



## KNOW YOUR RIGHTS

(VERSION 11 2018/19)

**IMPORTANT DAGGA ARREST INFORMATION FOR EVERYBODY**

**PLEASE GIVE COPIES OF THIS BOOKLET TO THE POLICE**

**SOS HELPLINE 063-174-0938**

**SOS WEBFORM <https://podio.com/webforms/17336590/1165744>**

**DOWNLOAD AND PRINT COPIES OF [THE CONSTITUTIONAL COURT JUDGEMENT](#) HANDED DOWN IN SEPTEMBER 2018 AND THE [POLICE DIRECTIVE](#) ISSUED SOON AFTER. KEEP COPIES OF THESE TWO DOCUMENTS AT HOME AND IN YOUR CAR.**

**This is written for you...** policeman, magistrate, dagga user, grower or trader. From the medical patient who depends on the plant for relief to the casual smoker, frail pensioners, gardeners, artists, students, prosecutors, nurses, everyone who uses, cultivates or trades in this plant. **Many people from all walks of life are STILL arrested on Cannabis charges every day in South Africa.** Don't think that you're immune or invincible... it may be your turn next to take part in this pointless arrest fiasco.

**KNOW YOUR RIGHTS BEFORE THIS HAPPENS TO YOU.**



## FOR THE POLICE:

**A person's vehicle, home, bag and pockets are private spaces and cannot be searched without an original signed warrant shown beforehand.**

According to case law, an officer cannot search someone's person, house or car simply because they believe the person is "suspicious". This simply will not hold up in court.

The Constitutional Court clarified the legal status of **warrantless search and seizures** on 27 July 2016 (*Minister of Police and Others v Kunjana [2016] ZACC 21*) and found that these searches infringe on the right to privacy to a degree that cannot be justified, finding sections 11.1 (a) and (g) of the Drugs and Drug Trafficking Act **unconstitutional**.

**Dealing CANNOT be assumed.** The 18 Sept 2018 Constitutional Court 'Privacy Judgement' said *"there will be cases where it will be difficult to tell whether the possession is for personal consumption or not. In the latter scenario a police officer should not arrest the person because in such a case it would be difficult to show beyond reasonable doubt later in court that that person's possession of Cannabis was not for personal consumption"*. ...so the magistrate will throw the case out.

Dealing CANNOT be proved without an undercover operative, marked notes or photographic evidence. Several bags or jars stored together (even near cash!) is NORMAL and still does NOT imply dealing and will NOT hold up in court.

## YOU CANNOT ASSUME DEALING JUST BY HOW MUCH DAGGA SOMEONE POSSESSES

**Quantity DOES NOT MATTER** and is a useless measuring stick. **BE AWARE that the law that says more than 115g of Cannabis constitutes dealing has been deemed UNCONSTITUTIONAL in S v Bhulwana; S v Gwadiso 1996 (1) SA 388 (CC).**

If you see 50 plants, half of them could be males and the grower could end up with just a few plants. In some instances this is not even enough medicine for one month, let alone a year, and you can only grow outdoor once a year. If you are sick you will need to grow much more than this to have a regular supply of home grown meds. See why quantity DOES NOT REALLY MATTER?

To explain: a patient using a gram of Cannabis oil a day, could need a kilo or more of flowers per week if they make medicine from the plant. It is not unusual to juice an entire plant in a day for health purposes. Therefore an annual harvest stored or kept to smoke (or to make bricks or socks) or to make extracts from, can amount to a substantial amount of Dagga and CANNOT be seen as dealing just like a fully stocked private bar, wine cellar or medicine cabinet in a private home does NOT imply public sales or require police interference, AT ALL. We need the police to UNDERSTAND THIS clearly, put it in their pipes and smoke it!



