

MODEL LAW

*for Eastern Europe
and Central Asia*



On the regulation and control of the circulation of narcotic drugs, psychotropic substances, their precursors, and plants containing said substances.

MODEL LAW *for Eastern Europe and Central Asia*



Purposes of the Law

This law establishes balanced means and methods of regulating the circulation of narcotic drugs, psychotropic substances, their precursors, and plants containing said substances (hereinafter “narcotic drugs and psychotropic substances”), to achieve the following interconnected objectives:

- Protecting the life and health of all citizens, including people who use drugs
- Ensuring state and public security and combating corruption
- Complying with norms and principles of human rights, including protection against discrimination
- Ensuring that measures of state governance are efficient and economically sound

CHAPTER 1

Principles of Regulating the Circulation of Narcotic Drugs and Psychotropic Substances



ARTICLE 1.

Principle of Proportionality

1. Measures to regulate and control the circulation of narcotic drugs and psychotropic substances must be shown to be necessary for achieving specific stated objectives, consistent with the purposes of this law.
2. When developing such measures that restrict human rights, these measures must not be arbitrary. Measures must reasonably and justifiably lead to the expected outcome, with the fewest possible restrictions on human rights. All possible alternative measures with fewer restrictions to achieve the same results must also be shown to have been considered.

ARTICLE 2.

Principle of Prioritizing Human Dignity, Rights, and Freedoms

1. Human dignity, rights, and freedoms must be prioritized and strictly observed in any measures of regulation and control of narcotic drugs and psychotropic substances.
2. Human rights and freedoms shall be established in line with the norms underlying international treaties and principles of international law and considering the practice of international bodies established within the framework of international treaties on human rights and drug control.

ARTICLE 3.

Principle of Ensuring Scientific Support for Measures of State Regulation and Control

1. The federal government (hereinafter “the Government”) shall ensure that independent scientific support is provided for the planning, implementation, execution, and review of measures regulating and controlling narcotic drugs and psychotropic substances.
2. Conditions for this scientific support must include freedom of opinion and freedom of access to information on any issues related to the regulation and control of narcotic drugs and psychotropic substances, including access to statistical data from law enforcement, judicial, and penitentiary authorities.

ARTICLE 4.

Impact Assessment

1. Measures of regulation and control of narcotic drugs and psychotropic substances shall be subject to systematic monitoring and periodic evaluation of their impact on the legally protected interests of individuals, families, society, and on the state.
2. Comprehensive evaluation shall be conducted no less than once within two budgetary periods, covering all stages of budget planning. The impact of the measures of regulation and control on human rights and freedoms must be part of this comprehensive evaluation, taking into account the indivisibility, interdependence, and interconnectedness of all human rights and freedoms.
3. To ensure systematic evaluation of the impact of restrictive and control measures, continuous monitoring shall include the following indicators:

A) Indicators of health protection as defined by the World Health Organization:

mortality from drug overdose and poisoning by narcotic drugs; mortality among people who use drugs due to HIV, tuberculosis, and hepatitis; number of new cases of HIV, viral hepatitis, and tuberculosis among people who use drugs; proportion among people with drug dependence and mental health conditions receiving treatment or support for these conditions; percentage of people with opioid dependence who are receiving opioid agonist therapy; number of participants in needle and syringe programs and other harm reduction measures; percentage of people with drug dependence receiving appropriate treatment; number of patients with access to essential medicines containing narcotic drugs and psychotropic substances, including pain relief medications and opioid agonist therapy.

B) Justice indicators: quantity of seized narcotic drugs and psychotropic substances from List 1 with mandatory indication of substance purity and quantity seized in individual criminal cases; percentage and number of institutions of detention and of incarceration where harm reduction measures are implemented; percentage and number of cases adopting alternative forms of justice for people who use drugs; number of people with problematic drug use who are redirected from the justice system to prevention and treatment services.

C) Indicators of stigma and discrimination against the most vulnerable population groups subject to regulation and control measures, including people who use drugs, migrants and stateless individuals, people with chronic illnesses in need of life-saving medications containing narcotic drugs and psychotropic substances, Indigenous peoples, and ethnic and racial minorities; percentage of the general population, healthcare workers, and law enforcement personnel reporting discriminatory treatment towards people who use drugs; percentage of people who use drugs reporting discrimination by healthcare workers and law enforcement personnel.

