

The Constitutionality of “Possession” and “Possession for Consumption” in the Thai Narcotics Code Regarding the Presumption of Innocence

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Abstract

The current Narcotics Code attempted to distinguish between drug abusers and drug dealers, with drug dealers getting noticeably higher penalties than drug abusers. Currently, the most obvious way to distinguish between dealers and abusers in the case of being found in possession of narcotics is the number of narcotics found in possession. Thailand utilizes presumptions to aid in their cases. However, issues arise when the defendant does not benefit from the presumption, which may cause the defendant to have the burden of proving that he is possessing narcotics for his consumption instead. This article discusses the constitutionality of the conflict between “possession” and “possession for consumption” in the Narcotics Code and whether it conforms with the principle of the Presumption of Innocence. In doing so, the author first describes Thai Narcotics Law and the Principle of Presumption of Innocence under Thai Law; this part is descriptive. Then, the author will perform a comparative analysis to see how other countries deal with this issue. Finally, the author will provide some commentary on the issue. The result of this research shows that the current narcotics law is unlikely to be against the presumption of innocence under Thai jurisprudence. Nevertheless, the author recommends amending the current law to further safeguard the defendant’s rights.

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I. INTRODUCTION

The promulgation of the Thai Narcotics Code consolidated all relevant drug laws into one cohesive code. Notably, it also saw a tone shift by softening the punishments for certain drug offenses. The Narcotics Code adds a new type of offense called “Possession for Consumption.”¹ This new type of offense is now in a separate category from the offense of “Possession,”² which is present in both the old Narcotics Act B.E. 2522 and the new Narcotics Code. This addition is consistent with the government’s policy of separating its offenders into drug abusers and other types of drug offenders; the Narcotics Code separates provisions relating to consumption and possession for consumption, including the criminal penalties and addiction treatment measures, in a different title to other offenses.

However, the question arises as to how the government distinguishes between regular drug offenders and drug abusers. Currently, the defendant in a narcotics case must rely on the Ministerial Regulations by the Ministry of Public Health as to how much quantity of narcotics someone can possess to gain the benefit of being presumed to be in possession for consumption.³ While there is a debate on how much quantity should be allowed to gain the presumption of possession for consumption, people often neglect the implications of having a separate provision dealing with possession for consumption to the standard possession offenses.

The main problem that this article will discuss is the case when the defendant does not benefit from the presumption of possession for consumption and, as such, whether having separate provisions of similar but different offenses may mean that the burden of proof will have to fall upon the defendant to prove that he is a consumer and thus benefit from the lighter punishment and potential treatment measures. In doing so, this article seeks to discuss the Narcotics Code, the Ministerial Regulations for the presumption of consumption, and the presumption of innocence as enshrined in the Constitution. In essence, the critical question of this article is who has the burden of proof to prove that the defendant possesses narcotics for consumption if he possesses more narcotics than what was prescribed in the Ministerial Regulation.

The first part of this article will describe Thailand’s current policies on tackling narcotics in Thailand. Afterward, the author will describe the current Thai Narcotics Law. Then, this research will preliminarily describe the potential issues outlined in the previous paragraphs. Furthermore, the author will describe statutory presumptions

¹ Narcotics Code, s 107 para 1 and s 164.

² *Inter alia*, Narcotics Code, ss 90 and 145.

³ Narcotics Code, s 107 para 2; Ministerial Regulation on the Limit of the Number of Narcotics and Psychedelics That is Used for the Presumption of Consumption B.E. 2567 (as amended).

under Thai Criminal Law and the presumption of innocence. This part is meant to be descriptive. Then, the author will look outwards to different jurisdictions to see other nations' solutions to distinguishing between drug abusers and drug dealers. Finally, the author will provide some commentary on possible solutions that the government can consider.

II. THE THAI GOVERNMENT'S NEW POLICY TO TACKLE DRUG PROBLEMS

With the new Narcotics Code being promulgated, the government of Thailand now has new measures for dealing with Thailand's narcotics problems. One example to be illustrated is the shifting policy from a zero-tolerance approach to harm reduction for certain drug offenses. However, the most notable change to combat drug problems in Thailand is the distinction between drug abusers and drug offenders.

The current Thai government's policies dealing with narcotics emphasize the distinction between "sellers" and "abusers." This distinction serves as the new approach Thailand has not to condemn the drug abusers to prison but to treat them as patients.⁴ However, as of today, consumption and possession for consumption of narcotics and psychedelics are still considered an offense under Thai law,⁵ which does carry punishments of imprisonment.⁶

III. CURRENT THAI NARCOTICS LAW

The Thai Government promulgated the current Narcotics Code to consolidate all existing Thai narcotics law up to this point, citing that having multiple acts under multiple government bodies' jurisdictions creates inefficiencies regarding its enforcement.⁷ Furthermore, the Narcotics Code also seeks to update the law to fit the current societal status quo.⁸ The Thai Narcotics Law comprises three pieces of legislation: Act Promulgating the Narcotics Code, B.E. 2564 (2021); the Narcotics Code; and Act on Procedure of Narcotics Case B.E. 2550 (2007) (as amended).

⁴ “รัฐบาลย้ำนโยบายยาเสพติด ปราบผู้ค้า รักษาผู้เสพ มีเมตตาเยยถ้า ‘ค้า’ = ‘คุก’” [“The Government Repeats Narcotics Policy, Crackdown on Dealers, Save Abusers, Possessing 1 Pill if ‘Sell’ = ‘Jail’”] *The Active* (13 February 2024) (Thai) <<https://theactive.net/news/publichealth-20240213/>>.

⁵ Narcotics Code, s 107.

⁶ *ibid*, s 164.

⁷ ณัฐพล ยิ่งกล้า และคณะ (สำนักงานเลขาธิการสภาผู้แทนราษฎร สำนักวิชาการ กลุ่มงานบริการวิชาการ 3), เอกสารประกอบการพิจารณาร่างพระราชบัญญัติให้ใช้ประมวลกฎหมายยาเสพติด พ.ศ. . . . และร่างประมวลกฎหมายยาเสพติด [Nattapol Yingkla and others (Office of the Secretary-General of the House of Representatives, Office of Legal Affairs, Academic Services Group 3), *Draft Documents for Consideration of the Narcotic Drugs Act B.E. . . . and Draft Narcotic Drugs Act*] *LIRT* (August 2020) (Thai) 1-1 <<https://dl.parliament.go.th/backoffice/viewer2300/web/previewer.php>>.

