**GUYANA**

**BILL No. of 2021**

**NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL) (AMENDMENT) BILL 2021**

**ARRANGEMENT OF SECTIONS**

**SECTION**

1. Short title.
2. Amendment of section 2 of the Principal Act.
3. Amendment of section 3 of the Principal Act.
4. Amendment of section 4 of the Principal Act.
5. Amendment of section 5 of the Principal Act.
6. Amendment of section 12 of the Principal Act.
7. Amendment of section 72 of the Principal Act.
8. Amendment of section 73 of the Principal Act.

**A BILL**

**Intituled**

**AN ACT** to amend the Narcotic Drugs and Psychotropic Substances (Control) Act.

A.D. 2021 Enacted by the Parliament of Guyana:-

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| Short title.  Cap. 10:10 | 1. This Act, which amends the Narcotic Drugs and Psychotropic Substances (Control) Act, may be cited as the Narcotic Drugs and Psychotropic Substances (Control) (Amendment) Act 2021. | |
| Amendment of section 2 of the Principal Act. | 1. Section 2 of the Principal Act is amended by the insertion, immediately after the definition of the words “coca leaves”, of the following definition –  |  |  | | --- | --- | | Cap. 11:02 | ““community service” means a noncustodial punishment by which after conviction the court, with the consent of the offender, makes an order for the offender to serve the community without pay in lieu of imprisonment or the payment of a fine and includes a public work under the Extra-Mural Work Act;”. | | |
| Amendment of section 3 of the Principal Act. | | 1. Section 3 of the Principal Act is amended by the insertion, immediately after the definition of the words “public place”, of the following definition –   ““smoke” means to inhale, exhale, burn, combust or vaporise a narcotic by any means;”. |
| Amendment of section 4 of the Principal Act. | 1. Section 4 of the Principal Act is amended as follows – 2. in subsections (1) and (2), by the substitution for the words “Any person”, of the words “Except as provided under subsections (2A) and (2B), any person”; and 3. by the insertion, immediately after subsection (2), of the following -  |  |  | | --- | --- | | Cap. 11:02 | “(2A) The court shall make an order requiring a person who has been convicted for the possession of a narcotic under subsection (1) or (2) to undergo mandatory counselling by a certified counsellor specified by the court where that person was in possession of a quantity of cannabis or any substance represented or held out by that person to be cannabis which does not exceed fifteen grams for a period as determined by the counsellor after an assessment.  (2B) The court shall make an order requiring a person who has been convicted for possession of a narcotic under subsection (1) or (2) to perform community service where the person was in possession of a quantity of cannabis or any substance represented or held out by that person to be cannabis which exceeds fifteen grams but does not exceed thirty grams –   1. in respect of the cannabis, for a period not exceeding six months; or 2. in respect of the substance other than cannabis which is represented or held out to be cannabis, for a period not exceeding three months,   for any number of hours each day, excluding public holidays, as are specified in the order, and where an order is made, sections 3(2) and (4), 4, 5, 6(1) and 7 of the Extra Mural Work Act shall *mutatis mutandis* apply as if the order was an extra-mural work order made under section 3 of that Act.”. | | |
| Amendment of section 5 of the Principal Act. | 1. Section 5(2)(e) of the Principal Act is amended by the substitution for the words “fifteen grams”, of the words “thirty grams”. | |
| Amendment of section 12 of the Principal Act. | 1. Section 12 of the Principal Act is amended as follows – 2. by the insertion, immediately after subsection (1), of the following –  |  |  | | --- | --- | | Cap. 11:02  No. 17 of 2017 | “(1A) Except as provided under subsection (1B), a court which convicts a person who commits an offence referred to in subsection (1)(a), (b), (c)(i) or (d) in relation to cannabis shall make an order requiring that person to perform community service for a period not exceeding six months for any number of hours each day, excluding public holidays, as are specified in the order, and where an order is made, sections 3(2) and (4), 4, 5, 6(1) and 7 of the Extra-Mural Work Act shall *mutatis mutandis* apply as if the order was an extra-mural work order made under section 3 of that Act.  (1B) A person who is convicted of an offence under subsection (1)(a) in relation to the smoking of cannabis in any of the places to which section 16 of the Tobacco Control Act applies shall be liable, in addition to the penalty in subsection (1A), to a fine of ten thousand dollars for the first offence, and twenty thousand dollars for any second or subsequent offence.”; |  1. by the insertion, immediately after subsection (2) of the following –  |  |  | | --- | --- | | Cap. 11:02 | “(2A) A court which convicts a person of an offence under subsection (2) who, knowing or having reason to believe that a parcel, package, container or other thing contains a quantity of cannabis which –   1. does not exceed fifteen grams, handles the parcel, package, container or other thing shall make an order requiring the person to undergo mandatory counselling by a certified counsellor specified by the court for a period as determined by the counsellor after an assessment; or 2. exceeds fifteen grams but does not exceed thirty grams, handles the parcel, package, container or other thing shall, make an order requiring that person to perform community service for a period not exceeding six months   for any number of hours each day, excluding public holidays, as are specified in the order, and where an order is made, sections 3(2) and (4), 4, 5, 6 (1) and 7 of the Extra-Mural Work Act shall *mutatis mutandis* apply as if the order were an extra-mural work order made under section 3 of that Act.” | | |
| Amendment of section 72 of the Principal Act. | 7. Section 72 of the Principal Act is amended by the insertion, immediately after the words “period of imprisonment”, of the words “or the period that person performs the community service”, wherever it appears. | |
| Amendment of section 73 of the Principal Act. | 8. Section 73 of the Principal Act is amended by the following –   1. in subsection (1), by the substitution for the words “Where any provision”, of the words “Except as otherwise provided by any other provision of this Act, where any provision”; 2. by the deletion of subsection (2)(b); 3. by the substitution for subsection (5), of the following –   “(5) Where a court makes an order under section 4 or 12 for a convicted person to perform community service, that person shall also be made to undergo a mandatory assessment and counselling by a certified counsellor specified by the court for a period not exceeding the term in which that person performs the community service if no order is made under section 72 for the committal of that person to a Centre for the care, treatment and rehabilitation of persons addicted to a narcotic.”; and   1. by the insertion, immediately after subsection (5), of the following subsections–   “(6) The number of hours each day which the offender shall be required to perform community service or mandatory counselling under section 4 or 12 shall not exceed three.  (7) The hours of work or counselling under subsection (6) shall not conflict with the offender’s religious belief and shall exclude any intervals prescribed for meals, refreshment or rest and if the offender is gainfully employed or attends an educational institute, occupy only that part of the offender’s time which would represent leisure hours.    (8) Where a court makes an order under section 4 or 12 for a convicted person to perform community service or undergo mandatory counselling and that person without reasonable excuse breaches the requirements of that order, the court may –  (a) order that person to pay a fine of two hundred and fifty thousand dollars; and  (b) complete the number of hours remaining on the community service order or the mandatory counselling order.  (9) Where a person does not consent to community service in accordance with section 3(4) of the Extra-Mural Work Act or mandatory counselling under section 4 or 12, the court shall order that person to pay a fine of two hundred and fifty thousand dollars.”. | |

Cap. 11:02

**EXPLANATORY MEMORANDUM**

This Bill amends the Narcotic Drugs and Psychotropic Substances (Control) Act, Cap. 10:10, to reduce recidivism, prison overcrowdings and the burden on the criminal justice system, save State funds, and ultimately rebuild lives, families and communities affected and disadvantaged by the fining and incarceration of persons, especially youths, for the possession and use of small amounts of cannabis.

