

II. The law

The Drugs and Drug Trafficking Act of 1992 is the controlling legislation on street drugs in South Africa. This Act allows charges to be brought under three separate provisions:

1. Section 3 (manufacture and supply)
2. Section 4 (use and possession)
3. Section 5 (dealing)

Most street level enforcement will involve the latter two sections, although alert and informed uniformed members may be able to spot some of the precursors to drug manufacturing during building or vehicular searches. These chemicals are discussed in the chapters that follow.

Most arrests under Section 4 by police members assigned to street duty occur when one of the following occurs:

- consumption of the drug is witnessed (most commonly dagga);
- intoxicated behaviour is witnessed;
- sale of the drug is witnessed (usually at a known sales outlet);



- the drug is turned up in a body search, based on reasonable suspicion of an unrelated crime, suspicion of drug activity, or in a random consensual search;
- the drug is turned up in a warranted, unrelated suspicion-based, or consensual search of a vehicle or premises.

It is also possible that drugs can be discovered during a weapons search or custodial inventory search based on detention for an unrelated crime.

Hint: There are no minimum amounts specified for any substance in the law. Thus, paraphernalia containing residues of the drugs could provide the basis for a charge if the drug can be identified through forensic analysis.

Section 4 prohibits both use and possession, so it is possible to charge a person who is clearly under the influence even if no trace of the prohibited substance is found on their person. Possession of drug paraphernalia is also a common basis for requiring a blood test. The way this is generally done is by the taking of blood and urine samples by a District Surgeon. These are then sent to the National Forensic Labs for testing. This technique is especially useful where a buy has been witnessed by the police but where the subject has apparently swallowed the evidence before being apprehended. It can also be used any time it is clear that suspects are involved in taking drugs, but where no drugs are found on their persons. Remember, the law prohibits drug use, not just possession.

Simply finding drugs near a person, or even in their residence, is not enough to prove possession. Other facts are needed to prove the case, such as determining that the accused was in exclusive control of the area in which the drugs were found. Of course, if a suspect is seen to drop drugs, this does not absolve them of possession. The member simply needs to establish that the suspect was seen to drop something that was later determined to be drugs. The best way of doing this is to keep the suspect item in continuous sight from the time it is dropped.

Section 5 (dealing) can be proven in a number of ways:

- a controlled 'buy and bust' operation can be conducted, as part of a planned and authorised anti-drugs operation;



- a sale can be witnessed, in which money or other items of value are exchanged for money;
- the accused can be found in possession of drugs under circumstances which make clear his intent to deal.

While it is no longer constitutionally permissible to assume intent to deal based on the quantity of the drugs alone, possession of a large quantity of drugs can form part of the argument for dealing. Other factors might include:

- the way the drugs are packaged (the quantity of 'saleable units');
- the presence of the accused in an area known for drug dealing;
- possession of large quantities of cash;
- possession of paraphernalia that are used in weighing and packaging drugs; and,
- other activities that conform with the activity of dealing (such as loitering on the street and approaching vehicles).

Because a police member is the complainant, most drug cases that are lost are lost due to suppression of the evidence due to police error. Some of these suppressions are based on illegal searches, but more common are mistakes in the handling of the evidence. As is the case with all evidence, it is essential that:

- a complete accounting of the chain of evidence be documented, from the scene of the crime to the courtroom;
- the description of the item in the initial statements matches that of the item received by forensics and that produced in court;
- that the seals are secure and that all serial numbers are consistent.

Even seemingly trivial errors in this process can result in the case being lost.

Other relevant sections of the law include the Prevention of Organised Crime Act of 1998, which allows for asset forfeiture. If a building, vehicle, or other piece of property is used to deal or even consume drugs, it may be forfeit to the state. Contact the Asset Forfeiture Unit of the National Prosecuting Authority if you know of any such property. Even if a building cannot be seized under the Act, it may be possible to shut down sites where drugs are sold under municipal by-laws (fire or health codes, for example) or foreclose on them due to failure to pay rates and taxes.

South African law also prohibits money laundering. You should keep an eye out for any business establishment in your area where a lot of cash sales are made (such as takeaway restaurants, convenience stores, beauty parlours, or other service establishments) which does not seem to get much business but which remains open. While storefront sales of drugs are not common in South Africa, also keep an eye out for any small business where many people leave without buying anything visible, especially if the stock on shelves is sparse, redundant, old, or dusty. Remember, businesses that launder money do not need to sell anything to prosper.