4. **Data collection for continuous monitoring** must be done with the participation of the most vulnerable population groups, as well as civil society organizations submitting shadow and parallel reports to United Nations treaty bodies.
5. **A continuously operating independent expert body** shall be established to coordinate monitoring and evaluation, with equal representation of experts from law enforcement, economic, financial, educational, medical, social, and human rights sectors, and with mandatory and significant participation of representatives of people who use drugs and their family members. The Government shall make proposals for the composition of the expert body, along with the procedure for the appointment and replacement of experts, rights, duties, and the procedure for budgetary and other funding of the expert body, which shall then be approved by the expert body.

CHAPTER 2

Rules for Formulating National Lists



ARTICLE 5.

National Lists of Narcotic Drugs and Psychotropic Substances

1. The Government shall ensure the inclusion of narcotic drugs and psychotropic substances, in a unified list according to the schedules and tables corresponding to the *Single Convention on Narcotic Drugs of 1961* as amended by the *1972 Protocol*, the *Convention on Psychotropic Substances of 1971* and the *UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988*.
2. Creating new schedules and tables including new substances not listed in international conventions, or modifying schedules and tables provided in international conventions, in such a way that criminal penalties for violations of regulatory and control measures regarding such substances are applied, is prohibited.

CHAPTER 3

Application of Measures of Regulation and Control Regarding the Demand and Supply of Narcotic Drugs and Psychotropic Substances



ARTICLE 6.

Measures Regarding the Demand and Use of Narcotic Drugs and Psychotropic Substances

1. Any action related to the demand for and use of narcotic drugs and psychotropic substances (manufacturing, acquisition, storage, transportation, transmission, dispatch) may be subject to measures of regulation, restriction, and control, which must not be punitive.
2. The link to use shall be established based on the intent of the individual, whose actions are subject to assessment to determine the application of legal measures.
3. Involuntary medical examination to assess intoxication resulting from the use of narcotic drugs and psychotropic substances is permitted only for operators of dangerous machinery or for workers responsible for the safety of other individuals, animals, plants, or the environment.
4. Medical confidentiality in the implementation of measures regarding the demand for and use of narcotic drugs and psychotropic substances takes precedence over other interests of the individual, family, society, or state. Medical institutions may disclose patient health data only in response to a court order.

ARTICLE 7.

Measures Regarding the Supply and Commercial Distribution of Narcotic Drugs and Psychotropic Substances

1. Actions related to the commercial distribution of narcotic drugs and psychotropic substances may be subject to measures of regulation, restriction, prohibition, and control, including administrative or criminal measures.
2. Commercial distribution shall be understood as the deliberate commission of two or more acts of illegal dissemination of narcotic drugs or psychotropic substances aimed at systematic profit-making not related to the necessity of financing an ordinary person's everyday needs for food, housing, medications, and similar household needs, or financing an individual's dependence on narcotic drugs or psychotropic substances.
3. Criminal measures shall not apply to acts related to narcotic drugs or psychotropic substances, in quantities equal to or less than ten-day supplies if the intent of commercial distribution for systematic profit-making is not proven beyond a reasonable doubt.
4. The size of the daily dose shall be determined based on the individual declaring the purpose of use, considering the purity of the seized substance and the tolerance of this individual to this substance, which shall be based on the assessments by medical and chemical experts.

ARTICLE 8.

Prohibition of Police Provocation

1. A guilty verdict cannot be based on evidence obtained as a result of police provocation. To prevent police provocation during controlled purchases, sting operations, or other covert investigative actions, law enforcement officers or other individuals acting on instructions from law enforcement agencies must primarily conduct investigations in a passive manner, without influencing or provoking the suspect to commit an offence that could not otherwise have been committed.
2. In determining whether the investigation was primarily conducted without police provocation, the court shall consider the standards of international treaty bodies and mechanisms of the United Nations on human rights and examine the reasons for conducting the covert investigation and the behaviour of the law enforcement agencies conducting it. This examination shall include a mandatory assessment of evidence regarding the suspect's involvement in commercial distribution or propensity for such activity. Previous convictions shall not on their own be taken as a predisposition to commit a crime.
3. When there are indications that law enforcement agencies initiated contact with the suspect without any evidence that the suspect was involved in or about to be involved in commercial distribution, the court must either consider a defence motion regarding police provocation or independently verify the evidence collected by the prosecution. This includes instances where the suspect initially refused to sell narcotic drugs or psychotropic substances to law enforcement, yet law enforcement persistently solicited the purchase, or where there was insistent incitement by offering an above-average price for the requested substance or appealing to the suspect's sympathy by mentioning symptoms of drug withdrawal or other circumstances evoking pity.
4. The decision to initiate a controlled purchase or sting operation is made by the head of the law enforcement body responsible for conducting the covert investigation and must be approved by the prosecutor.

