



# PACK

>> IN THE POCKET <<



WHAT TO EXPECT IF  
YOU GET CAUGHT WITH  
A SMALL AMOUNT  
OF DRUGS?



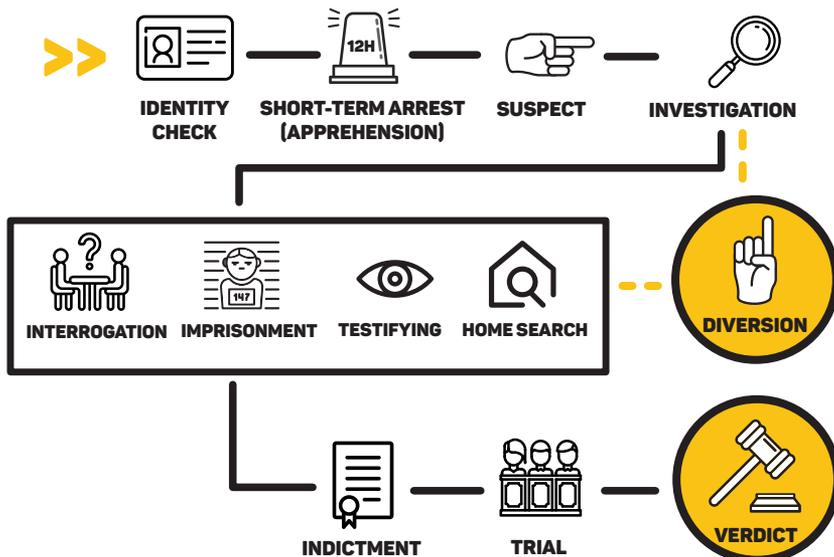
In Hungary, the possession and consumption of illegal substances (in legal terms: “drugs”) is prohibited by law, therefore the act of committing an offense or merely suspicion entails criminal proceedings. However, the end result of this – that is, whether you get a penalty, and if so, what kind and how much – depends largely on what decisions you make during the process.

With our publication, we want to help you learn about the proceedings that can be initiated in the case of illegal possession and consumption of small amounts of drugs. Our goal is that if you find yourself in a similar situation, you can get the best possible outcome for you through making the right decisions.

## WHAT ARE THE STEPS IN DRUG POSSESSION PROCEEDINGS?

Let’s say you’re attending a party when all of a sudden, the lights go on and police swarm the venue. You remember that 2 grams of marijuana are lurking in your pocket when a police officer steps in front of you and introduces themselves.

This is just one of many possible scenarios, after which you will have to consider the initiation of criminal proceedings against you. In the headings below, we will walk you through the course of action you can expect, and will detail each point in the following sections.



## IDENTITY CHECK

The primary element of the identity check is identification of the person, which you can do with an identity card, driving license or passport, and you will be asked for your certificate of domicile. If you can’t prove your identity, it is an offense itself that may be subject to a fine.

After the greeting, the acting police officer announces the purpose of the identity check. The police officer must also identify themselves with their name, identification number and service card. A search of your clothing, luggage, or possibly your vehicle may be considered if the police suspect you have committed a crime and want to gather proof of evidence. But all this is possible also if they want to prevent an “act threatening public safety”. The latter is often used to justify raids of nightclubs, where the aim is to prevent the consumption and distribution of drugs and to catch the perpetrators. If, according to a public report, drugs are consumed in one place, the police are used to screening the entire clientele of the nightclub as part of the raid.

The National Chief of Police may also order increased inspections at the national level, which may be continuously extended. This is how it happened that the increased control ordered due to the wave of refugees in September 2015 lasted until 1 July 2018. Meanwhile, in a strict sense, anyone can be searched - meaning a police officer can search clothing, luggage and vehicle. Increased control is a jolly joker in the hands of the police: the police officer taking action can unpack your pockets at any time, searching for drugs, even if there is no strong suspicion against you.

## WHAT ARE YOUR RIGHTS AND OBLIGATIONS DURING THE IDENTITY CHECK?

You have the right to know the reason for the identity check, which the police officer can only refuse in the interests of public safety. However, it is possible that the police officer taking action will only refer to the increased inspection mentioned earlier, which will get you no further. It is similar to a “simple suspicion” when the police refer to information obtained that justifies an identity check. And this information won’t necessarily be shared with you.