**STAY CALM. THIS IS A GROW TENT WITH EXTRACTION FAN AND LIGHTS (sometimes purple or orange). CONTRARY TO NEWS REPORTS, THIS IS NOT A DRUG LAB, IT IS THE BEST WAY TO GROW DAGGA INDOORS AND IS COMPLETELY NORMAL AND LEGAL JUST LIKE OUTDOOR GROW OPERATIONS.**



**This is a syringe with about 3 grams of crude cannabis oil, aka RSO. This is only three days worth of medicine for some, so it is not unusual to possess large amounts.**



**These are all Cannabis extracts and fall into the same category as oils and tinctures. This photo shows extracts each from about a kilogram of Dagga and could last a user several days.**

## FOR THE PUBLIC:

**There are NO licenses, permits, medical certificates or cards, prescriptions or permissions of any kind available in SA (yet).** The Concourt Judgement of 18 Sept 2018 allowed for the possession and cultivation of Dagga in private, but left us with a big grey area regarding amounts, policy and law. Parliament has two years to adjust the law to fit this judgment. Until such time, here is some advice:

### **DON'T GET CAUGHT.**

**Not being arrested should be a very high priority in your life.**

**Rule No.1: Be alert when buying Dagga.** Cannabis is legal to possess and grow, but we don't have a law yet to tell us how much is allowed. Buying the good plant is fraught with difficulty and danger. Cannabis traders come in all types and, as with anything in life, there are good traders & bad traders. Avoid buying weed from a stranger on the street at all costs. It's just too risky as the police may be a few steps behind. Be super vigilant, even if you have known the trader for a long time. A huge proportion of busts happen when the police follow you after you've made your purchase. Many traders are in cahoots with the police in return for their immunity. Be alert at all times. It is a good idea to drive the same route to the trader as you intend to drive home. That way you can check if there's anything suspicious on the way. There is no way of telling what the cops waiting to bust you would look like but trust your instincts. If you suspect anything, leave the area. Your paranoia keeps you safe.

It is important to add here that you should also be super vigilant about WHAT you're buying. Make sure that the weed looks okay to you and there are no suspicious looking powders at the bottom of the bag. Smell it and be warned if there is an unusual or chemical odour. Unscrupulous traders sometimes lace the plant with addictive substances or powdered glass.

**Rule No.2: Be discreet at all times.** Be careful what you post on social media and unsecure Cannabis forums.

**Rule No.3: Hide it like your life depends on it.** Whether it be at home, in your car, when you're out and about. Don't leave your smoking paraphernalia lying around, anywhere, at any time. Very clever stash ideas are available online. While growing and possession is allowed in South Africa, we still don't have clarity from the lawmakers. Currently, the police & the justice system are trying to make dealers out of all possession cases. Don't TRUST THE AUTHORITIES WITH ANYTHING. SOUTH AFRICA HAS HIGH LEVELS OF CORRUPTION AND YOU NEED TO STAND YOUR OWN GROUND AS A CITIZEN AGAINST A CORRUPT SYSTEM.

**Rule No.4: DON'T SMOKE IN PUBLIC.** Whereas smoking in the infinite beauty of mother nature is obviously preferable, your home is the safest place to smoke. This does not mean that your home should become a free for all to be blazing and doing as they please, inviting trouble. While your home is your castle the police can still act on allegations. Be a good, considerate neighbour.

**Rule No.5:** The Constitutional Court has now offered clarity on the legal status of warrantless searches and seizures under the Drugs and Drug Trafficking Act and found that these searches infringe on the right to privacy to a degree that cannot be justified and is unconstitutional after the case Minister of Police and Others v Kunjana [2016] ZACC 21. The police cannot arbitrarily search you or your home without being given specific legal authority to do so.

Bear this in mind: The police are not allowed to just put up a roadblock whenever and wherever they



want to. The police need to have a written authorisation (warrant) signed by the provincial commissioner (or his designated authority). The authority has to state when and where the roadblock is to be and what the purpose is. Without this the police CANNOT enter your vehicle. You're entitled to film the police and see the authority for the roadblock at that time.

Obey the rules of the road. Roadblocks are always going to be the bane of our lives. Even though it is now legal to possess Cannabis, hide it like your life depends on it. Ensure that your car is licensed and roadworthy. Only break one law at a time.

Smoking in your car and then hitting a roadblock is the worst of luck. The SAPS know what cannabis paraphernalia is, so smoking gear is best kept out of sight & well hidden in your bag, the cubby hole, or better, the boot. Don't keep smoked roaches within the car, they stink. Smoking and driving is not the best idea.

A great tip from one of our Advocates is to install a dashcam in your car. Police are more likely to either wave you through the roadblock, or stick to the rules if they pull you over. You are allowed to film the police.