⁸ *ibid*.

A. Narcotics Code

The promulgation of the Narcotics Code conforms with the United Nations General Assembly Special Session on the World Drug Problem - UNGASS 2016.⁹ The Narcotics Code itself contains 3 Books: Book 1: Prevention, Suppression, and Solution of Narcotics Control (Sections 1–107); Book 2: Treatment and Social Rehabilitation for Narcotics Addicts (Sections 108–23); and Book 3: Penalties (Sections 124–86).

For the purpose of consolidation, “Narcotic Drugs,” “Psychotropic Substances,” and “Volatile Substances” are now all under the umbrella of the Narcotics Code, all being referred to by the term “Narcotics.”¹⁰ Even though the current Code is quite similar to the previous laws, some differences merit discussion regarding the Thai Government’s new approach.

B. Possession of Narcotics

Book 1, Title 5, Sections 90–96 of the Narcotics Code prohibits the production, importation, exportation, distribution, or having in possession of Narcotic Drugs and Psychotropic Substances. Possession of narcotics is now defined, however, as a “serious offense relating to narcotics,”¹¹ and is a stricter approach than the previous Narcotics Act B.E. 2522, as reflected in the punishments of the new Narcotics Code.¹² A violation of Sections 90–96 of the Narcotics Code is a criminal offense as prescribed in Book 3, Title 4, Sections 145–53 of the Narcotics Code. For this research, only the issue of possession of schedule 1 narcotics under Section 90 will be covered.¹³

C. Possession of Narcotics for Consumption

Before the promulgation of the Narcotics Code, possession for consumption used to be lumped in with the cases of possession under Section 15 paragraph 1 of the Narcotics Act B.E. 2522.¹⁴ Now, possession for consumption is separate¹⁵ from the previously

⁹ “สรุปสาระสำคัญของประมวลกฎหมายยาเสพติด” [“Summary of Key Points of the Narcotics Act”] *Ministry of Justice* (7 July 2023) <https://www.moj.go.th/attachments/20230707140038_72499.pdf> (Thai).

¹⁰ Narcotics Code, s 1.

¹¹ *ibid.*

¹² For example, possession of narcotics in schedule 1 carries a sentence of up to 15 years imprisonment or a fine not more than 1,500,000 baht, or both in the Narcotics Code (Section 145), as opposed to 1–10 years imprisonment, or a fine between 20,000 to 200,000 baht or both in the Narcotics Act B.E. 2522 (Section 67).

¹³ This concept of “possession” can also be applied to Sections 91–94 of the Narcotics Code. The reason that the author chooses only the case of Section 90 is so that the author does not need to repeat this analysis for all other schedules of narcotics and psychotropic substances, in which the only practical difference in the case of possession is the amount of punishment imposed on each type of narcotic or psychotropic substances. Please compare Section 145, the criminal offense provision of the violation of Section 90, with Sections 146–49 for reference.

¹⁴ Supreme Court Decision 7526/2561; Supreme Court Decision 4444/2561.

¹⁵ Narcotics Code, s 164.

described offenses.¹⁶ This separation is reflected in two ways: firstly, the offense exists under a different title from serious offenses. Secondly, the punishments vastly differ from possession under Section 90 of the Narcotics Code.

As for the first difference, “possession for consumption” is codified in Section 107 and is included in Book 1, Title 8, instead of being included with other serious offenses found in Book 1, Title 5. Furthermore, possession for consumption is not considered a “serious offense relating to narcotics.”¹⁷ This separation indicates that the law separates regular drug offenders and drug abusers. However, unlike some countries with more liberal narcotics policies, drug abuse, such as consumption of narcotics or possessing narcotics for consumption, is still considered an offense under Thai Law, although the punishment is vastly different from possession under Section 90 of the Narcotics Code; a violation of Section 90 carries a punishment of imprisonment of not more than 15 years, or a fine not exceeding 1,500,000 baht, or both,¹⁸ whereas a violation of Section 107 of the Narcotics Code carries a punishment of imprisonment of not more than 2 years or a fine not more than 40,000 baht, or both.¹⁹

To continue, Book 3, Title 7, outlines the punishments for the offense of possession for consumption, and it is here that the most explicit difference in treatment is illustrated. As stated before, Section 164 of the Narcotics Act prescribes the penalty for a violation of Section 107, which is the possession of Narcotic Drugs in Schedule 1, 2, or 5, or Psychotropic Substances in Schedule 1 or 2, will be liable for imprisonment not exceeding two years or a fine not exceeding 40,000 baht or both.²⁰ Furthermore, the defendant may not have to receive any punishment at all if the court grants the defendant the option to quit narcotics by treatment under Section 165 of the Narcotics Act.²¹

We can see a clear difference between the punishments and measures of treatment available to a violation of Section 107 compared to a violation of Section 90, where under Section 145, possession of a Schedule 1 Narcotic means that the defendant can be punished with up to 15 years imprisonment, a fine of not more than 1,500,000 baht, or both.²² This example does not include all the aggravating results, such as acting for trade or selling to persons under 18, which can impose even harsher sentences.²³

With the new distinction, one of the ways to gain the presumption of possession of narcotics for consumption is from the Ministerial Regulations from the Ministry of

¹⁶ *ibid*, ss 145–53.

¹⁷ *ibid*, s 1.

¹⁸ *ibid*, s 145.

¹⁹ *ibid*, s 164.

²⁰ *ibid*, s 164.

²¹ *ibid*, s 165.

²² *ibid*, s 145 para 1.

²³ *ibid*, s 145 paras 2 and 3.

Public Health.²⁴ This presumption was made to provide an option for drug abusers to come and get treatment willingly without fear of prosecution.²⁵

Notably, the development of this presumption has become stricter due to the backlash from detractors of this policy. For example, the previous Ministerial Regulation provided a limit of 5 methamphetamine pills to gain the presumption of possession for consumption.²⁶ This decision was met with criticism since critics of this limit fear that drug dealers may also abuse this limit to gain the presumption of possession for consumption and thus may receive a lighter sentence than what the dealers should receive or even avoid prosecution altogether.²⁷ Hence, the limit of the amount of narcotics was amended, which generally reduced the limit allowed.²⁸ Now, the limit to gain the presumption of consumption has been reduced to 1 methamphetamine pill.²⁹ Nevertheless, the government has reiterated that if the facts of the case appear that the defendant is indeed a dealer, he would still be prosecuted as a dealer.³⁰

D. Practical Implications

The question must be asked about how the court differentiates between possession and possession for consumption in practice. Currently, the most obvious way that the court may do so is the presumption granted under Section 107 paragraph 2 of the Narcotics Code, which states that if the defendant possesses exactly or lesser of a certain amount of narcotics or psychedelics, it shall be presumed that such possession is possession for consumption.³¹ The exact amount is prescribed in the Ministerial Regulation on The Limit of the Number of Narcotics and Psychedelics that are used for the Presumption of Consumption B.E. 2567 (as amended).