Thus, in the event of increased inspection or suspicion of a crime, the police officer in charge may inspect your clothing, luggage, and vehicle, but may not undress you or perform a body cavity inspection! Examination of the body cavity may take place only in prison and only in certain justified cases. The examination may not be obscene, must be performed by a doctor, and no person of the opposite sex can be present.

You must cooperate during the identity check process. With resistance, you only worsen your situation, as it can be a reason for short-term arrest. Accordingly, you need to prove your identity as you may be under arrest while the establishment is pending. You must also cooperate in the examination of your belongings and hand over the drugs or equipment necessary for their use.



## SHORT-TERM ARREST (APPREHENSION)

If a drug suspected substance has been found during your identity check or any other crime has been potentially committed, you can be taken to the police station and officially taken under short-term arrest. In case of being caught in the act, it may occur that first a house search is executed and then the short term arrest follows. You can prepare for a

### **MAXIMUM 12-HOUR STRETCH AT THE POLICE STATION,**

with many hours of waiting. During this time, your personal data, the legal basis and reason for the measures, the date of the arrest and release, the use of coercive measures, their duration and manner will be recorded on a print form. Urine testing may be done during short-term arrest. You have the right to refuse this, but a blood test will be performed instead. Because drug breakdown products can be detected in the blood for a shorter period of time, there is a greater chance of a negative drug test from blood sampling. Catheterisation can only be justified in exceptional cases! If you are required to do so, please contact the HCLU Legal Aid Service at one of our contact details.

During short-term arrest, you better not talk to others under short-term arrest about your case because the police may use this information against your case or others under short-term arrest may testify against you in hope of a more positive outcome.

You may be asked to testify during short-term arrest. See the next section for more information.



## INTERROGATION

*WHAT SHOULD I SAY AT THE INTERROGATION AND  
WHAT SHOULD I REFRAIN FROM?*

During the investigative phase of criminal proceedings, when the investigating authority tries to find out about the circumstances of the crime and gather evidence, you may be called for interrogation several times, but you may also be asked to testify during short-term arrest. It is important to know whether you were summoned as a witness or suspect, as your rights and obligations are different in one situation or another. If you are not sure about it, ask! It may also be that you are summoned as a witness and become a suspect based on your confession.

### **AS A SUSPECT, YOU ARE NOT OBLIGED TO TESTIFY.**

This means that you do not have to answer questions if you do not want to speak. Moreover, in some cases, you may even make a false statement since you cannot be obliged to testify against yourself or a close relative. With a false story, however, you often complicate your own situation, especially when you say conflicting information. If you choose to testify, you may want to do so in the presence of your attorney, who will provide advice and ensure that the testimony is conducted within a legal framework. Keep in mind that in your story you cannot falsely accuse a specific person of a crime, for that is a false accusation, which is a crime. So, if you try to accuse your neighbour of

the marijuana found on you and the truth turns out differently, you will already be suspected of two crimes. It is usually most practical to refuse to testify, because that way you are certainly not saying anything that can be turned against you. Refusing to testify is not final: you can choose to testify at any time later. You may need to acknowledge the use or possession of a small amount of drugs if you want to take advantage of diversion, which will be discussed later. In the case of a drug case involving a small amount, your punishment can be reduced indefinitely by revealing your source. This means that if you reveal who you got the drug from, they can waive the penalty in exchange for the information. In fact, it may even mean that you can even be exempted from diversion, but we don't know of any such cases, so don't have high expectations of revealing others. If summoned as a suspect, you may be required to give urine and blood samples.

### **AS A WITNESS, YOU CANNOT REFUSE TO TESTIFY.**

So, if you get notice of a subpoena, you have to go to the police and answer the questions asked. As a witness, you are obliged to tell the truth, that is, - unlike the suspect - you cannot tell untruths. To do so would be to commit the crime of perjury. However, as a witness, they may not oblige you to testify against yourself or your immediate relatives, nor may they oblige you to give urine or blood samples.

