

Caution Policy - PACE section 36A Guidance: Formal Police Caution

The Director of Public Prosecutions issues the following Caution Guideline pursuant to PACE section 36A to the Commissioner of Police effective 23 February 2017.

This Guidance is entitled **"Guidance – Formal Police Caution – Simple Possession of Cannabis - in respect of the offence under Misuse of Drugs Act 1972 section 6(2)"**.

Prerequisites	
Matrix System See <u>Appendix I</u> for Matrix System.	An offender scoring 4 or more, after applying aggravating and mitigating factors shall not be subject to a caution.
Admission of Possession	<p>A caution can be given only when an offender admits possession of the seized cannabis.</p> <p>If an offender has a defence to the possession of the seized cannabis, eg "It is not my cannabis", then a caution is not appropriate. The offender should be bailed to Hamilton Magistrates Court for prosecution and trial as necessary.</p>
Weight of Seized Cannabis	A caution can be given only in respect of seized cannabis that has a weight of less than three (3) grams.
Other Drugs	A caution can be given only when no other controlled drug is seized from the offender upon search (of person, vehicle, premises) in connection with the arrest for the seized cannabis.
Documentation	A caution can be given only when an offender agrees to sign the Caution Document.
Young Offenders	All young offenders under the age of 18 on arrest will be referred to Child & Family Services in every case. Young offenders should be bailed to return to the Police Station in six (6) months. Child & Family Services will be invited to recommend a caution or a prosecution when the young offender answers bail.
Treatment Court Programme Clients	An offender who is a client in the Treatment Court programmes may be bailed to return to the Police Station in six (6) months. The matter should be referred to the Treatment Court which will be invited to recommend a caution or a prosecution when the offender answers bail.

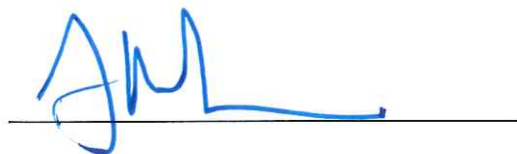
First and Second Arrest	
First arrest for simple possession of cannabis	First Caution Available
Second arrest for simple possession cannabis	Second Caution Available
Third Arrest	
Third Arrest for simple possession of cannabis	Third Caution Available on conditions as follows:
	<p>Condition 1 – Offender must be referred to and assessed by the Bermuda Assessment and Referral Centre (BARC) which may make referrals to the appropriate treatment. The Offender must provide a certificate of completion of the treatment programme as recommended by BARC.</p>
	<p>Condition 2 – Offender must undergo a minimum of twelve (12) hours of approved Drug Counselling and provide a “Certificate of Drug Counselling” from counsellor within three (3) months.</p> <p>Drug Counselling to be provided by an NDC approved counsellor/counselling service.</p> <p>Approved counsellors/counselling services at <u>Appendix II</u></p>
	<p>Condition 3 – Offender should be bailed by Bermuda Police to return to Hamilton Police Station three (3) months from date of arrest to present Certificate of Drug Counselling.</p> <p>Cautioning Officer will have a discretion to extend once only by three (3) months depending on circumstances eg illness, overseas study, employment etc.</p>
	<p>Condition 4 - Provide certification from NDC approved counsellor /counselling service that is providing the drug counselling that offender has passed a random drug test since date of offence for all controlled drugs.</p>
Fourth Arrest within 2 years of Third Caution	
Fourth - or more - arrest for simple possession of cannabis within two (2) years of date of Third Caution	<p>No caution available.</p> <p>Offender is processed to appear in Hamilton Magistrates’ Court to be prosecuted.</p>
Re-eligibility for First Caution	
Upon two (2) years passing from date of Third Caution, an offender is re-eligible for a First Caution.	

Appendix I – Matrix System

Matrix System		
1. Any offender scoring 4 or more, after applying aggravating and mitigating factors shall not be subject to a caution.		
2. The starting point for this calculation is 2 points.		
3. Each aggravating factor scores an additional point and each mitigating factor reduces it by 1 point.		
	Aggravating Factors	Mitigating Factors
	Possession in an increased penalty zone as defined in the Misuse of Drugs Act 1972.	The offender was in transit through an Increased Penalty Zone according to the circumstances of the arrest
	Presence of unexplained cash	Under 18 years of age
	Offender committed other offences at the same time	No previous convictions
	On probation, police bail or court bail	

Appendix II – List of NDC Approved Counsellors/Counselling Services

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