COMMISSION ON NARCOTIC AND DRUG LAWS

REPORT OF THE COMMISSION

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA

House Document No. 23

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1972

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COMMISSION ON NARCOTIC AND DRUG LAWS

Report of the Commission

to

The Governor and The General Assembly of Virginia

Richmond, Virginia

January 25 1972

To: HONORABLE LINWOOD HOLTON, *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

I. INTRODUCTION

Narcotic and drug laws can be viewed as two separate sets of laws. The *regulatory provisions* establish rules and procedures for the control of all legitimate manufacturing, selling or otherwise distributing narcotics and controlled drugs. The *criminal sanctions* define criminal offenses for violations of the regulatory provisions, establish penalties for such offenses, and provide special provisions for the enforcement and prosecution of such offenses.

Virginia's narcotic and drug laws were substantially amended at the 1970 Session of the General Assembly. Since that time, the Uniform Controlled Substances Act has been drafted by the National Conference of Commissioners on Uniform State Laws, and it appears that there would be a great benefit, from both control and law-enforcement views, if all states were to substantially adopt the regulatory provisions of this law. If so, all states and the federal government would have similar laws and powers in this area.

The need for changes in the criminal sanctions portion of these laws was recognized by studies of the Virginia State Crime Commission in 1970 and that body recommended enactment of House Joint Resolution No. 16 by the 1971 Session, which created this Commission.

HOUSE JOINT RESOLUTION NO. 16

To create a commission to study the narcotic and drug laws of the State.

Whereas, the present State narcotic and drug laws are primarily laws to regulate the profession of pharmacy, and the control of narcotics and dangerous drugs is but an adjunct to such laws; and

Whereas, the control of narcotics and dangerous drugs is now of paramount importance to our society; and

Whereas, many members of the legal profession and many law-enforcement officials throughout the Commonwealth have expressed concern on the practicality of provisions to enforce the criminal sanctions enumerated in these laws; now, therefore, be it

Resolved by the House of Delegates, the Senate of Virginia concurring therein, That a commission be and hereby is created to study the narcotic and drug laws of the State. The Commission shall be composed of five

members of the Courts of Justice Committee of the House of Delegates, to be appointed by the Speaker of the House of Delegates, three members of the Courts of Justice Committee of the Senate, to be appointed by the President of the Senate, two members from the pharmacy profession, to be appointed by the President of the State Board of Pharmacy, two members of the medical profession, to be appointed by the President of the Board of Medical Examiners, and the Attorney General of Virginia. The Commission shall elect its own chairman. The members of the Commission shall receive no compensation for their services, but shall be paid their necessary expenses incurred in the performance of their duties.

The Commission shall concern itself primarily with the criminal sanctions enumerated in the narcotic and drug laws, the penalties imposed and all other legal and law-enforcement aspects of these laws. It shall report its findings and recommendations to the Governor and the General Assembly no later than December one, nineteen hundred seventy-one.

For the purpose of carrying out this study, the sum of five thousand dollars is hereby appropriated from the contingent fund of the General Assembly.

Pursuant to this Resolution, the following were appointed to the membership of this Commission: Delegate George E. Allen, Jr., of Richmond, Senator Herbert H. Bateman of Newport News, Mr. R. Michael Berryman of Kenbridge, Dr. Earnest B. Carpenter of Richmond, Dr. George J. Carroll of Suffolk, Delegate J. Samuel Glasscock of Suffolk, Senator William H. Hodges of Chesapeake, Senator J. Harry Michael, Jr., of Charlottesville, Attorney General Andrew P. Miller, Delegate Stanford Parris of Fairfax, Delegate Donald G. Pendleton of Amherst, Delegate A. L. Philpott of Bassett and Mr. Ralph M. Ware, Jr., of Richmond.

Senator Hodges was elected Chairman and Mr. Glasscock, Vice-Chairman.

The Virginia Advisory Legislative Council and the Division of Statutory Research and Drafting made staff and facilities available to carry out this study; they assigned the necessary employees to assist the members and the study group at all times.