However, the presumption under Section 107 paragraph 2 of the Narcotics Code is still a presumption, which means that if the court were to be convinced that the possession was not for consumption, even if the number of narcotics was below the quantity prescribed by the Ministerial Regulation, the defendant may still be guilty of possession under Section 90 of the Narcotics Code instead.³² However, even without the reliance on Section 107 paragraph 2 of the Narcotics Code, the court, through a case-by-case analysis of the facts in hand, may determine the defendant to be a drug

²⁴ *ibid*, s 107 para 2.

²⁵ “Summary of Key Points of the Narcotics Act” (n 9) 3.

²⁶ The Ministerial Regulation on the Limit of the Number of Narcotics and Psychedelics That Is Used for the Presumption of Consumption B.E. 2567 (No 1) art 2 (1)(e).

²⁷ Apinya Wipatayotin, “‘5-Pill Rule’ to Become Just 1 For Meth” *Bangkok Post* (18 May 2024) <<https://www.bangkokpost.com/thailand/general/2794935/5-pill-rule-to-become-just-1-for-meth>>.

²⁸ The Ministerial Regulation on the Limit of the Number of Narcotics and Psychedelics That Is Used for the Presumption of Consumption B.E. 2567 (no 2), art 2,

²⁹ *ibid* art 2.

³⁰ Apinya (n 27).

³¹ Narcotics Code, s 107 para 2.

³² “The Government Repeats Narcotics Policy” (n 4).

abuser if circumstances such as drug tests and the behavior of the defendant prove the defendant to be an addict.³³

Unlike the previous Narcotics Act B.E. 2522, the presumption is now used inversely to determine whether the defendant was an abuser, not a dealer. In the Narcotics Act B.E. 2522, the quantity of narcotics present on the person would mean that the defendant is presumed to be a dealer;³⁴ in the Narcotics Code, it is the opposite.³⁵

The potential problem with this approach is that the default offense would be “possession” and not “possession for consumption.” As such, the defendant may, in practice, be presumed to be in possession, not for consumption, and thus receive a stricter sentence if the defendant cannot prove that he is a drug abuser. This hypothetical scenario is due to the provision’s wording stating that possession would already be considered an offense,³⁶ even if the possession is not for trade.³⁷

This possibility stands in stark contrast to the objectives of the Thai Government’s policy on curing drug abusers and punishing drug dealers; by consolidating possession for distribution and possession into a single type of offense, it may prove to be an obstacle for drug dealers to come and get treatment without being labeled an offender.

Furthermore, a graver situation may arise as to the constitutionality of the practice since charging the defendant with possession under Section 90 of the Narcotics Code may mean that the defendant will have the burden of proof to prove that he is, in fact, a drug abuser. The author could not find an instance where a defendant was charged with Section 164 of the Narcotics code, which violates Section 107, to confirm whether the defendant was first charged with Section 145 paragraph 1. Nevertheless, before the promulgation of the Narcotics Code, the Supreme Court had decided in Supreme Court Decision no. 7526/2561 and Supreme Court Decision no. 4444/2561³⁸ that “possession” also covers “possession for consumption.” Hence, it may be a real possibility that the defendant may be charged with “possession” even

³³ “คำถาม-คำตอบ กฎหมายยาเสพติด” (สำนักกฎหมายและวิชาการศาลยุติธรรม) [“Questions–Answers, Narcotics Law” (Office of Judicial and Legal Affairs)] (Thai) 5 <<https://jla.coj.go.th/th/content/page/index/id/274230>>.

³⁴ Narcotics Act B.E. 2522, s 66.

³⁵ Narcotics Code, s 107 para 2.

³⁶ *ibid*, s 145 para 1.

³⁷ See Narcotics Code, s 145 para 2(1), which is the specific provision for the case of possession to act for trade.

³⁸ Although decisions still used the old Narcotics Act B.E. 2522, the author thinks that it is still relevant to this issue since Section 15 paragraph 1 of the Narcotics Act B.E. 2522 has a similar wording to Section 90 paragraph 1 of the Narcotics Code.

Section 15 paragraph 1 of the Narcotics Act B.E. 2522: “No person shall produce, import, export, dispose of or **possess** narcotics of category I, unless the Minister permits for the necessity of the use for government service.” (emphasis added)

Section 90 paragraph 1 of the Narcotics Code: “No person shall produce, import, export, distribute or **having in possession** of narcotic drugs in schedule I, unless for the case that the permission is granted under Section 34 or Section 35 (3).” (emphasis added)

though he was possessing narcotics for his consumption. Several issues arise as to whether or not the defendant is presumed innocent before being proven guilty.

IV. STATUTORY PRESUMPTIONS UNDER THAI CRIMINAL LAW

Under Thai law, some provisions that provide for certain presumptions are allowed to ease the burden of parties, whether for the prosecution or the defendant.

For example, Section 60 of the Criminal Code prescribes that:

Whenever any person intends to commit an act against a person, but the effect of the doing of such act occurs to another person through a slip, it **shall be deemed** that such person intentionally commits such act against the person who suffers from the bad effect of such doing. But, in case the law provides for the infliction of heavier punishment on account of individual status or the relation between the doer and the person suffering from the bad effect, such law shall not be applied so as to inflict the heavier punishment on the doer. (emphasis added)

This provision is a classic example of *de jure* intention, where the perpetrator’s intention follows him with the act, regardless of who it hurts. Furthermore, presumptions lower the standard of proof, only requiring proving up to the required conditions to gain the presumption.

Section 84/1 of the Civil Procedure Code, which can be applied to criminal cases,³⁹ confirms this, stating that:

Any party who alleges any fact in support of his or her pleading shall have the burden of proof of such fact. **However, where there is a presumption in law or reasonable presumption from the usual state of events in favor of a party, such party must prove only that he or she has fulfilled the conditions required to be entitled to such presumption.** (emphasis added)

Such presumptions may benefit or prejudice the defendant, depending on the provision. There are two types of presumptions: absolute presumptions and non-absolute presumptions.