Warrantless searches will still happen and are unlawful and could get the police into serious trouble. Although you would be well within your rights to request that a valid warrant be provided to you before you, your home or your car are searched; this does not necessarily mean that the police will provide this warrant before proceeding with a search. The laws regarding searches at roadblocks may also overwrite any rights (in more extreme situations) that you have to request a warrant before having your vehicle searched. KNOW YOUR RIGHTS

**Rule No.6: Be polite to the police.** Keep all interactions with the police to a minimum. You don't have a duty to interact with the police. Don't talk to them more than you absolutely have to. It doesn't matter what you think of the police, when they stop you they immediately have the upper hand. The best way to keep calm is to be polite. The arrogance of some officers can make you mad but just bite your tongue, smile and remember that YOU KNOW YOUR RIGHTS!

**Rule No.7: KNOW that trading is VERY dangerous.** If you're selling, don't boast about it. You have to be more discreet than any other member of the Cannabis community. If you are caught you're in for a long, stressful and expensive battle. Dealing "includes performing any act in connection with the transshipment, importation, cultivation, collection, manufacture, supply, prescription, administration, sale, transmission or exportation of the drug".

Every day we are asked, "**How much can I carry / keep at my home / grow / etc?**" The answer is simple, "**How much do you need?**" As it stands, the Constitutional Court Judgement has placed the onus on the police to prove dealing but you will also have to prove that your plants are for personal use in the end.

**BUT...** Until such time as we have clear, concise, evidence-based policies in place and the new Cannabis laws have been signed by parliament, the police have the upper hand.

**WHAT TO DO IF YOU'RE ARRESTED.** You have obeyed Rules 1 – 7 but you have been arrested anyway. This can be a scary and stressful situation. The only way to reduce your fear and make the best of a bad situation is to know your rights and know how to act.

**Know in your head that YOU ARE NOT A CRIMINAL. PHONE OUR HELPLINE 063-174-0938**

**Don't resist.** Make it clear to the officer that you're co-operating. Again, BE POLITE. Running is a bad idea. Fighting back is a bad idea. Your arrest should follow certain steps.

**STEP 1:** You're informed that you have been arrested. Don't talk. If you have to talk, TELL THE TRUTH. The officer/s may take you to the nearest police station to be processed. Don't attempt to talk your way out of it in any way. Don't believe everything the police tell you. It is at this stage that corrupt police officers may "suggest" that you "buy them a cold drink". Whether you wish to bribe a police officer or not is up to you, but we strongly recommend that you don't do this. This perpetuates a corrupt system and does our cause a great deal of harm.

**BE AWARE THAT SINCE THE CONSTITUTIONAL COURT JUDGEMENT OF 18 SEPTEMBER 2018, THE POLICE ARE NOT ALLOWED TO LOCK YOU UP IN A CELL UNTIL YOUR COURT APPEARANCE. INSTEAD THEY HAVE TO GIVE YOU A SUMMONS WITH A COURT DATE AND LET YOU GO.**

**If the police take any of your belongings or equipment, make sure they sign a detailed list of any items that they confiscate from you.**

At some stage, your fingerprints may be taken. \*\*If you have other warrants out for your arrest / cases pending, this is when the police will find out.\*\*

**STEP 2: The interview process.** Tell the truth. Your case will be assigned to an Investigating Officer. He / she will interview you. Apart from your name and address you don't have to tell them anything. Anything you say may aggravate the case against you. Don't be fooled by subtle promises of lesser punishment or getting the court to be lenient.

The police may want to confirm your address before they let you go. This they will do by sending a van to the address and speaking to the people there or the neighbours. The police will accept a parent of the accused to come and depose an affidavit that the arrested person is their offspring. A utility bill can also help if the arrested person has given the same address.

At the start of the interview, say: "My name is ... and I live at .... I have been informed of my right to remain silent and respectfully wish to remain silent at this time". The police will take you seriously if you call your attorney and you have his card. You're constitutionally entitled to speak to him. If you have an attorney, say: "My attorney's name is .... and his telephone number is ... I would like to contact him now." NEVER TRUST LAWYERS THE POLICE RECOMMEND. RATHER ASK YOUR FRIENDS TO RECOMMEND ONE

**STEP 3: Know your arrest paperwork.** Examples of the following documents are available on our website.

**PAPER 1: NOTICE OF RIGHTS IN TERMS OF THE CONSTITUTION (SAPS 14A)** Read this through carefully. Make sure all names & dates are correct and sign.

