

論持有毒品行為與其目的行為之關係 —以持有大量毒品行為與其目的行為之競合 為重心*

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關鍵字：持有毒品、施用毒品、販賣毒品、轉讓毒品、意圖販賣而持有毒品、持有大量毒品、純質淨重。

Keywords：possessing narcotics, applying narcotics, transferring narcotics, selling narcotics, possessing narcotics with intent to sell, possessing narcotics over the legal standards, pure weight.

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摘要

持有毒品為毒品犯罪之基礎，除製造毒品外，其餘之毒品犯罪必先透過持有毒品後，才得以進行後續之施用、轉讓或販賣毒品等目的行為。因此，實務上關於持有毒品與其後續目的行為之競合，向來皆以吸收關係處理。無論就持有毒品後，自行施用、販賣與他人、意圖販賣而持有，抑或轉讓與他人，均認為持有毒品乃低度行為，應為後續之高度目的行為所吸收。

鑑於行為人持有毒品之數量，遠超過常人平日施用之配額時，經驗上應可推定除供己施用外，有極大可能是為了轉讓或販售與他人，為有效斷絕毒品蔓延，立法院於2009年5月20日修正通過之毒品危害防制條例第11條第3項及第4項，特別就持有第一級及第二級毒品純質淨重達法定標準者，予以重罰，將其刑度提高至轉讓同等級毒品之法定刑，並超越施用同等級毒品之法定刑。未來一旦查獲行為人持有大量毒品，同時發現有其他諸如施用、轉讓及販賣等犯行時，應如何論罪，為本文討論之重心。

The relationship between the acts of possessing narcotics and their purposive behavior

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Abstract

Possession of narcotics is the basis of narcotic-related crimes, in addition to manufacturing narcotics, the rest of the narcotics -related crimes should take the possession of narcotics to making the further types, like applying narcotics, transferring narcotics and selling narcotics. Therefore, the application of law competition in applying narcotics, transferring narcotics and selling narcotics, always been regarded that the possession of narcotics is a low act, shall be incorporated in further act.

As the number of drugs held by the defendant, far more than ordinary daily application of the quota, the experience should be presumed to have been applied in addition to, there are most likely to transfer or sell with others. To effectively cut off the spread of narcotics, the Legislative Yuan May 20, 2009 amended by the Against Narcotics Act article 11, paragraph 3 and 4 of the items, especially to holding heavy penalties in people who possessing the first grade and the second grade narcotics over the legal standards. That is, to raise the degree of punishment to the mandatory transfer of the same class of drugs, and beyond the mandatory application of the same class of drugs. The focus of discussion for this article is how to deal with the defendant held by large quantities of narcotics seized, and found the act with applying, transferring or selling the narcotics at the same time.