If you have not yet reached the age of 18, your parents or legal representatives will be notified of the initiation of criminal proceedings, may be present at your interrogation and will be required to be heard as a witness during the investigation.



## BEING A SUSPECT

If you have been apprehended, the drug suspected substance found on you has been sent for examination and a urine or blood sample has been taken from you, you have become a suspect.

### **ON YOUR FIRST INTERROGATION, YOU WILL BE INFORMED OF WHAT CRIME YOU ARE BEING CHARGED WITH,**

but the evidence will not be presented yet as it could interfere with the investigation. If you choose not to participate in or do not complete the diversion within the given time, the evidence and confessions gathered so far will determine what charges are brought against you.

### **COURT APPOINTED OR PRIVATELY ASSIGNED ATTORNEY**

In cases where the crime could lead to up to 5 years in prison, the authorities are obliged to assign a public defender for your legal defense. Possessing drugs exceeding small amounts can be punished between 1 to 5 years of imprisonment, and if you are suspected of this, you will be assigned a public defender who you can contact at the beginning of the procedure - you will find their contact information in the decision assigning the defender. It's recommended you take the initiative and reach out to them, as it's unlikely the defender will contact you about how they can help.

It's important to know that you yourself can authorise a defender in your case. If you are not a minor, you have three days after the statement of reasonable suspicion to authorise a defender. If you do not do this, the defender will be assigned by the authorities. If you are a minor, the authorities will assign a defender at the time of the statement of the reasonable suspicion. If you were to authorise someone with your defense, it's probably best to choose a lawyer, but any relative of yours over 18 – parent, guardian, sibling – can become your authorised defense counsel too. As a minor, you can only be interrogated as a suspect if your authorised attorney or public defender has been notified.



## POLICE BOOKING

AM I GOING TO PRISON?

The process known as “booking in” can be expected if you are suspected of a crime and as such criminal proceedings are initiated. During the booking, the police take a photo of you, take your finger- and palm prints, which will enter the criminal records and will stay there until the criminal proceedings are closed.

**BOOKING IN ONLY MEANS RECORDING INFORMATION.  
ONCE THIS IS DONE, YOU ARE FREE TO LEAVE.**



## INVESTIGATION

During the investigation, they will try to prove the charges brought against you with confessions and evidence. During this period, the police can use actions such as short-term arrest or home searches, but these can happen after being caught in the act. If the police suspect that you are not just consuming, but distributing drugs, you can expect your phone to be confiscated and being asked for the code necessary to open it. If you refuse to disclose the code, they will try to convince you that they will use specialists to open your phone, the fee of which will be billed to you under criminal expenses. Don't fall for this trick: both the Android and iPhone operating systems are almost unbreakable - if you yourself don't open the phone and you use a strong password, nobody will be able to open it. As the calls and messages on the phone can determine the set of possible witnesses or additional suspects, it's probably useful to delete any content which could be interpreted as “suspicious”.

**AS A RESULT OF THE INVESTIGATION, THE CHARGES AGAINST YOU  
MIGHT BE DROPPED, BUT IN CASE OF FURTHER EVIDENCE BEING  
FOUND, A MORE SERIOUS CHARGE IS POSSIBLE.**

For example, if you are suspected of owning a small amount of drugs, but during the home search they find objects indicating drug trade - for example scales precise to a milligram or zip lock bags - the suspicion of drug distribution might arise. If the charges change, you will be notified of this on the first hearing after the change. If the suspicion of distribution is found to be true, you cannot choose diversion – even if only small amounts were found in your possession. The confiscated substances will also be analysed during the investigation, determining their active content.

Section 461 of the Criminal Code contains what constitutes a small amount for certain drugs. Let's look at this in the case of a few better-known drugs:

|                          |  |
|--------------------------|--|
| <b>THC</b>               | – 6 grams<br>(including THCA in acidic form,<br>so-called “total THC”) |
| <b>LSD</b>               | – 0,001 grams  |
| <b>AMPHETAMINE</b>       | ] 0,5 grams  |
| <b>METAMPHETAMINE</b>    |  |
| <b>MDPV</b>              |  |
| <b>ALPHA-PVP</b>         |  |
| <b>HEROIN</b>            | – 0,6 grams  |
| <b>MDMA AND KETAMINE</b> | – 1 grams  |
| <b>KOKAIN</b>            | – 2 grams  |

active content is considered the upper limit of what is a small amount.