CHAPTER 4

Ensuring Accessibility of Narcotic Drugs and Psychotropic Substances for Medical and Scientific Purposes



ARTICLE 9.

Obligation to Ensure Accessibility of Narcotic Drugs and Psychotropic Substances for Medical and Scientific Purposes

1. The Government must ensure the accessibility of narcotic drugs and psychotropic substances for medical and scientific purposes.
2. The establishment of reasonable measures for the regulation, and control of narcotic drugs and psychotropic substances for medical and scientific purposes shall be done in consultation and agreement with national and provincial professional bodies of medical and scientific workers.
3. The experimental use of narcotic drugs and psychotropic substances for medical and scientific purposes by individual medical or scientific workers is permitted. This shall only be done with the approval of the relevant provincial professional body of medical or scientific workers and notification of the relevant health authority and science management authority before, during, and upon completion of the experiment. Participants must also be compensated in case of harm to their life or health.
4. The responsible use of narcotic drugs and psychotropic substances for medical and scientific purposes by individual medical or scientific workers is permitted if such use replicates a similar successful application abroad, and the specialty, work experience, and license of the responsible medical or scientific worker, and the presence of risk insurance in the event of negative consequences ensure reasonable mitigation of the risks, taking into account the anticipated benefit of responsible use for the interests of the individual, family, society, and state.

CHAPTER 5

Regulation of the Production and Use of Narcotic Drugs and Psychotropic Substances for Recreational Purposes



ARTICLE 10.

Non-commercial Unions of Consumers of Narcotic Drugs and Psychotropic Substances

1. To ensure lawful, safe, controlled, non-commercial access to narcotic drugs and psychotropic substances, the municipal council has the right to establish a local non-commercial union of consumers of narcotic drugs and psychotropic substances. Upon a written reasonable request, which includes justifications for its necessity, from at least five residents, the municipal council must establish such a union.
2. Non-commercial unions of consumers of narcotic drugs and psychotropic substances are membership-based organizations. At least 80% of the union's members must reside in the municipality where the union is established. The constitution of the union, the procedure for admission to and expulsion from the union, and rules regarding members' access to narcotic drugs and psychotropic substances shall be developed and approved by the union with the participation of local representatives of the medical psychiatric profession and local law enforcement agencies. The municipal council, in consultation with the local union, may adopt binding rules and restrictions, including financial and tax incentives, safety regulations, and requirements for informing residents of the municipality about harm reduction measures.
3. Once requested by the union, the municipal council shall approve the union's acquisition of narcotic drugs or psychotropic substances and their acquisition or cultivation of plants containing narcotic drugs or psychotropic substances. With this approval, the union can acquire narcotic drugs or psychotropic substances from organizations that produce them for medical purposes or can cultivate plants containing narcotic drugs or psychotropic substances. Such organizations cannot refuse the union's purchase if reasonable compensation is provided, which cannot exceed the price paid by buyers of similar substances and plants for medical purposes. The union may be authorized to cultivate plants containing narcotic drugs or psychotropic substances if there is no substantial increase, over 30%, in the natural content of narcotic drugs or psychotropic substances in the plant during cultivation.
4. Non-commercial unions of consumers of narcotic drugs and psychotropic substances have the right to collect compensation from their members for providing access to narcotic drugs and psychotropic substances, provided that all money received is used solely for the implementation of the purposes provided for by this law.
5. Upon agreement with the representative municipal councils, unions may provide temporary access of up to 12 months, to narcotic drugs and psychotropic substances for permanent members of the unions from other municipal entities, under the same conditions as for their permanent members.

ARTICLE 11.

Establishment of Producers of Narcotic Drugs and Psychotropic Substances for Recreational Use

1. The Government shall establish and regulate the activities of a state-owned enterprise for the production of narcotic drugs and psychotropic substances for recreational use upon a request that includes justifications from municipal councils. These municipal councils must represent a total population of not less than 2% of the country's population and include non-commercial unions of consumers of narcotic drugs for at least three years.
2. The state-owned enterprise shall produce any narcotic drugs or psychotropic substances solely to provide the same to unions authorized to acquire them. Upon the Government's order, the state-owned enterprise may also produce products for medical or scientific purposes.
3. The state-owned enterprise has the right to charge unions a reasonable fee for the narcotic drugs and psychotropic substances acquired within the framework of the unions' authorization. The profit of the state-owned enterprise may only be used to ensure lawful, safe, controlled, non-commercial access to narcotic drugs and psychotropic substances for people who use drugs.

