

## Dangerous Drugs Ordinance (Amendment No 3) Law 5749 - 1989

Enacted:

Texts:

### DANGEROUS DRUGS ORDINANCE (AMENDMENT No. 3) LAW, 5749-1989 \*

#### 1. Amendment of section 1.

In the Dangerous Drugs Ordinance (Consolidated Version), 5732-1973 <sup>1/</sup> (hereinafter referred to as "the Ordinance") -

(1) the definition of "dangerous drug" shall be replaced by the following definition:

"dangerous drug" means a substance specified in the First Schedule and includes any salt thereof, as well as any preparation, compound, mixture or solution of a substance as aforesaid and a salt of any such preparation, compound, mixture or solution;"

(2) the following definition shall be inserted after the definition of "dangerous drug":

"drug transaction offence" means an offence under this Ordinance punishable with imprisonment for a term of twenty years or over;"

(3) the following definition shall be added after the definition of "conveyance":

"property" means immovables, movables, moneys and rights and includes property which is a consideration for property as aforesaid and any property accrued, or derived as a consideration, from profits of property as aforesaid."

#### 2. Amendment of section 9

In section 6 of the Ordinance, the words "imprisonment for a term of fifteen years or a fine of a million pounds" shall be replaced by the words "imprisonment for a term of twenty years or a fine twenty-five times the fine mentioned in section 61(a)(4) of the Penal Law, 5737-1977.

#### 3. Amendment of section 7.

In section 7(c) of the Ordinance, the words "imprisonment for a term of fifteen years or a fine of half a million pounds" shall be replaced by the words "imprisonment for a term of twenty years or a fine twenty-five times the fine mentioned in section 61(a)(4) of the Penal Law, 5737-1977", and the words "of fifty thousand pounds" shall be replaced by the words "mentioned in section 61(a)(4) of the Penal Law, 5737-1977".

#### 4. Amendment of section 9

In section 9(d) of the Ordinance, the words "imprisonment for a term of fifteen years or a fine of half a million pounds" shall be replaced by the words "imprisonment for a term of twenty years or a fine twenty-five times the fine mentioned in section 61(a)(4) of the Penal Law, 5737-1977", and the words "of fifty thousand pounds" shall be replaced by the words "mentioned in section 61(a)(4) of the Penal Law, 5737-1977".

#### 5. Amendment of section 10.

In section 10 of the Ordinance, the words "imprisonment for a term of fifteen years or a fine of half a million pounds" shall be replaced by the words "imprisonment for a term of twenty years or a fine twenty-five times the fine mentioned in section 61(a)(4) of the Penal Law, 5737-1977", and the words "of fifty thousand pounds" shall be replaced by the words "mentioned in section 61(a)(4) of the Penal Law, 5737-1977".

#### 6. Amendment of section 19A

In section 19A of the Ordinance, the words "imprisonment for a term of fifteen years or a fine of half a million pounds" shall be replaced by the words "imprisonment for a term of twenty years or a fine twenty-five times

the fine mentioned in section 61(a)(4) of the Penal Law, 5737-1977".

## **7. Amendment of section 21.**

In section 21(a) of the Ordinance, the words "imprisonment for a term of fifteen years or a fine of half a million pounds" shall be replaced by the words "imprisonment for a term of twenty-five years or a fine twenty-five times the fine mentioned in section 61(a)(4) of the Penal Law, 5737-1977".

## **8. Amendment of section 27.**

In section 27 of the Ordinance, the words "of fifty thousand pounds" shall be replaced by the words "mentioned in section 61(a)(4) of the Penal Law, 5737-1977".

## **9. Amendment of section 28.**

Section 28 shall be re-marked as section 28(a) and the following subsections shall be added thereafter:

(b) without prejudice to the general power of a police officer to carry out a search, a police officer may carry out without a search warrant a search of -

(1) any conveyance if the search is required for the purpose of the implementation of the provisions of this Ordinance;

(2) the belongings or body of a person, even if he does not arrest him, if he has reasonable cause to assume that such person is unlawfully carrying a dangerous drug with him;

(3) the belongings or body of a person upon entry to any aerodrome, landing ground, aviation installation, port, frontier station or point of entry to or exit from the country, while staying there or while staying in any aircraft or vessel, if the search is required for the purpose of the implementation of the provisions of this Ordinance;

(4) luggage and other goods before being brought to any aerodrome, landing ground, aviation installation, port, frontier station or point of entry to or exit from the country, before being placed in or removed from any aircraft or vessel or while being therein, if the search is required for the purpose of the implementation of the provisions of this Ordinance;

(5) the belongings and body of a person upon entry to a place where detainees are in police custody if the search is required for the purpose of the implementation of the provisions of this Ordinance.