It's important to note that these amounts refer to the net active substance content, not the total amount of drugs you have on you. For example: you are allowed to possess 50 grams of cannabis with a total THC content of 12%, because it still doesn't exceed the 6-gram upper limit of a small amount. Similarly: with amphetamine, the upper limit of 0.5 grams of active substance is exceeded by 5 grams of 10% pure street quality “speed”.

Exact amounts like the above are only specified for a few dozen drugs. Other drugs are considered to be in small amounts if their active substance content “doesn't exceed 7 times the unaccustomed consumer's average effective dose”, which is trying to define the weekly dose of an average user. What exactly this amount is going to be will be determined by an expert.

**ATTENTION!** The situation is different in the case of so-called new psychoactive substances. These are not listed in the Criminal Code, but on the appendices listing substances in the Govt. Decree No. 66/2021, the EMMI Decree No. 55/2014, and the Act XCV of 2005 on Medicinal Products for Human Use. If you are found with a small amount of one of these substances – where the active content is maximum 2 grams – that does not count as a criminal offence, but as a misdemeanour. In this case there will be no criminal case, only a fine or public work which can be given as a result of a misdemeanour. If laboratory testing indicates that the substance found on you belongs to this group and the active content is not greater than 2 grams, as you will not be criminally charged, you won't be able to use diversion. The list of new psychoactive substances can be found in the EMMI Decree No. 55/2014, which is updated in response to developments. Take into consideration that most new psychoactive substances are not named in the appendix of the decree, but will be identified by their chemical structure, being put on the block list by a so-called generic regulation.

During the investigation you won't have access to every record and evidence gathered in your case, only if you will actually be charged later. However, at any time you can get to know the records from any event where you have been present or could have been present. You can also look at the expert's reports related to your case.



## DIVERSION

THE POSSIBILITY OF SUSPENDING THE PROCEEDING

Diversion is a service offered in place of punishment, the goal of which is reducing or completely stopping the use of substances.

### **AFTER YOU COMPLETE THE REQUIRED PROGRAMME, THE CRIMINAL PROCEEDINGS ARE CLOSED, AND YOU BECOME EXEMPT FROM PUNISHMENT.**

You are eligible for diversion if:

- you are being accused of possessing or consuming a small amount of drugs and
- you confess to committing the crime and
- you have not been involved in any drug-related cases in the past two years.

When confessing, it is recommended to confess to the minimum amount of activity. For example, don't say more than "I confess that the 2 grams of cannabis found in my pockets were my property" You do not have to disclose the circumstances of the purchase or of the consumption to be entitled to diversion.

There are 3 forms of diversion officially, which can be undertaken based on the severity of the substance use:

- "treatment curing drug addiction";
- "other treatment treating drug use"; and
- "preemptive-educative service".

Which of these services will be used will be determined by a preliminary check conducted by the designated health institutions. In cases with small amounts of substance, the preemptive-educative service is usually used, which most often consists of personal casework and group sessions. Diversion is paid for by the state, so this programme is free of charge for you.

However, even after successfully completing diversion, you may be charged with the fees of the legal expert inquiry, called criminal expenses. In this case you can file a complaint against the decision of the public prosecution in 8 days. In the complaint you can reference dire financial circumstances, unemployment or any situation requiring special consideration which can justify being exempt from paying the fees. It helps to get the complaint approved if you mention these circumstances in your confession and you submit all supporting documents together with the complaint.

If your complaint gets rejected, the National Tax and Customs Office will send a separate notice for the payment of the criminal expenses. If you delay the payment after this, consider that the final sum will be increased by the enforcement cost and the fee for late payment.

You can find additional information and the forms required for the complaint here: <https://ellataskereso.hu/>. (only in Hungarian).

To start the diversion, you will have to choose an institution where you will use

the service. The police will inform you about the list of institutions, but you can also find it here: <https://ellataskereso.hu/>.

