



REFORMS TO THE GENERAL HEALTH ACT, THE FEDERAL PENAL CODE, AND THE FEDERAL CODE OF CRIMINAL PROCEDURES

On August 20th, 2009, the initiative to reform the General Health Act, the Federal Penal Code and the Federal Code of Criminal Procedures, was published in the Mexican Official Gazette. This initiative was presented to Congress on September 30th, 2008, by President Felipe Calderón and entered into force on August 21st. 2009

The objectives of these reforms are: to modernize and improve legal instruments to fight small-scale drug dealing; to increase the involvement and coordination with state and local law enforcement agencies in drug-related offenses; and to strengthen penalties and establish nationwide parameters for minimum quantities per user.

The new provisions not only consider the criminal aspects of the problem, but also demand reduction and public health issues and seek to differentiate between criminals and those who are victims or addicts.

These reforms:

- ❖ Grant law enforcement nationwide with additional legal tools to fight drug-trafficking, by punishing the following actions: sale, distribution, supply and possession of drugs with the intent of selling or distributing.
- ❖ Allow the Federal Government to share responsibility with State and Local law enforcement agencies to specifically prosecute retail drug dealing (“narcomenudeo”), a task that previously was the sole responsibility of federal authorities.

- ❖ Allow State and local authorities to assist federal officials in the fight against drug-trafficking by focusing their efforts on street dealers.
- ❖ Mandate the Ministry of Health to develop a national program for the prevention and treatment of drug consumption and addiction, which will be implemented in coordination with state and local health institutions.

Currently, the possession of small amounts of drugs for personal use is not punished with jail for first-time offenders. Therefore, the reforms clearly define what a “small amount” of drugs is in order to apply the same standard nationwide, which is of the utmost importance if state and local authorities are to be responsible for fighting retail drug dealing.

Maximum Dosage for Personal Consumption

DRUG	MAXIMUM AMOUNT
Opium	2 gr.
Heroin	50 mg.
Marijuana	5 gr.
Cocaine	500 mg.
LSD	.015 mg.
MDA	40 mg.
MDMA	40 mg.
Methamphetamine	40 mg.

These new provisions stiffen penalties for small-scale drug dealers. They call for prison terms of 4 to 8 years for those who sell or deal the drugs considered in this initiative. If the “victim” is a minor or cannot fully



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comprehend the consequences of his actions, the penalty increases to 7 to 15 years in jail. These penalties will be doubled under the following circumstances:

- o When the crime is committed by law enforcement officials or judges.
- o When a crime is committed in educational, support, police, or detention centers, or within 300 meters of these facilities.
- o When the crime is carried out by health sector professionals, technical assistants, or other staff.

A penalty of 3 to 6 years in jail is set for individuals who possess, with the intent of selling or dealing, any drugs considered in this initiative. It also considers a penalty of anywhere from 10 months to 3 years in prison for those possessing drugs in lower quantities than those in the table multiplied by one thousand, without the intent of selling or dealing them.

No penal action will result for those in possession of medications containing any of the drugs included in this initiative, especially if the amount is considered to be for personal treatment.

The Federal Prosecutor will not pursue legal action against anyone possessing, strictly for their personal use and outside the facilities mentioned above, drugs considered in this Initiative in quantities equal or lower than established. The Federal Prosecutor will provide information of the nearest drug prevention and treatment centers.

It is important to underscore five key issues regarding these reforms:

- a) The trafficking of any type of drugs, regardless of the amount, will continue to be a crime punishable with up to 25 years of jail under Mexican law.
- b) Possession of any other drug not considered in these reforms, will face criminal charges.
- c) In any case, individuals found in possession of "small amount" of drugs, will be presented before the local prosecutor, who will determine if such possession was intended for personal consumption or trafficking and distribution. In the former, the individual will be released and his/her file sent to the proper health authority.
- d) These reforms do not legalize drugs or their consumption, but rather establish objective criteria regarding specific quantities of drugs to provide a clear definition of retail drug-dealing. It seeks to eradicate the corruption entailed with the free interpretation of what constitutes "retail drug-dealing" and strengthens penalties in applicable situations.
- e) These reforms seek to focus law enforcement actions against retail drug dealers and distributors who are poisoning Mexican society, especially youth, instead of on small amount users or addicts.

State and local legislatures will have one year after the entry into force of these reforms, to adapt corresponding legislation and federal, state and local entities will have up to three years to take necessary action for its implementation.