**Clauses 2 and 3** of the Bill amend the Act by including definitions for “community service” and “smoke”.

**Clause 4** of the Bill amends section 4(1) and (2) of the Principal Act to exclude from the offence of possession of any narcotic (narcotic is defined to include cannabis) under subsections (1) and (2), the offences of simple possession and possession in certain places of a quantity of cannabis or a substance represented or held out to be cannabis which does not exceed a specified amount and provides separately for them under new subsections (2A) and (2B). Under the new subsection (2A) the possession of a quantity of cannabis or any substance held out to be cannabis which does not exceed fifteen grams is punishable by mandatory counselling for a period to be determined by the counsellor. Whereas under (2B) the possession of any quantity of cannabis or any substance held out to be cannabis which exceeds fifteen grams but does not exceed thirty grams is punishable by community service which includes employment in a public work under the Extra-Mural Work Act, Cap. 11:02, for a period not exceeding six months.

Public work is defined by section 2 of the Extra-Mural Work Regulations, Reg. 8 of 1998, to include any work on State or Government land or any property belonging to, or rented or leased to the State or with the permission of a local government authority, on any land or any other property belonging to, or rented or leased to, the local government authority.

**Clause 5** amends section 5(2)(e) to increase the quantity of cannabis, in relation to the burden of proof being placed on a person to prove that the person is not in possession of cannabis for the purpose of trafficking, from more than fifteen grams to more than thirty grams.

**Clause 6** amends section 12 to remove the fine and term of imprisonment for the smoking, inhaling, sniffing, or otherwise using cannabis, being found in a place used for that purpose, or being the owner, occupier, or concerned in the management of any place used for preparation of cannabis for that purpose. The amendment also removes the penalty for the possession of any pipe or other utensil used in connection with the smoking, inhaling or sniffing or otherwise using of cannabis. These offences are now punishable by community service for a period not exceeding six months. Further, the offence of handling any package, container or other thing which contains a quantity of cannabis not exceeding fifteen grams, is now punishable by mandatory counselling for a period determined by the counsellor. Where the package, container or thing contains a quantity of cannabis or any substance held out to be cannabis which exceeds fifteen grams but does not exceed thirty grams the offence will now be punishable by community service which includes a public work under the Extra-Mural Work Act, Cap. 11:02, for a period not exceeding six months in respect of the cannabis and a period not exceeding three months in respect of the substance.

Further, while the clause removes the fine and term of imprisonment for smoking cannabis, it also prohibits the smoking of cannabis in certain places akin to the prohibition of smoking in public places provided for under section 16 of the Tobacco Control Act, No. 17 of 2017, and is punishable by the same fines found in that Act in addition to the penalty herein.

**Clause 7** consequentially amends section 72 in relation to the discretion of the court to order a person convicted of an offence under section 4, who is an addict and in possession of cannabis for personal consumption, to undergo rehabilitation for any part, where the court thinks fit, of the period of the community service.

**Clause 8** also consequentially amends section 73 in relation to the restriction on the power of the court to impose a lesser sentence to remove the special reason for the discretion of the court to reduce the term of imprisonment for the possession of five grams for personal consumption as the provision is no longer necessary. The clause also substitutes subsection (5) to provide for the court to make an order for mandatory counselling for a period within the period the person is performing community service where no order for care, treatment and rehabilitation of person addicted to a narcotic is made under section 72. Finally, it inserts new subsections (6), (7), (8) and (9). Subsections (6) and (7) prescribe the hours and instances for the undergoing of mandatory counselling and the performance of community service. Subsections (8) and (9) provide for instances in which the offender does not consent to an order for mandatory counselling and community service to be granted and where the requirements of an order to undergo mandatory counselling or perform community service is breached by the offender to give the court the discretion to order the offender to pay a fine of two hundred and fifty thousand dollars, where the court sees fit.

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**Hon. Mohabir Anil Nandlall, SC, MP**

**Attorney General and**

**Minister of Legal Affairs**