

# Policy Brief on the Narcotics, Drugs and Psychotropic Substances (Control) Amendment Bill

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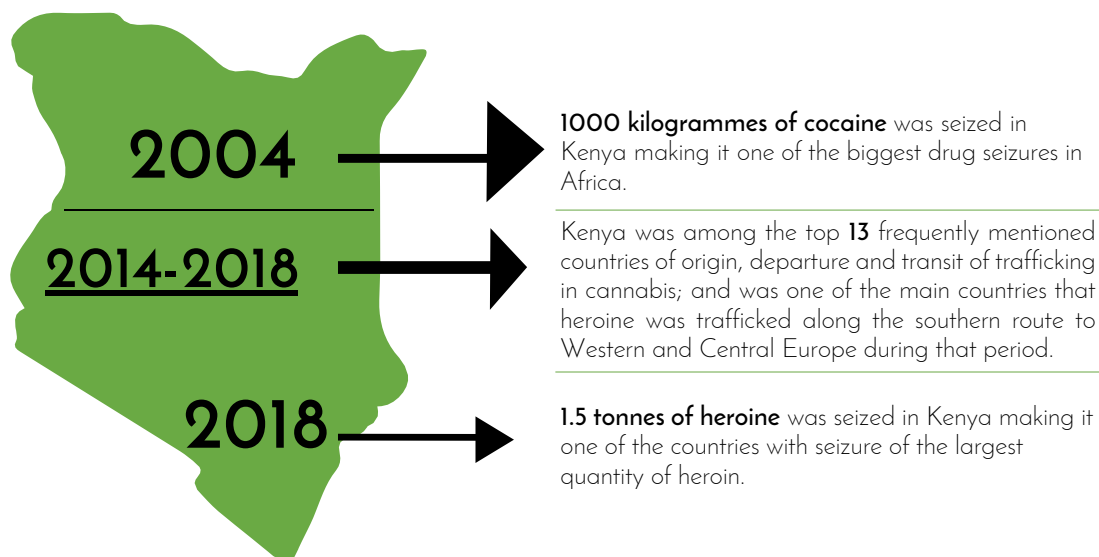
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## Introduction

The Narcotics, Drugs and Psychotropic Substances (Control) Act No. 4 of 1994 provides the framework for combating abuse of narcotics, drugs and psychotropic substances in Kenya. The law provides the parameters on the control, possession, transportation, trafficking and use of narcotic drugs and psychotropic substances.



## Governance Impacts from Safety and Security, and Economic Perspectives:

In 2019, there were increasing gang attacks in the Coastal region of Kenya which the National Police Service attributed links with drug cartels. These increasing criminal attacks have had an adverse impact on the tourism sector and somewhat dent Kenya's image in terms of safety and security.

Negative Social Impact:

Type of Narcotic Drug and Psychotropic Substance	Available in school neighborhood (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)

Criminal Justice Sector Perspective:

There has been 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 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)

Source	%
Friends	32.2%
Home	29.3%
Other students	25.7%
Bar near School	22%
Local brew den	19.1%
Kiosks/shop near school	16.9%
Relatives	16.7%
Non-teaching school workers	7.4%
Parents	5.3%
Teachers	4.8%



Most commonly mentioned source of substances abuse by school going children

Likelihood of Drug use among students	%
During weekends	30.4%
During Inter-school meetings	27.8%
During School outings	27.3%
During Entertainment in school	24.4%
During games	23.7%
During school trips	21.8%



Within the school environment, students are more likely to use drugs:

Drugs and substances are more likely to be used:



