



## **Know Your Rights**

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A South African guide to  
(NOT) being arrested...

This is written for you... The Dagga user, grower or trader. From the medical patient who depends on the plant for relief to the casual smoker. From the pensioner who has arthritis to the gardener, the musician, the mechanic, the student, the lawyer, the IT specialist. Many people from all walks of life are arrested in connection with Dagga every day in South Africa. Do not think that you are immune or invincible... it may be your turn next. Know your rights BEFORE this happens to you.

Possession of cannabis is illegal and punishable in terms of the Drugs and Drug Trafficking Act 140 of 1992. There are NO permits, medical certificates or cards, prescriptions or permissions of any kind available in SA.

# CHAPTER ONE: DON'T GET CAUGHT.

Not getting busted should be a very high priority in your life.

## **Rule No.1: Be alert when buying Dagga.**

Dagga is illegal. Buying the good plant is fraught with difficulty and danger. Dagga traders come in all types and, as with anything in life, there are good traders & bad traders. Avoid buying weed from a stranger in 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 have made your purchase. Some traders are in cahoots with the police in return for their immunity. This is their survival technique. There is no perfect recipe for avoiding this except to be alert before and after your purchase. 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 are 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 a chemical odour. This should go without saying for most Dagga connoisseurs but we know that unscrupulous traders sometimes lace the Dagga with addictive substances.

## **Rule No.2: Be discreet at all times.**

The war on drugs is intensifying in South Africa. There is no such thing as being too discreet. **Never EVER sms terms** like weed, skunk, pot, zol, dagga. That is just being silly. Be creative. Don't have pictures of your favourite plant on your phone. Be careful what you post on online social media networks and growing communities.

### **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. Do not leave your Dagga and smoking paraphernalia lying around, anywhere, at any time.

### **Rule No.4: Avoid smoking 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. Burning some incense is not the worst idea in the world.

Do not walk in the street smoking Dagga. Be very careful in public parks. Smoking in public is a fast route to being caught. Be aware of which way the wind blows. If you have red eyes and are going out in public, it is a good idea to use eye drops or wear sunglasses.

### **Rule No.5: Obey the rules of the road.**

Roadblocks are always going to be the bane of our lives. Hide it like your life depends on it. It is absolutely essential to have a valid driver's licence with you when you are driving. If you don't have a licence you will have a problem the person with a licence doesn't have. **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 SAP know what cannabis paraphernalia is, so smoking gear is best kept out of sight & well hidden. Do not keep smoked roaches within the car, they stink. Smoking and driving is not the best idea.

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 signed by the provincial commissioner (or his delegated authority). The authority has to state when and where the roadblock is to be and what the purpose is. You are entitled to see the authority for the roadblock at that time.

### **Rule No.6: Be polite to the police.**

Keep all interactions with the police to a minimum. You do not have a duty to interact with the police. Do not talk to them more than you absolutely have to. It does not matter what you think of the police as 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 growing or trading is VERY dangerous.**

If you are doing either of the above, DO NOT boast about it. You have to be more discreet than any other member of the Dagga community. Know that if you are caught you are in for a long, stressful and expensive battle. The potential punishments for possession and dealing are different. Dealing “includes performing any act in connection with the transshipment, importation, cultivation, collection, manufacture, supply, prescription, administration, sale, transmission or exportation of the drug”. Although it makes no sense, the law states that anything above 115g constitutes dealing. Being caught growing under lights means big trouble. The police will call this a “lab” and will immediately assume that you are part of an organised crime syndicate.

## **CHAPTER TWO: WHAT TO DO IF YOU ARE ARRESTED.**

You have obeyed all the rules in Chapter One 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**. Do not resist. Make it clear to the officer that you are 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 are informed that you have been arrested.**

Don't talk. If you have to talk, TELL THE TRUTH. Do not attempt to talk your way out of it in any way. 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 do not do this. This perpetuates a corrupt system and does our cause a great deal of harm.

The officer/s will take you to the nearest police station to be processed. Be sure to tell the police at this stage that you know your rights and add, politely, that you are not a criminal and intend to co-operate.

The Dagga must be weighed. This must be done in front of you. Sometimes this happens at the police station and sometimes they take you to a nearby shop that has a scale! Be very alert during this process but do not object to anything that is going down. The police may weigh your paraphernalia together with your weed. Take note of this for your court appearance. If it is just you and one officer present and you suspect any wrong doing in the weighing process, ask for another officer to be present.

Next you will be locked up in a cell. If you can, grab warm clothing because the cells are cold. If you have shoes without laces, take them. Try not to take any valuables with you but make sure that you & the police sign a detailed list of any items that the police confiscate from you.

At some stage, your fingerprints will be taken. Sometimes you will also have to press your thumb on the "Move 'n Tag" system.

\*\* If you have other warrants out for your arrest this is when the police will find out.

## **STEP 2: The interview process. Tell the truth.**

The only information you have to give to the police is your name and your home address. The police will then confirm that you live at that address. 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 will also help if the arrested person has given the same address. Nothing will happen until the police have confirmed the arrested person's address with the person waiting in the cells.

Your case will be assigned to an Investigating Officer. He will interview you. Apart from your name and address you have to tell him nothing. Anything you say may aggravate the case against you. Do not be fooled by subtle promises of lesser punishment or getting the court to be lenient.

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. Having an attorney's name and number available is a real bonus. The police will take you seriously if you call your attorney and you have his card. You are 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." If you do not have a lawyer, make sure that you have a trusted friend that you have arranged to contact in the event that you are arrested. Someone close to you has to know that you are there so they can provide backup on the outside.

### **STEP 3: Know your arrest paperwork.**

The following documents are available on our website:

<https://www.daggacouple.co.za/know-your-rights/>

#### **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)**

**WHAT THE POLICE WILL MOST PROBABLY NOT TELL YOU AT THIS STAGE IS THAT YOU ARE ENTITLED TO POLICE BAIL.**

This is entirely at the discretion of the police. If you are arrested with more than 115g, or are suspected of being a dealer, there is little chance you will get bail before appearing in court. However, **YOU MUST ASK FOR POLICE BAIL**. The senior police are authorised to grant this. Alternatively you have to arrange for your attorney to meet the standby prosecutor and set after hours bail.

Police bail or after hours bail results in immediate release once paid. However, both arrangements result in a court date on which **you HAVE TO APPEAR**.

The State is entitled to keep a person for 48 hours before bringing them to court for the first time. This does not include weekends and public holidays. If you are arrested after 16h00 on a Wednesday and you do not get police bail, you will stay in jail until Monday morning.

At the first court appearance the court will set bail or extend the police bail, inform the accused of his right to counsel and when the next court day is. Bail for possession can be anything from R300 to R2000, which is returned at the end of the trial as long as you don't miss any appearances.

Also on this piece of paper is an ADMISSION OF GUILT section. If you have been caught with a small amount of cannabis the police will offer you the chance of admitting guilt, paying R300 and walking free. **IF YOU PAY THIS FINE YOU WILL HAVE A CRIMINAL RECORD**. The police will NOT tell you what the consequences are of paying an admission of guilt fine. The police also do not tell you that you have 3 weeks to pay this fine and demand payment to let you go. Only pay them 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. **YOU ARE NOT A**

**CRIMINAL, DO NOT PAY THE FINE.** Instead, ask the police to give you this 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. All the admissions of guilt are sent from the police stations to the magistrate's court where a magistrate will "confirm" them. It is a race against time for your attorney to write a letter explaining the withdrawal of the admission of guilt and for him to intercept the docket and admission before it gets to the magistrate. The admissions are usually confirmed the following day (and on a Monday following the weekend).

## **CHAPTER THREE: COURT**

### **YOUR FIRST APPEARANCE**

Your first court appearance will be on the first working day after your arrest. The court proceedings will seem foreign and hostile. One of two things can happen. Firstly, the charges can be dropped. This is when the police have obviously made huge errors in terms of the law. It is unlikely that you will get the charges dropped if you do not have an attorney present in court. - Secondly (and most likely), this appearance will result in a postponement of the case for about two weeks. You do not 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.**

If you are asked by the magistrate how you intend to plead indicate *not guilty*. Silence will/should be interpreted as not guilty, as not entering a plea is considered a not guilty plea. You are entitled to change your plea at any time before conviction.

Once you are through the first appearance, you need to take the following into account:

#### **1. LEGAL REPRESENTATION**

You are entitled to represent yourself, however this is strongly discouraged, other than in the very first court appearance (see above).

The state provides attorneys to those who cannot afford them. Those who do not qualify for legal aid have to pay for their own attorney. Choose your attorney carefully. Be warned that some lawyers hang around the police stations looking for business. These 'touts' mostly have their own interests at heart.

It is at this stage that you can contact us about finding a lawyer. Please send an email to [info@daggacouple.co.za](mailto:info@daggacouple.co.za) and we will assist you. We will be updating this document with more comprehensive information on legal representation in the future.

## 2. GETTING THE CHARGES DROPPED

Obviously this is first prize! Your attorney is entitled to write to the prosecution, or state in court, a 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.

## 3. DIVERSION PROGRAMMES

If you are a first offender and you are caught with a small amount (less than 100g) there is the possibility of being sent to a "diversion / harm reduction / rehab" programme which results in community service and/or therapy sessions with an organisation such as SANCA. This will cost you about R1500, includes drug testing and will last up to 3 months. **It is possible to do this on your own without an attorney** as you will be referred directly to a Social Worker. If you / your attorney is successful in getting the court to order a diversion programme for you and you successfully complete the course, this ends the matter. This also does not result in a discernible criminal record.

## 4. 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 in possession of what you are caught with. Each case is different. Your attorney can do his 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.

We believe that the law prohibiting cannabis is unconstitutional, because the prohibition 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. It is always possible for any accused to ask to join our constitutional challenge of the law, or to apply for a stay of your court proceedings, pending the outcome of The Dagga Couple's constitutional challenge.

## 5. SENTENCING

Prosecutors are always keen on having the accused plead guilty. For the prosecutors their conviction rate is important. Do not plead guilty unless you are 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 are convicted. Possession of 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.

## 6. HOW MUCH WILL THIS COST ME?

If you can get through the first part of your arrest on your own and you are out on bail, you will have some time to organise a lawyer. Then you can negotiate fees in a calm manner or have time to brief your legal aid lawyer properly. Legal aid lawyers might be free of charge but they do not know the subject so you need to be able to brief them very well and this takes time & effort. Lawyers charge anything from R1500 to R3000 per day. We ESTIMATE that the average bust in South Africa costs the victim R10 000 to R15 000. The cost depends on the severity of the charges, 20 plants under lights could cost you R50 000. 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.

# CHAPTER FOUR: DEALING. WHAT'S THE DEAL?

Knowing the difference between dealing and possession is important. The prosecutors consider the evidence as the police present it to them in order for them to make a decision as to whether you are selling Dagga or not.

Evidence of dealing are factors like how the Dagga is packaged (in small quantities), or the police find a scale and bank bags with a bunch of cash. There is no limit, upper or lower, for which a person can or cannot be charged for dealing. Bankies, scales, money, frequency of visitors to your home and volume of stock could all count against you.

\*\* Section 252A of the Criminal Procedure Act allows the state to entrap people breaking the law and this is used with some frequency. If you are trading and the police send an informant with a hidden camera or marked notes, you are in serious trouble.

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. LIGHTS = LABORATORY

## **CHAPTER FIVE: HOW DO I REPORT POLICE MISCONDUCT?**

If you feel you have been a victim of police abuse, crime or corruption it can be hard to know where you can turn for help. While we do not have the capacity to follow up or investigate your personal case, we do want to help you.

We suggest taking the following steps:

1. Contact the station commissioner and Community Policing Forum (CPF) at the station to which the police are linked, or open a docket at a neighboring station. (contact details at [www.saps.gov.za](http://www.saps.gov.za))
  - It is the station commissioner's responsibility to follow up on your complaint, or to delegate the task to somebody who will. Ensure that they keep you informed as to the progress they make. (NOTE: it is important that you give the commissioner as many details as possible).
  - You can also approach the station's CPF. Some CPFs are very effective while others are weak. An effective CPF can follow up your complaint and put pressure on the station to take it seriously. If CPF members are too

friendly with station staff there is a chance they may side with the station but this is unlikely.

- If you have been the victim of a criminal offence such as assault, robbery or theft at the hands of police officials, you can open a criminal case against them at a neighboring station.

If you are not assisted by either of the above you can try the following:

2. Contact the SAPS Community Service Call Centre:
  - 0860130860
  - The Community Service Call Centre is an underutilised internal structure within the SAPS which can be called upon with corruption and service delivery complaints.
3. Contact the Independent Police Investigative Directorate (IPID)at:
  - [http://www.ipid.gov.za/lodge\\_complaint/lodge\\_complaint.asp](http://www.ipid.gov.za/lodge_complaint/lodge_complaint.asp)
  - 012 399 0000
  - A complaint may be lodged in person, by telephone, per letter or e-mail to any IPID office. The complainant must fill in a Complaint Reporting Form (Form 2), which can be obtained from any IPID office. Download "Complaint Reporting Form (Form 2)". The form can be accessed here: <http://www.ipid.gov.za/documents/IPID%20Complaints%20Form-%20Form%202.pdf>
  - The IPID is responsible for investigating complaints against police bodies in South Africa. Unfortunately the IPID is severely under capacitated and is often unable to follow up on any but the most serious of cases (eg. deaths in custody, police shootings). It is worth contacting them though.
  - If you have been a victim of police corruption in Gauteng, call the IPID's Anti-Corruption Command at: 012-392-0448 or 0828495848
4. As a victim of police corruption you can also contact the Public Service Commission's toll free anti-corruption hotline at:
  - 0800 701 701
  - [www.psc.gov.za](http://www.psc.gov.za)
  - The PSC monitors and investigates ethics in the public

5. If you feel you have been a victim of a major human rights violation at the hands of the police contact the South African Human Rights Commission (SAHRC). Contact the SAHRC at:
- [www.sahrc.org.za](http://www.sahrc.org.za)
  - 011 484 8300
  - The SAHRC is a national institution established to entrench constitutional democracy through the promotion and protection of human rights including addressing human rights violations.

Other avenues to pursue:

If you are not assisted by any of the above, get in touch with the provincial government structure such as the Department of Community Safety in Gauteng and the Western Cape, or the Department of Safety and Liaison in the Eastern Cape. You can also try approaching the SAPS head office in Pretoria.

(source: <http://www.issafrica.org/crimehub/page.php?page=1000195>)

Are there any Dagga friendly lawyers out there who are prepared to help at a subsidised rate? Let us know...

A wealth of legal advice can be found on the 'Iqela Lentsango: Dagga Party of South Africa website:



## Conclusion

There are many players in this crazy farce called prohibition – police wanting to make their arrest targets, lawyers 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 that, as the Dagga 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.

This is a working document which we update with more information when necessary. Many people have been involved in the compilation of this guide and we acknowledge their input.

Share your story on our website if you like. That way we get more insight into different situations in different police stations and courts nationwide. It all helps. <https://www.daggacouple.co.za/dagga-stories/>



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