When you start diversion, the institute facilitating diversion will send confirmation to the police that you have started the programme there. As a result, the criminal case will be suspended (by either the prosecutor or the judge, depending on which phase of the process you are at) After you start to use this service, you have a year to participate in a six-month-long continuous therapy, which usually means 2-hour sessions every other week, but in some cases, you can choose 4-hour sessions every four weeks. If more than 30 days pass without a session, the diversion becomes invalid and you have to start again.

Completion of the diversion programme will be certified by the institution to the police or the public prosecutor, and as a result the criminal proceedings against you will be terminated. But even in this case there are consequences, as if you will have another drug case in the next two years, you won't be able to choose diversion again and can expect to receive one of the judgments detailed later.



## TESTIFYING

During the investigation, the police may also contact witnesses who can provide information about the circumstances of the case and the exact course of the case. This means that the police can look at your phone's call list and message exchanges to find witnesses or suspects.

### **SEVERAL CONSISTENT TESTIMONIES MAY REINFORCE THE SUSPICION AGAINST YOU.**

From the prosecutor's indictment, you can also find out who the witnesses are in your case, and you also have the opportunity to initiate the summoning of witnesses. If the prosecution does not comply with your initiative, you can ask a court to decide about their hearing.

### **EXPERT OPINIONS**

By default, a forensic chemist will look at two things regarding the drug suspected substance seized from you:

1. whether it contains an illegal substance and, if so, in what quantity or concentration
2. if it may be of common origin with substances seized from different persons

From the former, it can be ascertained whether the seized substance contained an illegal substance of any kind: what was seized from you may not even be considered a drug, or its possession may be a misdemeanour. At the same time, if the substance is illegal, what quantity it qualifies according to the law [minor, incidental, significant, or particularly significant]. And whether it may be of common origin with substances seized from other individuals, i.e., whether a similar substance has been found in another, may be important in exploring distribution networks.

The forensic toxicologist has two months to issue the opinion. It reports on the exact active substance content of the seized substance and which drug breakdown products can be detected and in what quantities from 'biological body fluids' (urine and / or blood samples). Tests can usually only detect the use of a group of drugs and false positive and negative results are not uncommon.

The evaluation of seized substances and biological body fluids forms the basis for the quantitative parts of the charge – that is, how many drugs you owned and what illegal drugs you used. (You can find for example information on the discharge time of some drugs from blood and urine here: [tinyurl.com/kabszerkimutatas](http://tinyurl.com/kabszerkimutatas)).



## HOME SEARCH

A house search can be conducted if the police deem it important for a successful investigation. It is common for house searches to be carried out even if you have a small amount of drugs to find additional drugs or traces of distribution. House searches are usually done with you present as a suspect. Rarely, though, it also happens that they go to your house at the same time as your short-term arrest. In such cases, the police refer to an urgent investigative act, as they do not need a decision authorising the house search. During the house search, the police will normally go to your registered address. You can let them know that your registered and actual home address are different – for example, if you registered with your parents but you are actually living in a rented flat. However, this is not a guarantee that the police will not conduct a house search on your registered address.

If the incoming police would like to conduct a house search at your house, ask them to show you their police ID and their search warrant. This will ensure that the procedure is lawful.

### **YOU MAY WANT TO COOPERATE WITH THE POLICE DURING THE HOUSE SEARCH, AS YOU MAY BE FINED FOR OBSTRUCTING THE INVESTIGATION.**

However, this does not mean that you should make a self-incriminating confession. If you are asked a question that is about the crime, or if you are unsure of the answer, the best answer is "I don't know".

A record is made of the house search. Read this thoroughly before signing and indicate if something does not match the reality. Later, it will be difficult to amend the points in the record and the claims attributed to you.

## PRE-TRIAL DETENTION

To be clear at the beginning: It is unlikely that you should count on a pre-trial detention due to the possession of a slight amount of drugs. This usually occurs in severe cases, for example, in a regular distribution of large amounts of drugs. However, they may order your pre-trial detention if the police find that you will commit similar crimes in the future, you will obstruct the investigation, you will escape from the investigating authority or you will try to affect the witnesses.