(c) Without prejudice to the general power vested in him, a prison officer, as defined in the Prisons Ordinance (New Version), 5722-1971, may without a warrant of arrest, search the belongings and body of a person upon entry to a place declared to be a prison, or while staying there, if the search is required for the purposes of the implementation of the provisions of this Ordinance.

(d) For the purposes of searches under subsections (b)(3) to (5) and (c), a police officer and a prison officer shall have the power conferred by section 9(c) of the Air Navigation (Security in Civil Aviation), Law, 5737-1977, in respect of a person who refuses to let a search be carried out.

(e) Before the beginning of the search of a person or conveyance under this section, the person who is to carry out the search shall inform the person to be searched, or the owner of the conveyance or a person who is in the conveyance at the time, of the object of the search. The search shall be carried out without undue delay. A woman shall only be searched by a woman.

(f) Where a search has been carried out under this section, a list of the things seized shall be prepared. The list shall be signed by the person who carried out the search and by the person whose belongings or body have or has been searched. When any conveyance, luggage or goods has or have been searched, the list shall be signed by the person who had possession of it or them at the time of the search. A copy of the list, signed as aforesaid, shall at the request of the person who signed it, be delivered to him.

## **10. Repeal of section 29.**

Section 29 of the Ordinance is hereby repealed.

## **11. Amendment of section 31.**

In section 31 of the Ordinance, the following paragraphs shall be added after paragraph (3):

(4) the testimony of an expert witness in accordance with regulations made by the Minister of Justice on a sample test of a drug shall, pending proof to the contrary, be evidence as to the nature, weight, quantity and form of the drug;

(5) where a dangerous drug has been destroyed under section 36(a), a certificate given in accordance with regulations made by the Minister of Justice as to the nature, weight, quantity and form of the drug and signed by two witnesses shall, pending proof to the contrary, be evidence as to the drug destroyed;

(6) where the court has established under section 36A(b) that a sentenced person is a dealer in drugs -

( a)

any property of that person, and any property of his spouse and his children under twenty-one years of age, and any property of another person the acquisition of which by the other person was financed by the sentenced person or which was transferred to the other person by the sentenced person without consideration shall be regarded as property of the sentenced person obtained by a drug transaction offence unless the person proves -

( aa)

that the property was obtained by legal means or

( bb)

that the property came into his hands or the hands of its owner not later than eight years before the filing of the information concerning the offence for which he was sentenced;

( b)

any property found in the possession or in an account of the sentenced person shall be regarded as his property unless he proves that it belongs to another person who is not one of these specified in paragraph (a).".

## **12. Amendment of section 33.**

In section 33 of the Ordinance -

(1) in subsection (a), the words "of five thousand pounds" shall be replaced by the words "as mentioned in section 61(a)(4) of the Penal Law, 5737-1977";

(2) subsection (b) is hereby deleted.

## **13. Replacement of section 36.**

Section 36 of the Ordinance shall be replaced by the following Sections:

### **36. "Optional forfeiture.**

(a) Where any dangerous drugs or any utensils destined for the use thereof have come into the hands of the police, the court may, after a certificate as referred to in section 31(5) has been submitted to it, order the forfeiture and also the destruction thereof at any time even if no person has been convicted in respect thereof: Provided that if an information has been filed the court shall not direct the destruction of the drugs until a copy of a certificate under section 31(5) has been delivered to the accused or his counsel and they have been given an opportunity to do with them or in respect of them the acts which, in their opinion, are required in order to refute the evidence of the prosecution regarding them.

(b) Notwithstanding the provisions of subsection (a), the court shall not direct the destruction of any dangerous drug or of any utensils destined for the use thereof if an investigation is being conducted against a suspect and an information has not yet been filed.".

## **14. Addition of sections 36A to 36 J.**

The following sections shall be inserted after section 36 of the Ordinance:

### **36A. "Forfeiture of property in criminal proceeding.**

(a) Where a person has been convicted of a drug transaction offence, the court shall, unless it sees fit not to do so for special reasons which shall be recorded, order that, in addition to any penalty, there shall be forfeited to the Treasury -

(1) any property which was used or destined to be used as a means to commit the offence or was used or destined to be used to enable the commission of the offence;

(2) any property which was obtained, or intended to be obtained, directly or indirectly, as a remuneration for the offence or as a result of the commission thereof;

For the purposes of paragraphs (1) and (2) -

commission of the offence" includes the commission of any other drug transaction offence, even if the sentenced person was not convicted of it, provided that it is connected with the offence of which he was convicted.