During this study, the Commission mailed letters to all Commonwealth attorneys, judges, chiefs of police and sheriffs throughout the Commonwealth to solicit their views on the present narcotics and drug laws of Virginia and needs for changes in such laws. A public hearing was conducted by the Commission in Richmond, which was widely advertised; all members of the public were encouraged to express themselves on the subject. Additionally, the expertize and opinions of the Office of the Attorney General, the State Board of Pharmacy and the Virginia Pharmaceutical Association were requested in several instances. These responses, statements and opinions were all carefully considered by the Commission and were of great benefit.

II. SUGGESTED AMENDMENTS

A. Regulatory Provisions

The regulatory provisions have not presented a great problem during the study. These are the least controversial parts of the drug laws among the general public and the major consideration of them was toward amending the appropriate sections in order to substantially conform them to the Uniform Law. The following is a list of the major changes which are felt necessary for such conformity, or which are otherwise desirable:

1. § 54-524.2.—Amend definitions for various terms and define other terms.

2. § 54-524.16.—Specify criteria that the Board of Pharmacy must consider in exercising its powers to regulate the practice of pharmacy.

3. § 54-524.17.—Authorize the rules and regulations of the Board of Pharmacy to be admissible as competent evidence in a court of law and declare that such rules and regulations be prima facie evidence of compliance with all provisions of law regarding their promulgation.

4. § 54-524.22.—Repeal this section, which authorizes the Board of Pharmacy to refuse to grant or to revoke a license and add a new § 54-524.22:1 to broaden such powers by authorizing the Board to suspend or fail to renew a license and to specify grounds for such action. These grounds will also apply to monetary penalties provided for in § 54-524.107.

5. §§ 54-524.42 and 54-524.43.—Repeal these sections which pertain to Class B manufacturing permits. The provisions relating to a Class A manufacturing permit are broadened to include all manufacturers who are now required to be licensed, and only one type of manufacturing permit will be issued.

6. §§ 54-524.47:1, 54-524.47:2 and 54-524.47:3.—These are new sections which will require all persons, other than pharmacists or pharmacies, who manufacture, distribute or dispense substances which are controlled in Schedules I through V to register with the State Board of Pharmacy. These sections contain provisions similar to all of the registration provisions in the Uniform Act. After registration under these sections, such persons may manufacture, distribute, dispense or conduct research with such substances only to the extent authorized by their registration.

7. § 54-524.56.—Require all registrants to immediately report the discovery of a theft or unusual loss of any controlled substances to law-enforcement officials and the Board of Pharmacy.

8. §§ 54-524.63, 54-524.64, 54-524.70, 54-524.71 and 54-524.74. Repeal these sections which authorize or prohibit certain activities since such prohibitions or authorizations are found elsewhere in the chapter.

9. § 54-524.76.—Repeal the provision which authorizes manufacturers or laboratories or their officers or agents to obtain drugs by fraudulent means.

10. Article 6. (§§ 54-524.79 through 54-524.84).—Repeal this Article, which pertains to standards and schedules, and add a new article (Article 6.1, §§ 54-524.84:1 through 54-524.84:13) relating to the same matter. This will establish six new schedules of controlled substances. The first five schedules will be similar to schedules in the Uniform Act and the sixth schedule will control additional substances which are now controlled by the present Virginia law. The Board of Pharmacy, after compliance with certain requirements, will have the authority to remove or add substances to or from these schedules.

11. § 54-524.77.—At present, it is the duty of the Department of Agriculture and Commerce to conduct all drug analyses, but other chemical laboratories operated by State or local government, which are capable of doing this work, exist and more are being planned. This section is amended to provide that the analyses of such other laboratories are admissible as evidence in court if they are authorized by the Chief Medical Examiner of the Commonwealth for this purpose. The amendment makes

clear that the certificate of the chemist who performed the analysis is admissible in any proceedings and the chemist need not be present in court unless specifically requested to do so by a party in interest. It will also require that the certificate be filed with the clerk of the court seven days prior to trial or hearing rather than made available to the defendant or his attorney twenty-four hours prior thereto.