Pre-trial detention must be carried out at a penitentiary institute. During this

time, you can contact your lawyer. Pre-trial detention before submitting an indictment may last up to 30 days, which may be extended by the investigative judge for a maximum of 90 days. In total, the pre-trial detention may take up to 1 year from the order. However, this is still no guarantee of release, as the court may extend the detention, up to 60 days each occasion.

## HOUSE ARREST AND HOME DETENTION

House arrest is an alternative to pre-trial detention. It can be ordered if the objectives of the pre-trial detention can still be reached with regard to your personal and family circumstances such as your health or your behaviour during the procedure. Reflecting its name, you are waiting for the investigation and prosecution in your home instead of a penitentiary institute. In this case, you can leave your home only for a specified time for the purpose set by the court, typically for the purpose of providing needs or treatment. They can check your movements with a tracker.

An even lighter form of limitation is home detention. In practice, it means that you have to check in at the police station for the purpose of verification. They can see that you did not leave the designated area or district (typically the city where you live) from this. In this case, the police may also order the application of a tracker.



## INDICTMENT AND TRIAL

After the investigation is completed, the entire investigative material is presented to your lawyer. At this time, you can first read all the documents and evidence underlying the prosecution to prepare for the next stage of the procedure.

With the closure of the investigation, the case is placed from the investigative authority to the prosecutor's office, which will decide whether to hand down an indictment or eliminate the investigation. By making an official accusation, the matter enters the court section. This is followed by the trial, on which the court will take the final judgment.

### **CRIMINAL PROCEEDINGS CONCLUDE WITH THE FINAL JUDICIAL DECISION, WHICH IS FOLLOWED BY THE EXECUTION OF THE PUNISHMENT.**

You also have the opportunity to negotiate with your lawyer and it is strongly recommended to develop a common strategy for your protection. We recommend that your lawyer should be actively involved in court negotiations and to protect you. The court may hear witnesses and experts whose confessions serve as important proof. In addition, the final judgment is influenced by the expert's report of the investigation, the tangible evidence, and your confession, which can be supplemented by the court stage.

You do not have to participate in the trial, but you must be present at the judgment. You can comment about the facts they said at the trial. You can doubt the evidence against you, and you can present your own evidence. You can suggest to hear a new expert's opinion or to hear new witnesses, which will be decided by the court.



## JUDGMENT

At the end of the trial, the court makes one of the following decisions:

- it imposes a fine, communal work or imprisonment;
- it puts you on probation or gives you a reprimand;
- it releases you, it states your innocence;
- it eliminates the procedure, i.e., it does not disclose a condemnation or relief decision.

The penalty can be imprisonment, communal work or a fine. With the possession of a small amount of drugs,

**THE MOST COMMON JUDGMENT (BETWEEN 2014 AND 2018) IS A WORKING PENALTY BETWEEN 60 AND 120 HOURS OF COMMUNITY WORK AND A FINE BETWEEN 80,000 AND 200,000 HUF, WHICH CAN BE SUPPLEMENTED BY THE CRIMINAL EXPENSES BETWEEN 50,000 AND 200,000 HUF.**

This large deviation is due to significant variations of the stringency of different courts. If several types of materials have been involved, their one-time test will increase the criminal expenses, which may affect the amount of the fine. What can also affect the amount of penalty is your willingness of cooperation and the protection provided by your lawyer.

If you first have a case of a slight amount of drugs, then the imposition of imprisonment is extremely rare [The legal aid service of HCLU has not yet seen such judgment]. If you go to the court for a second time within two years with a drugs case, there is a chance of them imposing a suspended imprisonment, but this is also not typical. However, if you have been tried for a crime under the probation of suspended imprisonment, which is imposed to imprisonment, then the new penalty and suspended imprisonment should also be implemented.

Be cautious and don't put yourself at the risk of another criminal prosecution! If you still get in trouble due to a small amount of drugs and have further questions, feel free to reach out to us at the following contacts!



TÁRSASÁG A  
SZABADSÁGJOGOKÉRT

web: [tasz.hu](http://tasz.hu) | Tel: 061/209-00-46 | email: [jogsegely@tasz.hu](mailto:jogsegely@tasz.hu)

**DÁT2 PSYHELP**

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