(b) Where a court, having convicted a person of a drug transaction offence, is satisfied that the sentenced person derived, or was to have derived, a profit from such offence, it shall in the finding, on the application of the prosecutor, declare that the sentenced person is a dealer in drugs; and when it has done so, it shall, in the sentence, order that, in addition to any penalty, any property of the sentenced person obtained through the drug transaction offence shall be forfeited to the Treasury unless it sees fit not to do so for special reasons which shall be recorded.

(c) The court shall not order forfeiture under this section until it has given the sentenced person and, if he is known, to the owner of the property, to the person who has possession or control of, or claims a right in, the property (any such reason hereinafter referred to as "the claimant of a right in the property") an opportunity to state their cases.

(d) Where a person other than the person proceeded against claims a right in the property under subsection (c) and the court, for reasons which shall be recorded, considers that the hearing of the claims may hamper the continuance of the proceedings in the criminal case, it may prescribe that the forfeiture shall be dealt with in a civil proceeding. If the court so prescribes, the provisions of section 31(6) shall apply in the civil proceeding.

(e) A prosecutor's application for the forfeiture of any property under this section and the particulars of such property shall be indicated in the information. Where any other property whose forfeiture is requested is discovered, a prosecutor may amend the information at any stage of the proceedings until the sentence.

(f) Notice of a prosecutor's application for the forfeiture of any property shall be given to the claimant of a right in the property if he is known.

### **36B. "Forfeiture of property in civil proceeding.**

(a) Where a District Court, in pursuance of an application of a District Attorney, is satisfied that any property -

(1) was used as a means to commit, or to enable the commission of, an offence under section 6 or 13;

(2) is a conveyance which was used as a means to commit, or to enable the commission of, a drug transaction offence or

(3) was obtained, directly or indirectly, as a remuneration for a drug transaction offence or as a result of the commission of such an offence, he may order its forfeiture even if no person has been accused or convicted of an offence under the Ordinance (any such forfeiture hereinafter referred to as "civil forfeiture").

(b) The District Attorney's application shall specify the property whose forfeiture is requested, and notice of such application shall be given to the claimant of any right in the property if he is known.

(c) The respondent to the application shall be the claimant of a right in the property if he is known. Where the court prescribes as specified in section 36A(d), the person proceeded against shall also be a respondent to an application under this section.

(d) A decision of the court under this section shall be appealable in like manner as a decision in a civil matter is appealable.

### **36C. "Restrictions as to forfeiture of property.**

(a) The court shall not order the forfeiture of any property under section 36A or 36B if the claimant of a right in the property proves that the property was used for the offence without his knowledge or

without his consent or that he acquired his right in the property for a consideration and in good faith and without being able to know that it had been used or obtained in connection with an offence.

(b) The court shall not order the forfeiture of any property under section 36A or 36B unless it is satisfied that the owner of the property and the members of his family living with him will have reasonable means of support and reasonable housing.

(c) The court shall not order the forfeiture of movables not attachable according to section 22 of the Execution Law, 5721-1961

### **36D. Cancellation of forfeiture**

(a) Where the claimant of a right in any property forfeited under section 36A or 36B (hereafter in this section referred to as "the applicant") has not been summoned to

state his case concerning the forfeiture order, he may ask the court which ordered the forfeiture to cancel the order

(b) An application for cancellation of a forfeiture order shall be made within two years from the date of the order or within a longer time prescribed by the court if it believes it just to prescribe it.

(c) If the court cancels the forfeiture order, it shall order the return of the property to the applicant or the payment of the value out of the Treasury if it is impossible to return the property or if the applicant agrees to accept its value. If the court orders the payment of the value of the property, it shall determine the amount of the payment, by order, in accordance with the value of the property on the free market on the date of the forfeiture order or on the date of the payment order, whichever is the higher. The payment order shall be made not later than six months from the date of the court's decision to cancel the forfeiture order.

(d) Where the court cancels the forfeiture order, it may order the payment of a fee for the use of the property during the period when it was withheld from the applicant and the payment of compensation for damage or depreciation caused to the property during that period.

(e) An order for the return of property and the order for payment shall be carried out as soon as possible and not later than sixty days from the date when they were made.

### **36E. Appeal.**

An appeal by the claimant of a right in property forfeited under section 36A and an appeal from a decision of the court under section 36D shall be filed in like manner as an appeal in a civil matter is filed; however, where a decision to forfeit has been included in the sentence and an appeal is filed against the judgment, the appellate court may hear also the appeal of the claimant of the right in the property.