A. Absolute Presumptions

Absolute presumptions are presumptions by law which cannot be refuted. These types of presumptions will use clear and absolute terms like “shall be deemed” and

³⁹ Criminal Procedure Code, s 15.

“is deemed.”⁴⁰ These types of presumptions are irrefutable, even if the defendant’s innocence is proven otherwise. The example of Section 60 of the Criminal Code in the previous section is an example of an absolute presumption.

B. Non-Absolute Presumptions

On the other hand, non-absolute presumptions can be refuted if enough evidence to the contrary comes to light. Some types of phrases to denote non-absolute presumptions are “is presumed” or “shall be presumed.”⁴¹ Practically, non-absolute presumptions shift the burden of proof to the other party when all the conditions to gain the presumptions are met.

One example of the non-absolute presumption can be found in Section 211 of the Thai Criminal Code, whereby:

Whoever meets in the meeting of a secret society or criminal association, the person **is said to commit the offense** to be such secret society or criminal association **unless such person can show that having met without the knowledge** that being the meeting of a secret society or criminal association. (emphasis added)

This provision is a non-absolute presumption that shifts the burden of proof onto the defendant to prove that he is not a member of the secret society or criminal association, which is a violation of Section 209 of the Criminal Code.⁴² Hence, if a person meets in a meeting of a secret society or criminal association, it is presumed that that person is part of it unless he can prove that he did not know that the meeting he attended was a meeting of a secret society or criminal association.

To apply the previous paragraphs to the current topic of this research, Section 107 of the Narcotics Code prescribes:

No person shall have in possession of narcotic drugs in schedule I, schedule II, or schedule V or psychotropic substances in schedule I or schedule II for consume.

Having in possession of the narcotic drugs in schedule I, schedule II, or schedule V, or the psychotropic substances in schedule I, or schedule II in a small quantity, that does not exceed the quantity that the Minister of Public Health

⁴⁰ Pitchanika Pohbunchern, “Constitutionality of Statutory Presumptions with Respect to the Criminal Offence of Insider Trading” (Masters of Law Thesis, Thammasat University 2019) 38 <https://ethesisarchive.library.tu.ac.th/thesis/2019/TU_2019_6001040069_12952_12826.pdf>.

⁴¹ *ibid.*

⁴² Criminal Code, s 209:

Whoever to be a member of a body of persons whose proceedings are secret and whose aim to be unlawful, is said to be a member of a secret society, shall be punished with imprisonment not exceeding seven years and fined not exceeding fourteen thousand Baht.

If the offender be the chief, manager or office-bearer in such body of persons, such person shall be punished with imprisonment not exceeding ten years and fined not exceeding twenty thousand Baht.

prescribed in Ministerial Regulations, **shall be presumed** as having in possession for consume. (emphasis added)

As we can see here, the presumption provided by Section 107 paragraph 2 of the Narcotics Code is a non-absolute presumption⁴³ that benefits the defendant if the conditions are met. Section 107 paragraph 2 is a non-absolute presumption because even if the defendant was found with the number of narcotics under or exactly what is prescribed in the Ministerial Regulation to benefit from its presumptions, if the prosecution can prove that the defendant did not possess the narcotic for consumption, the defendant would be found guilty of possession under other provisions, which is not Section 164 in violation of Section 107.⁴⁴

However, one objection the author sees as a potential issue is the logic of this application of presumption. The issue with Section 107 paragraph 2 is, why is there a need for conditions for the presumption of consumption, which is a benefit to the defendant, rather than having the defendant by default be presumed to be in consumption? While the stipulation of Section 107 paragraph 2 may not denote the idea that the default burden of proof does not fall upon the prosecution but instead falls on the defendant on its own, when put in the context of Section 90, which requires only “possession” to constitute an offense,⁴⁵ the defendant may be required to present evidence that the possession of narcotics was not merely just “possession” but to consume it. This hypothetical scenario may happen because without the presumption under Section 107 paragraph 2, the factors that are used to determine whether the defendant is an abuser rest upon the behavior and circumstances around the case, such as checking urine samples and finding any equipment for using narcotics, among other things.⁴⁶ Such factors may or may not be considered by the prosecution, which may lead to the defendant needing to find this evidence and submit it to the court, or else the defendant may not benefit from Section 164’s less strict punishments and potentially other treatment measures instead of imprisonment.

V. THE PRESUMPTION OF INNOCENCE

The presumption of innocence is one of the basic foundations of criminal law. Under the presumption of innocence, every defendant in a criminal case is presumed

⁴³ “‘ชลน่าน’ ยืนยัน กฎครอบครอง ‘ยาบ้า 5 เม็ด’ ไม่ใช่เรื่องใหม่ ใช้พฤติการณ์พิสูจน์ ‘ผู้ค้า’” [“‘Cholnan’ Confirms That the Rules on Possessing ‘5 Methamphetamine Pills’ Is Not New, Behavior Shall Be Used to Prove ‘Drug Dealers’”] *Thai PBS* (12 February 2024) (Thai) <<https://www.thaipbs.or.th/news/content/336950>>.

⁴⁴ “เปิดเผยเงื่อนไขครอบครองยาบ้าไม่เกิน 5 เม็ด เป็นผู้เสพ” (กรมประชาสัมพันธ์) [“Revealing the Conditions for Possessing Not More Than 5 Methamphetamine Pills to be Considered an Abuser”] *Government Public Relations Department* (14 February 2024) (Thai) <<https://www.prd.go.th/th/content/category/detail/id/9/iid/259497>>.

⁴⁵ Supreme Court Decision 7526/2561; Supreme Court Decision 4444/2561.

⁴⁶ “Questions–Answers, Narcotics Law” (n 33) 5.

innocent until proven beyond a reasonable doubt that he is guilty of the charge. This presumption is a fundamental right outlined in various international conventions⁴⁷ and is generally recognized as a fundamental principle of criminal law.⁴⁸ In practice, this means that the prosecution has the burden of proof to prove that the defendant is guilty of the charge he is accused of. Furthermore, the standard of proof for the prosecution is much higher than in civil cases, as the prosecution needs to prove that the defendant is guilty beyond a reasonable doubt instead of the preponderance of evidence the civil cases use.

