider to intercept and retain specific communication received or transmitted by the service provider or communication that is about to be received or transmitted by the service providers. The court may also make orders for a police officer to enter premises and to install devices to intercept or retain specific information.

8. The Bill makes it obligatory to disclose information that may aid in the prevention commission of offence arising under the Act; and aid in arresting or prosecuting persons that have committed offences under the Act.
9. **Amend the penalties to three categories.** Where the person is in possession of less than one gram, to a fine of not less than five million shillings or imprisonment for not less than five years, or to both such fine and imprisonment; where a person is in possession of between 1 -100 grams, to a fine of not less than thirty million shillings or imprisonment for thirty years, or to both such fine and imprisonment; where the person is in possession of more than 100 gram, to a fine of not less than fifty million or three times the market value, whichever is greater or imprisonment for life or to both such fine and imprisonment.

Q#8: Where can people get more information about the Bill?

NACADA is the lead agency. Please contact the office of the Chief Executive Officer in NACADA.



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