### **36F. Relief to ensure forfeiture.**

(a) Where an information or an application for civil forfeiture has been filed, the court may, on an application signed by a District Attorney specifying the property whose forfeiture is sought, make a provisional order as to guarantees on behalf of the accused or another person in possession of the property, a restraining order, an attachment order or directions as to other means ensuring the possibility of carrying out the forfeiture, including directions to the Administrator-General or another person as to the provisional management of the property (any of these hereafter in this section referred to as "a provisional order"). For this purpose, "the court" means the District Court with which the information or the action, as the case may be, is filed.

(b) The District Court may, before an information is filed, make a provisional order under subsection (a) in pursuance of an application signed by a District Attorney, supported by a sworn declaration that there is reasonable cause to assume that the property in respect of which the order is sought may disappear or may be treated in a manner preventing the implementation of its forfeiture. A provisional order under this subsection shall become void if an information is not filed within ninety days from the date on which it is made.

(c) The court may make a provisional order under subsection (a) or (b) *ex parte* if it considers that some immediate action with regard to the property will impede its forfeiture. The validity of an *ex parte* provisional order shall not exceed ten days, and the application shall be heard in the presence of the parties as soon as possible during the period of validity of the order. The court may, for reasons which shall be recorded, extend the validity of the *ex parte* provisional order for an additional period not exceeding ten days.

(d) A decision of the court under this section shall be appealable to the Supreme Court, which shall hear the appeal by a single judge. The appeal shall be filed within thirty days from the day on which

the decision is notified to the appellant.

(e) Where the court has ordered as specified in subsection (a) or (b) and the property is not forfeited, the court may direct that a person prejudiced by the order shall be compensated out of the Treasury.

### **36G. Forfeiture of other property.**

Where the court directs that any property shall be forfeited under section 36A or 36B, then, if the property is not located or has been transferred to a *bona fide* purchaser, or has been smuggled away or has depreciated by an act or omission of the person proceeded against or has been mingled with other property and cannot be separated without difficulty or if the person proceeded against so requests, the court may order the forfeiture of some other property of that person equivalent to the property whose forfeiture it has directed. In this section, "the person proceeded against" includes a person against whose property a forfeiture order has been made under section 36B.

### **36H. Management and use of forfeited property.**

(a) The court's decision for forfeiture under this Ordinance shall be a warrant for the Administrator-General to seize the forfeited property. The forfeited property or its equivalent shall be transferred to the Administrator General and deposited by him in a fund managed by him subject to regulations made for this purpose.

(b) The Minister of Justice and the Minister in charge of the Drug Control Authority Law, 5748-1988<sup>3L</sup>, shall, with the approval of the Constitution, Legislation and Juridical Committee of the Knesset, prescribe, by regulations, the modes of managing the fund established under subsection (a), the use to be made of the assets of the fund and the mode of apportioning them for the following purposes:

- (1) the payment of the cost of the forfeiture proceedings and the disposal of the assets;
- (2) the carrying out of the functions of the Drug Control Authority under the Drug Control Authority Law, 5748-1988;
- (3) payments in respect of information, assistance in enforcing the Ordinance and the discovery of property subject to forfeiture.
- (4) payments under section 36D(c) and (d).

### **36I. Regulations concerning forfeiture.**

The Minister of Justice shall, with the approval of the Constitution, Legislation and Juridical Committee of the Knesset, enact by regulations, provisions as to procedure concerning applications for a forfeiture order under a criminal or civil proceeding, proceedings for this hearing of opposition to forfeiture, applications for relief for the preservation of property, appeals, and also as to the carrying out of forfeiture, the management of assets and notices to persons having an interest in property, including any other matters required for the implementation of the provisions of this Ordinance relating to forfeiture.

### **36J. Use of fines.**

A fine imposed by the court under this Ordinance shall be deposited in the Fund established under section 36H(a)."

## **15. Addition of sections 37A and 37B.**

The following sections shall be inserted after section 37 of the Ordinance

### **37A. Denial of licence.**

(a) Where a person has been convicted of an offence under this Ordinance or where a court has established that a person has committed an offence as aforesaid but has not convicted him, the court may, in addition to any other penalty and in addition to its power under section 43 of the Traffic Ordinance (New Version) disqualify him for holding a driver's licence or vehicle licence for such period as it may prescribe if it considers that such is necessary in order to protect the public.