**PAPER 2: BAILJ398 (82/11616)** The police may set bail or let you go with a date to appear in court and the magistrate will then set bail. This is entirely at the discretion of the police. You are allowed to possess the plant in private, so you can only be arrested for dealing or possession with clear intent to sell and dealing CANNOT be proved without an undercover operative, marked notes or photographic evidence.

If you're suspected of being a dealer, there is a chance the police will want to keep you in the cells until your court appearance. However, YOU MUST ASK FOR POLICE BAIL. The senior police are authorised to grant this. You will not be granted police bail if you have any previous convictions / cases pending.

**Also on this piece of paper is an **ADMISSION OF GUILT** section.** If you have been caught with dagga the police will offer you the chance of admitting guilt, paying R300 - R500 and walking free. **DO NOT SIGN THIS SECTION OR PAY A FINE BECAUSE THAT WILL GIVE YOU A CRIMINAL RECORD.** The police will NOT tell you what the consequences are of signing or paying an admission of guilt fine. The police also don't tell you that you have 3 weeks to pay this fine and demand payment to let you go. The only time that you pay the police any money is after signing paper no. 2 (bail). Criminal records can only be expunged after 10 years and this is not automatic. It is a lengthy and expensive process that can be avoided by knowing your rights!

**You're NOT A CRIMINAL, DON'T SIGN OR PAY THE FINE.** Instead, ask the police to give you the next paper:

**PAPER 3A: ANNEXURE TO WRITTEN NOTICE TO APPEAR IN COURT IN TERMS OF SECTION 56 OF ACT 51 OF 1977.** This paper explains that, if you pay the fine, you will receive a criminal record. Police will most likely not offer you this paper and it is good for our cause that you **ASK FOR IT.**

If you have been caught and have signed an admission of guilt fine it can be possible to have the admission withdrawn. Contact us for more info regarding this but you need to ACT FAST. There is a time limit for cancelling the criminal record if you were not informed before paying the fine.

BAIL will only apply if there is clear evidence of dealing, otherwise you cannot be put in the cells.

**LEGAL REPRESENTATION:** You're entitled to represent yourself and we encourage people to do this for their first court appearance. The state provides attorneys to those who cannot afford them but these attorneys very seldom have any knowledge of matters concerning Cannabis. Please contact us if you're unsure about legal representation. We are now working with Legal Aid lawyers and, if you decide to become part of our Join The Queue project, we will help you with all the legal paperwork you need. Our project does not cover attorney's fees for court appearances

**YOUR FIRST COURT APPEARANCE:** You don't have to have an attorney present at this first appearance in order to get a postponement. Ask the magistrate for more time in order to consult an attorney / apply for legal aid. One of two things can happen. Firstly, the charges can be dropped. This is when the police have obviously made errors in terms of the law, and it happens often. It is unlikely that you will get the charges dropped at your first court appearance. Secondly, this appearance will result in a postponement of the case for about two weeks. Take careful note of your next court date and follow every word that is said in court.

It is highly unlikely that the magistrate will ask you to plead at your first appearance but if he/she does, indicate not guilty. Silence will/should be interpreted as not guilty, as not entering a plea is considered a not guilty plea. You're entitled to change your plea at any time before conviction.

**Once you're through the first appearance, you need to take the following into account:**

## **1. ARE YOU GOING TO JOIN THE QUEUE?**

We believe that the laws prohibiting Cannabis are unconstitutional. The prohibition of this plant is irrational and based on propaganda and outright lies. The Dagga Couple are challenging the constitutionality of the prohibition of Dagga. The arguments we are making are clear and rational. We have been helping people arrested on Dagga charges since 2013 so we have learned a great deal. If you would like to benefit from all the various strategies that we have under our belts, this is called Join The Queue. If you would like more information on how to do this, please contact us immediately on