B. Criminal Sanctions

Although the federal government has expressed a great concern in the benefits of every state enacting the regulatory provisions of the Uniform Controlled Substances Act, it is not so much concerned about the uniformity of criminal sanctions. As a matter of fact, the Uniform Act does not even suggest specific penalties for the more serious violations of the drug laws; it is felt that such penalties should reflect the criminal punishment philosophy of each specific state. Therefore, there is a great difference between the penalties established by the various states for such violations, and judging from the volume of legislation that is now being introduced into state legislatures, very few states seem to be satisfied with their present penalties. The trend of most states seems to be to provide harsh penalties for pushers, or distributors for profit, and to be more lenient towards users.

The Commission ascribes to the philosophy of that trend. With the ever-increasing drug abuse problem that exists today, more and more young and immature citizens are experimenting with drugs and, even more unfortunately, many are being addicted to the use of such drugs. The State's responsibility goes much further than prohibiting the illegal use of drugs; it must assist parents and guardians in protecting these young people from the temptation of drug experimentation and use, and it must assume responsibility towards addicts—to get them off the streets, to treat them and to get them away from crime. Surely, the imposition of a felony conviction for an indiscretion of a young boy or girl is not an acceptable solution if such youth is not a commercial distributor.

It is often very difficult, however, to draft a penalty statute which will accomplish such objectives with precision in all cases. An attempt to do so is found in new §§ 54-524.101:1 and 54-524.101:2 of the recommended revision of The Drug Control Act.

Criminal vs. Accommodating Distributors—The present law provides the same penalties for all persons who are found guilty of illegally manufacturing, distributing or possessing with the intent to distribute controlled substances. Therefore, an individual who is convicted of gratuitously passing a marijuana cigarette to another is guilty of the same type of offense and is subject to the same penalty as one who is convicted of selling large quantities of marijuana or heroin for a profit. The recommendation of this Commission makes a distinction between one who distributes the more commonly abused drugs for profit and one who distributes such drugs as an accommodation. The commercial distributor of drugs in Schedules I, II or III would be subject to five to forty years, but the gratuitous distributor would be subject to one to ten years or, at the discretion of the jury or court, he could be guilty only of a misdemeanor.

Intent Based on Quantity Alone—A provision in the present law enables a court to convict an accused for possession with the intent to distribute solely upon the evidence as to the quantity of the illegal controlled substance possessed. This provision is found to be necessary in order to

convict those who are found to possess such large quantities of illegal substances that an intent to distribute is clear but no other evidence can be discovered. In less obvious cases, however, this provision is not applied equally in courts throughout the Commonwealth. Some courts have apparently interpreted a legislative intent different from this sole objective and the provision can, and probably has, resulted in convicting an individual with the intent to distribute when such an intent did not actually exist.

In order to cure this problem, the Commission considered establishing a separate offense for possession of less than a certain amount of marijuana (i.e. an ounce) and other Schedule III substances so that possession of small amounts of these substances would constitute the offense of simple possession only. There are, of course, many obvious difficulties in administering such a law; for example, how to determine the specific amount in cases of mixtures. Probably the most important reasons for abandoning this possible solution is the fact that such a provision would benefit the pusher more often than the user. The pusher would soon learn of the new provision and would be cautious not to carry more than the specified amount, but the unsophisticated user probably would not be as well informed of the law and would be the one more likely to get caught with a larger quantity.

The courts must exercise extreme caution to insure that this provision is applied only in cases where the quantity is sufficient to indicate a clear intent to distribute. The presumption of a greater offense should not be allowed if possession for personal use of the substance is all that was actually intended.

Conditional Discharge for First Offenders of Possession—The Commission recommends a conditional discharge provision similar to that in the Uniform Act. Such a provision would permit a judge, at his discretion, to place a first offender on probation in cases involving simple possession of controlled substances under conditions determined by the judge. Since many simple possession offenders are either casual users or experimenters who would be unlikely to commit the offense again after their first encounter with the law, this provision gives the court an added flexibility in dealing with this type of offender. If the offender fulfills all of the terms and conditions of his probation, his record would remain clean and the stigma of a criminal prosecution would not follow him in later life. Additional language is added to the provision in the Uniform Act to insure that this section will apply only once to any one person.

