

THE DANGEROUS DRUGS (AMENDMENT) BILL 2003
(No. of 2003)

Explanatory Memorandum

The object of this Bill is to amend the Dangerous Drugs Act in order to make better provisions for combatting dealings in drugs.

The Bill provides, in particular for -

- (a) a wider definition of the family of a convicted person where assets may be the subject of inquiry and forfeiture;
- (b) a finding of guilty of simple possession of drugs as an alternative to an acquittal under a charge relating to drug-dealing;
- (c) a wider discretion in the sentencing powers of the Court for the offences relating to various forms of unlawful dealings in drugs;
- (d) a declaration of assets to be filed by a person upon being charged with certain offences under the Act;
- (e) the power of the Commissioner to investigate into the assets of a convicted person even where he claims his assets to have been previously made known to other public authorities;
- (f) the power of the Commissioner to search premises;
- (g) the use of part of forfeited drugs for training sniffer dogs;
- (h) the release of detainees to proceed to places where the Commissioner intends to effect a search.

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A.K. Jugnauth
Minister of Health and Quality of Life

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ARRANGEMENT OF CLAUSES

Clause

1. Short title
2. Interpretation
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4. Section 30 of principal Act amended
5. Section 34 of principal Act repealed and replaced
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A BILL

To amend the Dangerous Drugs Act

ENACTED by the Parliament of Mauritius, as follows-

1. Short title

This Act may be cited as the Dangerous Drugs Act (Amendment) Act 2003.

2. Interpretation

In this Act-

“principal Act” means the Dangerous Drugs Act 2000.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended by deleting the definition of “family” and replacing it by the following definition-

“family”, in relation to a person, means-

- (a) a spouse, concubine or paramour of that person;

- (b) his legitimate, illegitimate, natural or adopted child;
- (c) a brother or sister of that person;
- (d) the lineal ascendant or descendant of that person; or
- (e) a brother, sister, concubine or paramour of the spouse of that person;

4. Section 30 of principal Act amended

Section 30 of the principal Act is amended by adding after subsection (2) the following subsection -

(3) Where on the trial of a person charged with an offence under subsection (1)(f), it is proved that the possession, purchase or offer to purchase, as the case may be, was not for the purpose of any of the activity specified in subsection (1), he shall not by reason thereof be acquitted but the Court may find such person guilty of an offence of possession, purchase or offer to purchase, as the case may be, under section 34(1)(b).

5. Section 34 of principal Act repealed and replaced

Section 34 of the principal Act is repealed and replaced by the following new section -

34. Unlawful use of drugs

- (1) Any person who unlawfully –
 - (a) smokes, inhales, sniffs, consumes or administers to himself or any other person, in any way whatsoever, any dangerous drug;
 - (b) possesses, purchases, offer to purchase or transports any dangerous drug;
 - (c) has in his possession any pipe, syringe, utensil, apparatus or other article for use in connection with smoking, inhaling sniffing, consuming or the administration of any dangerous drug,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and, subject to subsections (2) and (5), to imprisonment for a term not exceeding 2 years.

(2) Subject to subsection (5), before passing a sentence of imprisonment under subsection (1), the Court, where it considers this to be appropriate, explain to the convicted person that, if he undertakes to co-operate in order to be cured of his addiction, the Court, instead of sentencing him to imprisonment, may order him to undergo, at such institution as may be prescribed and for such period not exceeding 3 years as the Court may determine, such treatment, education, after care, rehabilitation or social reintegration as the Court thinks appropriate and if he so undertakes, the Court may order accordingly.

(3) (a) Where the Court is satisfied that an order made under subsection (2) has been complied with, the Court shall discharge the offender.

(b) Where a person fails to comply with an order made by the Court under subsection (2), he shall commit an offence and shall be liable to a fine which shall not exceed 10,000 rupees and to imprisonment for a term which shall not exceed one year.

(4) The person in charge of the relevant institution prescribed for the purposes of subsection (2) shall notify a police officer attached to the Anti Drug and Smuggling Unit of any persistent failure by any person subject to an order under subsection (2) to comply with the terms of that order.

(5) Notwithstanding subsection (2), a person convicted of an offence under subsection (1)(b) and found to have purchased, offer to purchase, transported or been in possession of any dangerous drugs -

(a) listed in Part I of Schedule I, the street value of which is 5,000 rupees or more; or

(b) listed in Part II of Schedule I, the street value of which is 10,000 rupees or more,

shall be liable to double the maximum penalties specified in respect of that offence under subsection (1).