**063-174-0938**. You will need to contact us BEFORE your case goes to trial if you would like to Join The Queue.

We already have a long list of cases where prosecution has been put on hold and, as a result of the Davis Judgement in The Western Cape High Court in March 2017 & its subsequent confirmation by the Constitutional Court, we are able to speed up your defence process with customised "representations" where we enter into correspondence with the prosecuting authorities regarding your case. Everything will be explained to you if you contact us. The best way to do this is to fill in this form so that we have all the details and we will call you:

<https://podio.com/webforms/17336590/1165744>

## **2. GETTING THE CHARGES DROPPED**

It is very risky to try to get the charges dropped without an attorney. Your attorney is entitled to state in court or submit a written representation as to why the prosecution should cease. There are various grounds on which this can be done, the main being police incompetence. If this is successful it ends the matter there.

**THE CASE GOES AHEAD TO TRIAL:** If the state goes ahead you have the right to test the state's case. This means that the state will present their case and you will have the right to listen to it and test it. The state will try to prove beyond a reasonable doubt that you were trading in what you were caught with. Each case is different. Your attorney can do his/her best to shake the state's case. There are various ways that your attorney can argue your case: Police incompetence, an inaccurate or non-existent forensic report, inaccurate charge sheet, medical / psychological condition of the defendant, technicalities surrounding search warrants, to name but a few.

**SENTENCING:** Prosecutors are always keen on having the accused plead guilty as they love upping their conviction rates. Don't plead guilty unless you're absolutely sure that you have been given good legal advice. Been found guilty? There is a possibility that the State has done its job properly and you're convicted. Dealing in cannabis is usually punished by a fine with the alternative of prison. If you cannot afford the fine then you will be incarcerated. The amount payable once incarcerated reduces by the proportion of the sentence the person has served.

**HOW MUCH WILL THIS COST ME?** If you can get through the first part of your arrest on your own and you're out on bail, you will have some time to organise an attorney or decide to Join The Queue. If you decide to hire a private attorney then you can negotiate fees, or have time to brief your legal aid attorney properly. Legal aid attorneys might be free of charge and we will brief your attorney, as well as supply your legal documents. Attorneys charge anything from R1500 to R10 000 per day.



We ESTIMATE that the average bust in South Africa costs the victim R10 000 to R30 000. The cost depends on the severity of the charges. There is no standard to sentencing across South Africa, so there is no knowing what fine you might have to pay on top of your attorney's fees. If you decide to Join The Queue then you don't necessarily need an attorney, but be sure to contact us as soon as possible to let us know of your decision. Join The Queue is by far the most reasonable and sensible route to go.

Growing, as discussed earlier, fits under the expanded definition of dealing, which includes cultivation of the plant. The courts do accept that people can, and do, grow for themselves. However, it needs to be believable that you grew for yourself. Small is beautiful.

There are many players in this crazy farce called prohibition – police wanting to make their arrest targets, attorneys practising their profession, snitches working for the police, disgruntled ex-partners or neighbours, employers & employees, schools, doctors, rehabs, the government... the list goes on, but the bottom line is this: As the Cannabis Culture in South Africa, we are the victims of prohibition, we are not criminals.

**Arm yourself with knowledge, know your rights. Always tell the truth.**

**We get many of the same questions, over and over again! Arm yourself with knowledge, DON'T THINK THAT CANNABIS IS SAFELY LEGAL YET AND CHALLENGE THOSE WHO TELL YOU THIS MISINFORMATION.**

## **TRADING IN CANNABIS, IN ANY FORM, REMAINS COMPLETELY ILLEGAL IN SOUTH AFRICA**

Many people have been involved in the compilation of this guide and we acknowledge their input. Please share your story on **The Dagga Couple website**. That way we get more insight into different situations. Stories about your encounters with the police, stories about Cannabis and health, stories about your relationship with this amazing plant. It all helps. All stories, pics and videos are welcome on <https://www.daggacouple.co.za/dagga-stories>



**BE SAFE, BE CAREFUL AND KEEP IT GREEN**

**JOIN OUR VIBRANT CANNABIS LEGALISATION COMMUNITY TODAY!**

**[FIELDSOFGREENFORALL.ORG.ZA](https://www.fieldsofgreenforall.org.za)**