(b) Where a person has been convicted of an offence under this Ordinance or where a court has established that a person has committed an offence as aforesaid but has not convicted him, such person being the holder of a

professional, business or any other licence, and the court is satisfied that the offence was committed in the carrying-on of his profession or business or whilst using the licence or that its commission was enabled or facilitated by carrying-on of that profession or business or that the offence was committed at the location of that profession or business, the court may, in addition to any other penalty, order the denial of the licence for such period as it may prescribe if it considers such to be necessary in order to protect the public.

### **37B. Denial of passport.**

Where a person has been convicted under this Ordinance and the court is satisfied that the commission of the offence was enabled by the use of an Israeli passport, the court may, in addition to any other penalty, disqualify such person from holding that passport for such period as it may prescribe and direct that such passport be seized."

### **16. Amendment of section 39.**

In section 39 of the Ordinance, before the words "make regulations, there shall be inserted the words "in consultation with the Minister of Justice and with the approval of the Constitutional, Legislation and Juridical Committee of the Knesset."

### **17. Amendment of First Schedule.**

In the First Schedule to the Ordinance -

(1) in Article One of Part One, item 7 shall be deleted;

(2) in Article Two of Part One -

( a)

item 14 shall be replaced by the following item:

14. Optical isomers, stereoisomers, esters and the ethers of any of the substances specified in this Article, unless expressly excluded.";

( b)

item 15 shall be deleted;

(3) in Article One of Part Two -

( a)

item 100 shall be replaced by the following item:

100. Optical isomers, stereoisomers, esters and the ethers of any of the substances specified in this Article, unless expressly excluded.";

( b)

item 101 shall be deleted;

(4) in Article Two of Part Two -

( a)

item 7 shall be replaced by the following item:

7. Optical isomers, stereoisomers, esters and the ethers of any of the substances specified in this Article, unless expressly excluded.";

( b)

item 8 shall be deleted;

(5) in Article Three of Part Two -

( a)

item 6 shall be replaced by the following item:

6. Optical isomers, stereoisomers, esters and the ethers of any of the substances specified in this

Article, unless expressly excluded.";

( b )

item 7 shall be deleted;

(6) in Article Four of Part Two -

( a )

item 12 shall be replaced by the following item:

12. Optical isomers, stereoisomers, esters and the ethers of any of the substances specified in this Article, unless expressly excluded.";

( b )

item 13 shall be deleted;

## **18. Amendment of Second Schedule.**

In the Second Schedule of the Ordinance -

(1) the definition of "drug" shall be deleted;

(2) in the definition of "gramme net" and in the heading of the second column of the table, the word "Drug" shall be replaced by the words "Dangerous Drug".

## **19. Amendment of Penal Law.**

In the Penal Law, 5737-1977, Article Seven of Chapter Six shall be replaced by the following article:

### **" Article Seven; Treatment of Drug Users**

#### **82. Treatment of drug users.**

Where a person has been convicted and the court is satisfied that he uses dangerous drugs, within the meaning of the Dangerous Drugs Ordinance (New Version) 5733-1973, the court may impose on him, by order, probation under which he will receive treatment in such a communal framework, for such a period and in accordance with such a programme as the court may direct. The court may make an order as aforesaid even if it has not convicted the person.

#### **83. Conditions for probation order and treatment.**

A court shall not make a probation order under section 82 unless -

(1) the person concerned agrees to undergo the treatment and understands the conditions and nature thereof;

(2) the condition of the person concerned justifies the treatment and he is suitable for it;

(3) arrangements have been made enabling the person concerned to receive treatment under a programme set out in the report of a probation officer regarding the kind, nature and duration of the treatment.

#### **84. Regulations.**

(a) The Minister of Labour and Social Affairs may, in consultation with the Minister of Justice, the Minister of Police and the Minister of Health, make regulations for the implementation of this Article.

(b) The Minister of Health, in consultation with the Minister of Justice and the Minister of Labour and Social Affairs, may make regulations as to places and modes of medical treatment.

(c) Regulations under this section require the approval of the Constitution, Legislation and Juridical Committee of the Knesset."

## **20. Amendment of Courts Law.**

In the First Schedule of the Courts Law (Consolidated Version), 5744-1984 , the following paragraph shall be



added after paragraph 4:

"

(5) an offence under the Dangerous Drugs Ordinance (New Version), 5733-1973".

## **21. Commencement.**

Sections 11, 14 and 19 shall take effect six months from the date of publication of this Law or shall have effect from an earlier date prescribed by the Minister of Justice, by order, in respect of any of these sections.

YITZCHAK SHAMIR YAAKOV TSUR

*Prime Minister Minister of Health*

CHAIM HERZOG

*President of the State*

1/ Note by the Secretariat: The Penal Law, 5337-1977 is referred to as "the principal Law".

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