Under Thai Law, the presumption of innocence is written down as one of the basic principles⁴⁹ in the Constitution itself⁵⁰ and was derived from human rights.⁵¹ The principle is also reflected in some constitutional court decisions, stating that the defendant does not have a burden to prove his innocence⁵² and that the principle protects the defendant's rights by presuming the defendant is innocent until proven guilty via a final decision.⁵³

A. The Constitutionality of Presumptions under Thai Law

The Constitutional Court agrees that certain presumptions that increase the defendant's punishment are allowed.⁵⁴ There are two reasons to justify presumptions in criminal laws: 1. to promote government policies for the suppression of certain types of crimes; and 2. to intervene in the witness assessment process to conclude facts in a case for the court.⁵⁵

For the first reason, the prosecution has a high standard of proof, proving beyond a reasonable doubt every single element of a crime. What this means in practice is that there is a high chance for the perpetrator to be acquitted due to the failure of the prosecution to prove the defendant's guilt. As such, the government can lower this burden via presumptions.⁵⁶

For the second reason, usually, the court will have to look at the evidence and witnesses and use its discretion to determine whether or not it is satisfied with the

⁴⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 14 § 2; Universal Declaration of Human Rights (adopted 10 December 1948, UNGA Res 217 A(III)) art 11; European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) ETS No 5, art 6 § 2.

⁴⁸ Constitutional Court Decision 5/2556.

⁴⁹ Constitutional Court Decision 11/2544.

⁵⁰ Constitution of Thailand B.E. 2560, s 29 para 2.

⁵¹ Constitutional Court Decisions 12/2555 and 5/2556; วีระพงษ์ ตั้งสุวรรณ, “การใช้ข้อสันนิษฐานตามกฎหมายในคดียาเสพติดภายใต้หลักนิติธรรม” (เอกสารวิชาการส่วนบุคคล, วิทยาลัยรัฐธรรมนุญ สำนักงานศาลรัฐธรรมนูญ 2558) [Weeraphon Tungsuwan, “The Use of Legal Presumptions in Narcotics Case Under the Rule of Law” (Individual study, Institute of Constitutional Studies 2015)] (Thai) 9.

⁵² Constitutional Court Decision 11/2544.

⁵³ Constitutional Court Decision 12/2555.

⁵⁴ Constitutional Court Decision 11/2544.

⁵⁵ Weeraphon (n 51) 7.

⁵⁶ *ibid.*

evidence that the prosecution has presented to determine whether the defendant is guilty. Having presumptions serves as a guide for the court to use, basically to only look at whether the conditions of the presumptions are satisfied.⁵⁷

However, not all types of presumptions are allowed. The Constitutional Court uses a series of tests to determine the constitutionality of criminal presumptions. From an analysis of various Constitutional Court Decisions, certain themes arise as to which presumptions are allowed and which are not. Some tests include:

1. Did the defendant have the burden of proof to prove his innocence?⁵⁸
2. How connected is the presumed fact to the actual fact?⁵⁹
3. The type of presumption itself.
 - a. Presumptions based on the status of the defendants are generally not allowed.⁶⁰
 - b. Presumptions based on the actions or omissions of the defendants are generally allowed.⁶¹

A selected Constitutional Court Ruling will be analyzed to illustrate one example.

B. Selected Case: Constitutional Court Ruling No. 11/2544

The case that will be analyzed is the Constitutional Court Ruling No. 11/2544 due to its high relevance to the current topic. The facts of this case concern a charge of possession of heroin, a schedule 1 narcotic, by the first and second defendants. The first and second defendants were found guilty by the Phrae Provincial Court of possession for distribution due to both defendants' possession of 45.8 grams of the narcotic, which is in violation of Section 15 paragraph 1 and Section 66 paragraph 1 of the Narcotics Act B.E. 2522.

Both the defendants appealed the court's decision, citing that they were possessing the narcotics for use and not for distribution. However, the Appeals Court affirmed the lower court's decision, citing Section 15 paragraph 2 of the Narcotics Act B.E. 2522 as the basis for a presumption that the defendants possessed for distribution, and this presumption cannot be rebutted. This case was then appealed to the Supreme Court, where the defendants claimed that Section 15 paragraph 2 of the Narcotics Act B.E. 2522 was unconstitutional. This issue was then brought up in the Constitutional Court.

The Constitutional Court considered the main issue: whether Section 15 paragraph 2 of the Narcotics Act B.E. 2522 was contrary to or inconsistent with Section 33 of the Constitution B.E. 2540. Section 15 paragraph 2 of the Narcotics Act B.E. 2522

⁵⁷ *ibid.*

⁵⁸ Constitutional Court Decision 11/2544.

⁵⁹ Constitutional Court Decisions 12/2555 and 5/2556.

⁶⁰ Constitutional Court Decisions 12/2555, 5/2556, 11/2556, and 19–20/2556.

⁶¹ Constitutional Court Decisions 11/2544 and 9/2566.

(at the time) stated: “. . . The production, import, export or possession of narcotics of schedule 1 consisting of pure substance of 20 grams or more **shall be deemed** the production, import, export or possession for sale . . .” Section 33 paragraph 1 of the Constitution B.E. 2540 states: “The suspect or the accused in a criminal case shall be presumed innocent.” (emphasis added)

In determining the constitutionality of the law, the Constitutional Court explained that the intention of the law on narcotics was for the efficient suppression and control of narcotics. Furthermore, narcotics posed a severe effect on a person’s life and well-being, and, as such, the sanctions needed to be more severe.

The Constitutional Court further explained that the purpose of Section 15 paragraph 2 of the Narcotics Act B.E. 2522 was to punish those who possess 20 grams or more of the Schedule 1 Narcotic; nevertheless, the presumption was only for the aggravating result of the defendant. The Constitutional Court explained that Section 33 of the Constitution B.E. 2540 was intended for the plaintiff to prove the violation, not that the defendant had to submit evidence to prove his innocence. In this case, the prosecution successfully proved the offense of possession in Section 15 paragraph 1, and the presumption was to increase the punishment, not to determine guilt.

In light of the above, we can see that the Constitutional Court applied the test of whether the defendant had the burden of proof, and the answer was no. Furthermore, this type of presumption was made with respect to the acts of the defendant, not who they are.

As such, by 12 to 2 votes, the Constitutional Court ruled that the law was constitutional.

C. Potential Conflicts with the Current Narcotics Law

The author’s main issue with Section 107 of the Narcotics Code, as illustrated above, comes primarily down to the possibility that the defendant will have the burden of proof to prove that he possesses narcotics for consumption or not.