CHAPTER 6

Prevention and Reduction of Harm from Problematic Use of Narcotic Drugs and Psychotropic Substances



ARTICLE 12.

Prevention Principles

1. Prevention of problematic use of narcotic drugs and psychotropic substances shall be led by municipal councils with the financial and scientific support of the Government.
2. Authorities must trust well-informed individuals and their community to make decisions about whether or not to use narcotic drugs and psychotropic substances and prevention measures must be designed with this trust in mind.
3. Authorities must ensure that accurate information on the positive and negative properties of narcotic drugs and psychotropic substances, and the possible consequences of using them, is available. Municipal councils shall engage local non-commercial unions of consumers of narcotic drugs and psychotropic substances to provide access to reliable information.
4. Authorities at all levels, in cooperation with unions, shall ensure that the format, content, and methods adopted to prevent and inform the public about the problematic use of narcotic drugs and psychotropic substances are free from stigma and discrimination, with maximum consideration for the interests of individuals, families, society, and the state.

ARTICLE 13.

Harm Reduction Measures

1. The Government shall create conditions for every individual who uses narcotic drugs and psychotropic substances to understand the possible consequences of their use and to be able to mitigate the potentially harmful effects of use.
2. To reduce the risks of HIV transmission and viral hepatitis among people who use narcotic drugs and psychotropic substances, the Government shall provide opportunities and support to municipal authorities to create and finance harm reduction services, including access to sterile drug-use equipment, condoms, pre- and post-exposure prophylaxis for HIV, and other similar measures.
3. Law enforcement agencies and internal affairs bodies, in cooperation with health authorities, shall ensure access to harm reduction services in places of detention and places of confinement, including needle and syringe distribution services and opioid agonist therapy, as well as the provision of qualified psychiatric assistance to individuals experiencing problematic stimulant use.
4. To protect against discrimination, the Government, in coordination with bar associations and legal aid organizations, shall create conditions for people who use narcotic drugs and psychotropic substances to access free legal advice and assistance.

ARTICLE 14.

Treatment and Rehabilitation of Persons Dependent on Narcotic Drugs and Psychotropic Substances

1. The type and duration of treatment and rehabilitation for people with drug dependency shall be determined by the best interests of the patient and with their informed consent. Treatment and rehabilitation must be determined by a qualified medical professional in consultation with professionals providing long-term socio-medical rehabilitation.
2. The methods of treatment and rehabilitation must respect the dignity of the patient and enable the patient to develop and maintain socially acceptable skills, allowing them the best possible chance of adapting to life in society. Complete abstinence from narcotic drugs and psychotropic substances is not a mandatory goal of treatment and rehabilitation, nor is it a condition for continuing treatment in the case of substitution therapy.
3. Health authorities, in consultation with relevant independent professional medical organizations and unions of people who use drugs, shall ensure that treatment and rehabilitation protocols adhere to scientific approaches, norms, and human rights principles. They shall also monitor compliance with human rights in treatment, including in residential and institutional programs.
4. A medical or psychiatric professional may, with the patient's consent, prescribe a method of treatment and rehabilitation, including with the use of narcotic drugs and psychotropic substances, in the absence of the corresponding treatment protocol. With each such prescription, the medical worker shall arrange life and health insurance for the patient and notify the local health authority, the local independent professional medical organization, and the local union of people who use drugs.

CHAPTER 7

Final Provisions



ARTICLE 15.

Ensuring the Uniform Application of this Law

1. This Law shall have direct effect. If existing laws establish conflicting rules, the rules of this Law shall apply.
2. To ensure the uniform application of this Law, within six months from its date of entry into force, the Government shall submit to Parliament a draft law amending the relevant regulations to bring them into line with the provisions of this Law.

ARTICLE 16.

Oversight of the Implementation of this Law

Oversight of the implementation of this Law shall be carried out by the Prosecutor General and subordinate prosecutors.



1240 Bay Street, Suite 600
Toronto, ON M5R 2A7
Phone: +1 416-595-1666

hivlegalnetwork.ca