## Gaps and Challenges in Enforcement of the Law to Combat the Abuse of Narcotics, Drugs and Psychotropic Substances

1. Penalties imposed under the law are lenient. As a result, drug traffickers have paid the fines and continued with their illicit activities. The market value of the drugs informs the fines and imprisonment imposed on convicted persons; these keep on changing; hence the sentences vary. Due to uncertainty of the sentences prescribed under the law, over the span of 12 years (2007-2019), 2,480 cases were filed at the High Court by convicted persons, who successfully appealed against the fines and imprisonment sentences imposed on them at Magistrates' Courts.
2. The law is outdated and not alive to the current realities where drug traffickers use precursor chemicals to manufacture narcotic drugs. The law does not impose control over, and punish the unlawful use of precursor chemicals.
3. The law does not have specific provisions punishing law enforcement officers committing offences related to drug trafficking, which has become a global concern.
4. The law does not have specific provision to punish persons conspiring in Kenya or outside Kenya to commit offences related to trafficking. Therefore, drug traffickers have thrived on conspiring outside Kenya to commit drug trafficking offences in Kenya or conspired outside with persons to commit such related offences. Due to absence of stringent law punishing conspiracy related to drug trafficking, the crime has flourished. This is not only a Kenyan concern but also regional and global one.
5. Challenges in timely and effective investigations and prosecution as the law governing narcotics, drugs and psychotropic substances does not provide for securing crucial evidence through interception of communications amongst drug traffickers and conspirators; and for the request of information and evidence from foreigners who may have information.

6. The law does not have adequate punishment for the concealment of information by persons or failure to disclose information to aid in investigation and prosecution of offences related to drug trafficking has contributed to the crime

### Proposals by the Narcotic Drug and Psychotropic Substances (Control) (Amendment) Bill, 2020

#### 1. Enhance penalties on the offences relating to possession and trafficking in narcotics and psychotropic substances.

The proposals stipulate penalties per the weight of narcotic drugs and psychotropic substances. Therefore, the courts will have the parameters for imposing appropriate punishment in the form of fines and or imprisonment that deters potential perpetrators.



#### 2. Define precursors and chemical substances that may be used in manufacture of narcotics.

The Bill proposes fine of not less than Kshs. 50 million, and imprisonment of not less than 20 years for manufacturing, possessing or transporting precursor chemicals for unlawful production of a narcotic drug.



3. Define a law enforcement officer and prescribes offences for law enforcement officers who aid or collude with persons suspected of committing offences under the law.



This proposed amendment seeks to address the gaps where law enforcement officers aid or collude with suspects committing offences related to possession and trafficking narcotic drugs and psychotropic substances.

4. Introduce 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 penalty for conspiracy is a fine of not less than **Kshs. 100 million** and imprisonment for life.



5. Introduce the offence of collecting, generating or transmitting information for use in committing offences under the law.

Proposed penalty is a fine of not less than Kshs. 5 million or imprisonment of not less than 5 years or both.



## 6. Enhance effective prosecution of offenses.

The Bill 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 has information that a person has committed offences under the Narcotic, Drugs and Psychotropic Substances (Control) Act.



## 7. Seeks to enhance effective investigation by police officers by providing for the power to intercept communication and production of that communication in court as evidence.

The Bill 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. Prior to applying for the order to intercept communication, the police officer has to seek written consent from the Director of Public Prosecution.



## Conclusion and Policy Recommendations:

The proposed Bill is undoubtedly a strong step in the right direction. Based on the above background the following concrete steps ought to be undertaken for the adoption of the Bill:

- Consolidate Efforts with Ongoing Amendments under Narcotic, Drug and Psychotropic Substances (Control) Act No. 4 of 1994.
- Multi-sectoral Engagement with Key Stakeholders.
- Media Engagement to Create Demand for Passage of the Bill.
- Integrate Proposed Amendments of the Bill in County Model Legislation.
- Enlist Public Support from the Office of the President.
- Enlists Proponents of BBI in Parliament to Pass the Bill.
- Engage Witness Protection Agency and the Director of Public Prosecution to provide input into the Bill.
- Integrate Proposal of the Bill into the Alcohol and Drugs Abuse Prevention Policy.