Firstly, the status of the presumption for possession of narcotics for consumption has a high likelihood of being constitutional since the presumption is dependent on the defendant’s actions, i.e., possession below or equal to a certain threshold and not who the defendant is.⁶² As from the previous statement, the type of presumption in Section 107 paragraph 2 of the Narcotics Code is dependent on the acts of the defendant, which the Constitutional Court has allowed even when the effects against the defendant are more severe than mere possession.⁶³ As such, when these types of presumptions are made for the defendant’s benefit, it should be constitutional.

Nevertheless, the author’s objections are not with the presumptions themselves but with having a separate provision with a lower punishment than another provision. It will be helpful to compare the two provisions.

⁶² Constitutional Court Decisions 12/2555, 5/2556, 11/2556, 19–20/2556, 11/2544, and 9/2566.

⁶³ Constitutional Court Decision 11/2544.

Section 90 of the Narcotics Code: “No person shall produce, import, export, distribute, or **having in possession** of narcotic drugs in schedule I, unless for the case that the permission is granted under Section 34 or Section 35 (3).” (emphasis added)

Section 107 of the Narcotics Code: “No person shall **have in possession** of narcotic drugs in schedule I, schedule II or schedule V or psychotropic substances in schedule I or schedule II **for consume**.” (emphasis added)

The key similarity of both of the provisions is “have in possession,” whereas to get the lower punishment via Section 164 and not Section 145 of the Narcotics Code, the defendant may have to prove, or the facts will have to show, that he is a drug abuser. This potential situation starkly contrasts the principles laid by the Constitutional Court. Considering the criteria laid by the Constitutional Court, the key test here is whether the defendant had to prove his innocence.

The author will illustrate this potential issue with a scenario.

1. A hypothetical scenario.

The prosecution charges the defendant, “Mr. A,” for possession of a Schedule 1 narcotic, two pills of methamphetamine. Section 145 of the Narcotics Code states:

Any person produces, imports, exports, distributes, or has in possession the narcotic drugs in schedule I, which is in violation of Section 90, shall be liable to imprisonment for a term of not exceeding fifteen years or to a fine of not exceeding one million and five hundred thousand Baht.

Furthermore, Mr. A could not gain the presumption of Section 107 paragraph 2, since the amount of methamphetamine pills exceeds the number prescribed in the Ministerial Regulation.⁶⁴ However, Mr. A argued in court that he possessed the pills for consumption and not for distribution. The question now stands: does Mr. A have the burden of proof to prove what he is claiming?

Indeed, the prosecution does not have that duty since, under Sections 90 and 145 of the Narcotics Code, he only has to prove beyond a reasonable doubt that Mr. A was in possession of the Schedule 1 narcotic. This situation can only mean that Mr. A now has the burden of proof to prove that he possesses the narcotics for consumption.

2. The conflict with the presumption of innocence.

As the previous scenario has illustrated, it may be the case that the defendant will have to prove that he is eligible to seek treatment. The court will look at the facts and circumstances, such as the actions of the defendant and other relevant factors, to determine if he is a dealer or an abuser.⁶⁵ As such, although the defendant can still be

⁶⁴ The Ministerial Regulation on the Limit of the Number of Narcotics and Psychedelics That Is Used for the Presumption of Consumption B.E. 2567 (No 2) art 2.

⁶⁵ “Questions–Answers, Narcotics Law” (n 33) 5.

considered a drug abuser, the prosecution does not need to prove that the defendant is not an abuser since the wording of Sections 90 and 145 already criminalizes possessions in general.⁶⁶

This is not a direct violation of the presumption of innocence *per se* since it still requires the prosecution to prove the elements of the crime of possession. Nevertheless, the author argues that the prosecution should also have to prove that the possession of narcotics was not for consumption, which will add another element to the standard of proof and thus protect the rights of the defendant more. Thus, this conflict may need more analysis to see whether a better solution can be found.

VI. COMPARATIVE ANALYSIS OF PRESUMPTIONS IN NARCOTICS LAW

Now that the author has described Thai law on narcotics, presumptions, and presumption of innocence, the author wishes to look at other jurisdictions first to determine:

1. Other nations' solutions to distinguishing drug dealers and abusers; and
2. the status of criminal presumptions in their jurisdiction.

The two countries chosen for this analysis are Germany and the United States of America.

A. Germany

1. Narcotics law.

The German Narcotics Law is governed by the *Betäubungsmittelgesetz* (German Narcotics Act). Germany had a very interesting solution to separating drug abusers and drug dealers, simply by not separating them at all in the category of the offense but adding a measure to deal with offenders who are drug addicts instead.

Section 29 (1) 1. of the *Betäubungsmittelgesetz* criminalizes the act of possessing narcotics without being in possession of a written permit. It is noted that there are no distinctions between “possession” and “possession for consumption” in the criminal offenses provisions of the *Betäubungsmittelgesetz*.⁶⁷ However, one similar concept that can be compared to “possession for consumption” can be found in Section 31a of the *Betäubungsmittelgesetz*. In that provision, if the defendant possesses the narcotics in small quantities for personal consumption only, then the prosecution can decide not to pursue the case. Please note that this provision does not

⁶⁶ Supreme Court Decisions 7526/2561 and 4444/2561.

⁶⁷ *Betäubungsmittelgesetz*, ss 29–30b.

carry the same issues as Sections 107 and 164 of the Thai Narcotics Code since Section 31a is not a provision that imposes punishment on those who violate it like a criminal provision, but is a guideline that allows the prosecution to not prosecute the defendant. Hence, there is no issue determining whether the defendant is guilty of a crime; thus, the presumption of innocence does not apply here. Ironically, since Section 31a is not a criminal provision, it may be able to better achieve the Thai government’s objective with Section 107 of the Thai Narcotics Code in allowing defendants to come forward and get their addiction treated.⁶⁸

What is different here is that the way Germany tackles treating abusers and traders is by providing additional measures for so-called “Drug-Dependent Offenders.”⁶⁹ From Sections 35 to 38 of the *Betäubungsmittelgesetz*, there are two requirements to start these measures:

1. The defendant committed the offense due to drug addiction; and
2. The defendant was sentenced to not more than two years.

When these two conditions are met, the authority may defer punishments, suspend sentences, or not charge the defendant with the court’s consent.⁷⁰ Again, please note that Sections 35 to 38 are not Sections that impose punishments on the defendant but are additional measures only after the defendant has already been found guilty. Hence, the issue of who has the burden of proof here is not an issue since all types of possession are already illegal under Section 29 (1) 1.