6. Section 45 of principal Act amended

Section 45 of the principal Act is amended -

(a) by repealing subsection (1) and replacing it by the following new subsection -

(1) Where a person is brought before any Court on a provisional or formal charge in respect of an offence under section 30 or 39 of this Act, the Court -

- (a) shall order that the person charged shall not dispose of any of his assets or make any withdrawals from any account or deposit at any bank or financial institution until -
 - (i) he shall have been acquitted of that offence;
 - (ii) if convicted of the offence, the Supreme Court shall have made or refused to make an order under subsection (10); or
 - (iii) the Court shall have, on good cause shown, revoked or modified its order under this subsection;
- (b) may order the person charged to file with the Court, within a delay to be specified by the Court, an affidavit setting out all his assets and disclosing all his accounts and deposits at any bank or financial institution.

(b) in subsection (2), by adding the following new paragraph-

(c) Where a person referred to in subsection (1) acts in breach of an order made under that subsection, he shall commit an offence and on conviction shall be liable to a fine not exceeding 5 million rupees and to a term of imprisonment not exceeding 5 years.

(c) in subsection (4) –

(i) in paragraph (b), by adding immediately after the words “his family” the following words “including the production of all documents or other evidence establishing that these possessions have been lawfully acquired or obtained by lawful means”;

(ii) in paragraph (e), by deleting the full-stop appearing at the end of the paragraph and replacing it by a semi-colon;

(iii) by adding the following new paragraph -

(f) no certificate or other document issued by a public officer or other public authority, not being an order, direction or certificate made by a Court, and purporting to establish the public officer's or authority's acknowledgement of the lawfulness of the sources of the income or assets of the

convicted person or his family, shall be a bar to the Commissioner investigating into the assets of a trafficker.

- (d) in subsection (9), by adding immediately after the words “to which it relates”, the words, “, provided that the Court shall not take into account any document or evidence not produced to the Commissioner under subsection (4)(b) but produced to the Court for the purpose of establishing that the properties were lawfully acquired or obtained by lawful means”.

7. New Section 45A added to principal Act

The principal Act is amended by inserting the following new section immediately after section 45 -

45A. Order to search certain premises

(1) Where the Commissioner has reasonable grounds to believe that there is on specific premises or in any place of business, evidence which may assist him in his investigation, he may, with the concurrence of the Director of Public Prosecutions, apply to the Judge in Chambers for an order allowing the Commissioner, or any person delegated by him, to enter and search the premises or place.

(2) An application under subsection (1) shall be supported by an affidavit by the Commissioner disclosing the reason why the order is being sought.

(3) The Judge shall not make an order under subsection (1) unless he is satisfied that the evidence is necessary for the purposes of the investigation.

(4) No order shall be made under subsection (1) with respect to a law practitioner unless the Judge is satisfied that, having regard to the need to protect legal professional privilege, it is in the public interest that the order be made without requiring the law practitioner to show cause why the order should not be made.

(5) A search pursuant to an order under subsection (1) shall, so far as is practicable, be conducted in the presence of the occupier of the premises or place or his duly authorised agent.

(6) Prior to a search pursuant to an order under subsection (1), the officer effecting the search shall deliver a photocopy of the warrant to the occupier of the premises or place or his duly authorised agent.

(7) Where a search is made pursuant to an order under subsection (1), the officer effecting the search may -

- (a) seize and take possession of any book, document, computer disk or other article;
- (b) inspect, make copies of, or take extracts from, any book, record or document;
- (c) search any person who is on the premises or place, detain him for the purpose of the search, and seize any article found on such person;
- (d) break open, examine, and search any article, safe, container or receptacle.

8. Section 47 of principal Act amended

Section 47 of the principal Act is amended in subsection (5) by -

- (a) deleting the full-stop appearing at the end of paragraph (b) and replacing it by a semi-colon;
- (b) adding the following new paragraph after paragraph (b) -
 - (c) may, in addition to any penalty imposed by the Court, upon the production of a certificate under the hand of the Commissioner of Police, stating that a specified quantity of drugs is required in order to be used for the purpose of training sniffer dogs, order that such quantity from the dangerous drugs forfeited under paragraph (a) shall be so used.

9. Consequential amendment

Section 46 of the Reform Institutions Act is amended by adding the following new subsection -

- (4) The Commissioner or the Officer in Charge of Correctional Youth Centre or Rehabilitation Youth Centre may authorise a detainee to proceed, under escort, to such place or premises as are specified in a request under the hand of the Commissioner for Drugs, being a place or premises at or upon which he intends to carry out a search in the detainee's presence pursuant to an order made under section 45A(1) of the Dangerous Drugs Act 2000.

10. Commencement

This Act shall come into force on 1 September 2003.