

Decriminalisation of possession of drugs for personal use

This table outlines different modules currently in use for ‘decriminalising’ the possession of drugs for personal use, in terms of legal frameworks, policing practices, judicial processes, administrative sanctions or diversion schemes.

	‘DE JURE’ DECRIMINALISATION				‘DE FACTO’ DECRIMINALISATION		
	No offence	Administrative offence			No sanction	Diversion – alternative sanctions	
	A) Possession for personal use is not a punishable offence	B) Police discretion	C) Administrative decision	D) Criminal justice decision	E) ‘De facto’ decriminalisation	F) Police Diversion	G) Criminal justice diversion
Legal framework	Simple possession of controlled drugs is not a punishable offence; the law clearly distinguished between personal use and intent of supply to others	Possession not a criminal act but it is an administrative offence	Possession not a criminal act but it is an administrative offence	Possession not a criminal act but it is an administrative offence	Possession is a criminal offence, but police and/or prosecution are given instructions not to intervene based on discretionary powers	Possession is a criminal offence but policy/legislation provides for alternative sanctions to prison	Possession is a criminal offence but policy/legislation provides for alternative sanctions to prison
Police authority	Police does not have the authority to detain persons as long as there is no indication of intent to supply	Police can determine the nature of the offence – if deemed to be possession only, on the spot sanction can be applied, if not referral to criminal justice system	Police can detain persons in possession of drugs and refer them to an administrative body; entrance into the criminal justice system only occurs on the basis of suspicion of supply	Police can detain persons in possession of drugs but has no authority to determine the nature of the offence – the matter is then either referred to state prosecutors or to the judiciary for determination	Police does not have the authority to detain persons as long as there is no indication of intent to supply	Police can determine the nature of the offence and decide about the sanction, or refer to a senior official or specialist assessment at the police station	Police can arrest persons in possession of drugs but has no authority to determine the nature of the offence

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Judicial or administrative process	No further action in absence of indication of intent to supply	No further action in absence of indication of intent to supply	Civil or administrative body determines the appropriate health or social intervention	Judicial authorities (including state prosecutors) determine if the act falls within the legal parameters set for personal use	No further action in absence of indication of intent to supply	No further action in absence of indication of intent to supply	Judicial authorities have the discretion to refer individual to treatment or other non-criminal sanctions
Applicable sanctions for possession of drugs for personal use	None	Confiscation; warning or fine	Confiscation; warning or fine; referral to treatment; other administrative sanctions	Confiscation; warning or fine; referral to treatment; other administrative sanctions	Confiscation	Confiscation; warning or fine; referral to treatment; other administrative sanctions	Confiscation; warning or fine; obligatory treatment or community services as an alternative to criminal sanctions
Country examples	Uruguay	Spain Some Australian states (cannabis only)	Portugal Czech Republic	Germany Peru Estonia Argentina (proposed)	Netherlands	Not aware of a country that takes this approach – there are local examples such as Seattle in the USA	Some USA states