These measures would eliminate the author’s issues about Section 107 of the Narcotics Code by consolidating all types of possessions into one single offense and then applying “possession for consumption” as an additional requirement to reduce the punishment or allow the prosecution to refrain from prosecuting the defendant. By not separating the offenses into different provisions, Germany avoids the problem of having the defendant have the burden of proof to prove that he is a drug addict.

2. Status of statutory criminal presumptions.

a) Presumption of Innocence. Similar to Thai law, the right to be presumed innocent before proven guilty is also recognized as a basic right.⁷¹ However, unlike Thai law, the presumption of innocence is not explicitly mentioned in the *Grundgesetz* (The

⁶⁸ “Summary of Key Points of the Narcotics Act” (n 9) 3.

⁶⁹ *Betäubungsmittelgesetz*, ch 7.

⁷⁰ *ibid*, s 37.

⁷¹ Thomas Weigend, “Assuming That the Defendant Is Not Guilty: The Presumption of Innocence in the German System of Criminal Justice” (2013) 8(2) *Criminal Law and Philosophy* 285–99, 285.

German Constitution).⁷² Nevertheless, case law⁷³ in Germany has established the presumption of innocence to be a manifestation of the rule of law.⁷⁴ Furthermore, the presumption of innocence may be derived from Article 6(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 48(1) of the Charter of Fundamental Rights of the European Union.⁷⁵

In practice, this means that until the court makes the final decision, the defendant cannot be treated as if he is guilty. As for criminal presumptions, reverse burdens of proofs and strict liability are unconstitutional.⁷⁶

B. United States of America

1. Narcotics law.

The United States' Narcotics law is separated between the federal and state levels. The author will only analyze the federal level.

On the federal level, the United States Code Title 21 Chapter 13 deals with the control and enforcement of narcotics. Here, there is a clear distinction between mere possession, under Section 844, and possession with intent to manufacture, distribute, or dispense, under Section 841. Notably, "possession for consumption" is not present. Nevertheless, one notable thing about U.S. Federal law is that mere possession of narcotics is a misdemeanor, with a maximum sentence of 1 year, unless there is a prior conviction.⁷⁷ Furthermore, if the defendant possessed a small amount of narcotics specified by the regulation of the Attorney General, they could be liable for civil penalties.⁷⁸

The way of the United States, although it does not explicitly separate abusers and dealers, almost implicitly separates them by way of an assumption through the punishments thereof. Section 841 requires that the prosecution prove that the defendant is in possession with the intent to distribute, thus making it clear that the key focus is the intent to distribute. On the other hand, mere possession is its own thing and will inevitably contain possession for consumption.

⁷² Christoph Gröpl, "The Presumption of Innocence in the Legal Framework of Germany" (Universität des Saarlandes) <https://www.uni-saarland.de/fileadmin/upload/lehrstuhl/groepl/Groepl_PDF-Zsfg/Groepl_PresumptionofInnocence.pdf> 1; Federal Constitutional Court, Judgment of 31 October 2023, 2 BvR 900/22 <https://www.bverfg.de/e/rs20231031_2bvro90022en.html> para 86.

⁷³ Federal Constitutional Court, Judgment of 19 March 2013, 2 BvR 2628/10 <https://www.bverfg.de/e/rs20130319_2bvr262810en.html> para 61; and Order of 18 July 2005, 2 BvR 2236/04 <https://www.bverfg.de/e/rs20050718_2bvr223604en.html> paras 143–44.

⁷⁴ *Grundgesetz*, art 20(3).

⁷⁵ Gröpl (n 72) 1.

⁷⁶ Michael Bohlander, *Principles of German Criminal Law* (Hart Publishing 2009) 58.

⁷⁷ United States Code Title 21, s 844.

⁷⁸ *ibid*, s 844a.

Thus, by making possession its standalone provision, the prosecution has the burden of proof to prove that there is not only possession but possession with intent to distribute, eliminating the issue that may be present in the Thai Narcotics Code.

2. Status of statutory criminal presumptions.

a) Presumption of Innocence. Similar to Germany, the presumption of innocence is not explicitly mentioned in the United States Constitution.⁷⁹ However, through case law, the presumption of innocence is regarded as one of the basic components of a fair trial,⁸⁰ referencing the 14th Amendment of the U.S. Constitution with the right of due process. The presumption of innocence is even described as “axiomatic and elementary” to criminal law.⁸¹ However, there were controversies about the actual status of presumptions; some argued that it is an “instrument of proof” in favoring the accused.⁸² However, this concept was abandoned soon after,⁸³ turning the presumption of innocence from a practical concept to “an inaccurate, shorthand description of the right of the accused to “remain inactive and secure until the prosecution has taken up its burden and produced evidence and effected persuasion; . . .”⁸⁴ Furthermore, it is noted that the reasonable doubt standard and the presumption of innocence are similar concepts.⁸⁵

b) Statutory Criminal Presumptions. As for the status of statutory criminal presumptions, the United States seems to allow statutory criminal presumptions subjected to certain tests. An example is *United States v. Gainey*, where, similar to the Thai doctrine, the court allows for presumptions of facts through the act of the defendant. In this case, the Supreme Court explained that the statutory presumption is permissible due to the rational connection between the act and the crime.⁸⁶ Other tests include whether the trial judge was deprived of his normal powers to submit a case to the jury or granting a judgment notwithstanding the verdict and whether the jury was prevented from being instructed on the standards for reasonable doubt.⁸⁷

⁷⁹ *Estelle v Williams*, 425 US 501 (1976), reiterated in *Taylor v Kentucky*, 436 US 478 (1978).

⁸⁰ *ibid.*

⁸¹ *Coffin v United States*, 156 US 432 (1895), reiterated in *In re Winship*, 397 US 358 (1970).

⁸² *ibid.*

⁸³ William F. Fox Jr., “The ‘Presumption of Innocence’ as Constitutional Doctrine” (1979) 28(2) Catholic University Law Review 253, 261.

⁸⁴ *Taylor v Kentucky* (n 79).

⁸⁵ Fox (n 83) 262–63; *Taylor v Kentucky* (n 79).

⁸⁶ *United States v Gainey*, 380 US 63 (1965).