Distribution to Minors—A more severe penalty is provided in the present Virginia law for the sale or distribution of a controlled substance to persons under the age of eighteen. The obvious purpose of this provision is to present a stronger deterrent to adults selling or distributing such substances to children. However, distribution by youth among their peers is very common and if an individual eighteen years old distributes to someone just a few months younger than he is, he might be punished more severely. Therefore, the Commission recommends the suggestion of the Uniform Law that a more severe penalty would apply only if the distributor is at least three years older than the distributee.

Attempts and Conspiracies—The present section which prohibits attempts and conspiracies to commit offenses defined in the drug laws are vague in that no distinction is made in the punishment for these two separate types of crime. In order to cure this vagueness, the Commission recommends the enactment of two separate sections, one dealing with conspiracies and another dealing with attempts.

Confiscation of Property—Many law-enforcement officials throughout the Commonwealth have recommended a provision in the drug laws to provide for the confiscation of any motor vehicle found transporting illegal drugs. Such a provision now exists in § 18.1-346 of the Code of Virginia. This section is very broad and provides for the confiscation of any property used in connection with the illegal use and possession of drugs. The Commission suggests that this section be amended to allow confiscation only when the property is used in connection with the illegal manufacture, sale or distribution of drugs and to provide for the disposition of such confiscated property.

Commitment of Addicts—A great amount of consideration has been given during this study to the commitment of drug addicts to a therapeutic facility for treatment and rehabilitation, since this is a necessary step in any significant attempt to reduce drug abuse. The major problem in this respect, however, is the present lack of adequate rehabilitation facilities throughout the State. There are only a few such facilities compared to the great need that exists for them and the ones that do exist are very overcrowded. *The establishment of adequate drug rehabilitation facilities should be a high State priority for the next biennium.*

The present mental health laws provide for the voluntary and involuntary (civil commitment) admissions of drug addicts to State hospitals, but these hospitals are already filled to capacity with other types of mental patients. The estimated number of addicts in the Commonwealth who could benefit from treatment and rehabilitation is probably greater than the total population in all of the State hospitals. An additional problem is that the present definition of "drug addict" in the mental health laws is restricted to those persons who are dangerous to the public or themselves or who are unable to care for themselves, their property or family.

The Commission suggests two changes to the mental health laws: (1) to amend the definition of "drug addict" as to include all those who are in need of medical or psychiatric care, treatment, rehabilitation or counseling, and (2) to permit the Commissioner of Mental Hygiene and Hospitals to transfer patients in State hospitals to any treatment facility which is proper for the specific treatment and care needed in a specific case. The first change would provide for the treatment of all who are in need, and the second change will help to prevent overcrowding in State hospitals and more effective use of all drug treatment facilities throughout the Commonwealth as such facilities are established and properly licensed.

The voluntary admission and the civil commitment procedures, it is hoped, will provide treatment and rehabilitation to the majority of drug users before they commit serious violations of law. Many others will not be recognized until they get into trouble with the law and come before the courts. In the case of first offenders for possession of illegal drugs, the courts can use the conditional discharge provision to require treatment and rehabilitation. In order to provide for the treatment and rehabilitation of addicts charged with violation of other provisions of the drug laws, the Commission recommends that the Department of Welfare and Institutions conduct a study and develop a plan for the treatment and rehabilitation of all addicts who are charged with any violation of the drug laws or who are incarcerated in jails for convictions of such offenses.

Much consideration must be given in the formulation of this plan to insure that it is effective for Statewide application and that it makes maximum use of all available treatment and rehabilitation facilities, both

public and private which now exist or which may be established in the future.

III. RECOMMENDATIONS

For the reasons stated previously, it is the recommendation of this Commission that the four items of legislation included in this Report be enacted during the 1972 Regular Session of the General Assembly of Virginia.

IV. ACKNOWLEDGMENTS

The Commission wishes to express its sincere appreciation to the expertize liberally furnished to it during this study by Mr. Theodore J. Markow, Assistant Attorney General, and Mr. Jack B. Carson, Secretary-Treasurer of the State Board of Pharmacy. