



TWO-TIERED CANNABIS JUSTICE

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If all goes as planned, by next year, possession of up to 25 grams and cultivation of up to 50 grams of cannabis will be legal in Germany. Germany’s cannabis legalization proposal is a significant step towards reducing the counterproductive policing, criminalization, and punishment of cannabis-related offenses, 206,394 of which the police recorded in 2022.

The new bill (“CanG”), will not, however, end the policing and criminalization of cannabis-related offenses. Indeed, it is likely that CanG will create a two-tiered cannabis policy, with legal access and immunity from prosecution for some, and continued criminalization for people from racialized, migrantized, and other frequently-policed groups. The current draft must be strengthened to address these inequities.

Today, people from racialized and migrantized groups are disproportionately criminalized for cannabis-related offenses. This is despite research showing [similar cannabis use patterns](#) across groups. The reason for this disparity is simple: Police racially profile, and therefore are less likely to stop white Germans for cannabis-related offenses. In 2021, 28.1% of people sentenced to drug possession were non-German citizens, despite non-citizens [making up only 14%](#) of the population. (Data for German citizens by race and/or ethnicity is unavailable). In that same year, [over 77,000 people](#) were ultimately convicted of drug offenses, with enormous consequences for their mental health and employment, among other things.

The core idea of CanG are so-called cannabis clubs. In order to legally purchase cannabis, users must become members of such clubs, a regulation that will, because of its restrictive design, de facto exclude people at the intersections of economic, social, and [other disadvantages](#). For example, the new law envisions members “actively” participating in cultivation in exchange for access to cannabis, a hurdle for people with health problems or juggling low-paid work, for example. Without access to legal cannabis, people will continue to use the illegal market, and therefore face punishment.

Because of the restrictiveness of the CanG draft, police expect to continue to prosecute cannabis offenses (possibly [unlawfully](#)). Possession over a certain threshold remains a criminal offense and consumption within 200 meters of schools, daycare centers, or other child and youth facilities remain prohibited and therefore punishable. In urban, densely populated areas, where relatively [more people without a German passport live](#), this restriction covers a relatively large area. Suspected cannabis possession will continue to provide the police with a pretext for racial profiling.

CanG also continues Germany’s long history of harsh consequences for supply of cannabis, despite the government’s “reduced risk assessment” of cannabis. The current draft does not go far enough to reduce sentences for supply, and it retains some of the harshest aspects of the current law, including mandatory minimum sentences when supply is “in a professional capacity”, an ambiguous term applied broadly and arbitrarily. This failure to recalibrate sentences for supply will also disparately impact people from racialized groups.

Based on the experience of other countries, experts expect CanG to shift a significant part of the cannabis trade to the legal market. Nevertheless, a large illegal market will continue to exist. Today, this illegal market consists of two segments. Contrary to popular belief, [around 90% of cannabis trade today takes place in private spaces, behind closed doors](#). This part of the market, which is predominantly served by white Germans, is largely invisible to the police and is rarely prosecuted. On the other hand, racialized and migrant dealers do not have access to this privileged market and trade mostly in public spaces. This group includes people without work permits (who are unable to earn a legal income because they are excluded from the official labor market) or people who are otherwise structurally discriminated against.

Discrimination could even increase as a result of CanG: While today’s “invisible” market will largely switch to cannabis clubs and thus to legality, illegality and criminalization will fall almost entirely on racialized and migrant groups.

In the United States, too, people from racialized groups have historically been disproportionately criminalized for cannabis-related offenses. States in the US that wanted to legalize cannabis were

aware that this unequal treatment could persist after legalization. For this reason, several states have focused on equity and reparations in their legalization plans. They have [included the right to expungement of previous convictions](#), including for trafficking offenses, so that people with past offenses are no longer negatively impacted by these convictions in the job market. Punishment for trafficking has been [reduced](#) and [paths to access to work in the legal cannabis market have been created](#) for people with criminal records. Some US states have also passed reparations packages that invest in neighborhoods and communities most impacted by the harsh policing and punishment of cannabis offenses.

CanG is far from compensating for past discriminatory patterns of criminalization. To start, Germany should revise the high and arbitrary penalties for cannabis offenses, including for supply. It should also commit to proactively identifying and removing criminal records—including cannabis trafficking records—rather than doing so only on the initiative of those affected, and only for some possession offenses. CanG should also prevent cannabis offenses from being used against people in immigration proceedings or police checks.

The example of the US shows that legislators in Germany can also act more courageously. If the state wants to tackle the underlying causes of the criminalization of cannabis offenses, it must stop denying people work permits, forcing them into the illegal market, and then punishing them with harsh penalties. Criminal law reforms are a good start, but discrimination and criminalization are also immigration and social policy issues.

In its current version, the CanG is designed to free an imagined, white German "normal consumer" from stigmatization and criminalization. That the current draft was formulated primarily with this group in mind contributes to its current discriminatory effect. It is urgent that the Bundestag address these inequities.