⁸⁷ *ibid.*

However, certain limits are put on criminal presumptions. Firstly, the presumption cannot have a mandatory effect on an element of an offense.⁸⁸ It also cannot shift the burden of proof to the defendant.⁸⁹

As we can see, statutory criminal presumptions are allowed to ease the burden of proof of the prosecution, even in criminal cases, so long as they pass certain types of tests.

VII. COMMENTARY

Now that all of the descriptive and comparative analyses of Narcotics Law and Statutory Presumptions are done, the author would like to provide some possible suggestions for Thai Narcotics Law, considering the research to possibly prevent an issue with the constitutionality of “possession for consumption” or in any event to further protect the rights and liberties of the people as enshrined in Section 29 paragraph 2 of the Constitution B.E. 2560.

A. Suggestions

1. Add “not for consumption” to Sections 90–94 and 145–49 and reverse the presumption of Section 107 paragraph 2.

The first suggestion is to amend the Narcotics Act so that the prosecution must prove an extra element. In this case, by adding “not for consumption,” the burden of proof shall be like this:

Before:

Offense

1. Act
2. Internal Element
3. External Element
 - a. Possession of Narcotics

Justifications (if any)

Excuse (if any)

⁸⁸ Christopher B. Mueller, Laird Kirkpatrick, and Liesa Richter, §3.13 “Presumptions” in *Criminal Cases* (6th edn, Wolters Kluwer 2018) GWU Law School Public Law Research Paper No 2018-53, 3–4 <https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2634&context=faculty_publications>.

⁸⁹ *ibid*.

After:

Offense

1. Act
2. Internal Element
 - a. Not for consumption
3. External Element
 - a. Possession of Narcotics

Justifications (if any)

Excuse (if any)

With this approach, the prosecution will now have to prove the guilt of the defendant and prove that he is not a drug abuser. Furthermore, reversing Section 107 paragraph 2 means that instead of the presumption for possession for consumption, it can be the presumption for possession, not consumption. As such, the ministerial regulations that limit the number of drugs will be used as part of the defendant's guilt and not innocence.

a) Pros. Essentially, the burden of proof for the possession offense will now fully be the prosecution's duty. Furthermore, the defendant is presumed to be in possession for consumption unless proven otherwise via statutory presumptions or evidence and witnesses.

b) Cons. This approach does not solve the main issue of distinguishing between drug dealers and drug abusers. It merely provides for the burden of proof to be with the prosecution instead.

2. Follow Germany's approach: do not separate the offenses.

Another approach worth looking into is Germany's approach, which does not separate the types of offenses at all but provides additional measures and guidelines for the cases of possession for consumption. Having the discretion of the prosecutor and the courts, depending on certain types of facts, does not mean that the defendant has the burden of proof to prove that he is just a drug abuser.

a) Pros. The pros of Germany's approach are that there is no conflict with the burden of proof since the crime is under the same provision.

The separation of drug abusers and drug dealers is an extra category, separated from the offenses, which still allows for the distinction between dealers and abusers.

b) Cons. Nevertheless, as the crime of possession is all lumped together, drug abusers may be treated similarly to drug dealers if they do not gain the benefits outlined in other provisions.⁹⁰

3. Follow the USA's approach: separate possession for distribution from possession.

The USA's approach to combining mere possession into one provision⁹¹ and another, dealing with possession with intent to distribute,⁹² is quite similar to the previous Narcotics Act B.E. 2522.⁹³ This approach completely separates drug dealers from everyone else. To do this in Thai law, we must look at the previous Narcotics Act B.E. 2522, which already made such distinctions. Continuing with the themes of treating drug abusers as victims in need of curing, to add to the U.S.'s approach, Thailand should keep its measures for mere drug abusers so that they can get the health care that they need.

a) Pros. Legally speaking, this approach has the most explicit distinction between drug dealers and everyone else.

Furthermore, having to prove intent to distribute means that the defendant is presumed innocent until proven guilty.

b) Cons. Inversely, there are not many measures to distinguish drug abusers as well, and as such, separating them from other drug possessors is not as apparent as the German or Thai approach.

4. Observation.

These three suggestions and jurisdictions all have different measures and ways to deal with the issues of narcotics. Nevertheless, governments should find solutions that are

⁹⁰ *Betäubungsmittelgesetz*, ss 31a, 35–37.

⁹¹ United States Code Title 21, s 844.

⁹² *ibid*, s 841.

⁹³ As an example, Section 66 paragraph 1 of the Narcotics Act B.E. 2522 states:

Any person who disposes of or possesses for disposal narcotics of category I without permission and in quantity computed to be pure substances, or in number of used dosage, or in net weight, that does not reach the quantity prescribed in Section 15 paragraph three, shall be liable to imprisonment for a term of four to fifteen years, or to a fine of eighty thousand to three hundred thousand baht, or to both . . .

Contrast that with Section 67 of the Narcotics Act B.E. 2522:

Any person who possesses narcotics of category I without permission and in quantity computed to be pure substances, or in number of used dosage, or in net weight, that does not reach the quantity prescribed in Section 15 paragraph three, shall be liable to imprisonment for a term of one year to ten years, or to a fine of twenty thousand to two hundred thousand baht, or to both.

reflected in their policies to see which approach will serve them the best. The author does not think there is a clear-cut best approach but wishes to emphasize that the government needs to ensure that the presumption of innocence is well maintained.

VIII. CONCLUSION

In conclusion, the presumption of innocence is one of the basic principles of the rule of law. Without it, the government can abuse its power and use its enormous resources to persecute the common person into being convicted. Nevertheless, certain statutory presumptions are allowed so long as they do not reverse the burden of proof of the defendant and there is a logical link between the conditions and the presumed fact.

Although it is unclear whether Sections 90–94, 107, 145–49, and 164 violate the Constitution, upon the conclusion of this research, they most likely are not unconstitutional. Nevertheless, the author sees that there is a better way for the Thai government to separate drug dealers and drug abusers without violating the principle of presumption of innocence than the current status quo.

Essentially, there needs to be a clear-cut distinction between drug abusers and drug dealers, but the government also has to make sure that the burden of proof falls on the prosecution to prove that the defendant is more than a mere drug abuser. In doing so, the rights of the people will be protected, and this allows for more drug abusers to be able to have their addiction treated instead of being punished.

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* **Indexing Thai names.** “Although family names are used in Thailand, Thai people are normally known by their given names, which come first, as in English names. The name is often alphabetized under the first name, but practice varies.” *The Chicago Manual of Style* (18th edn, University of Chicago Press 2024) §15.93.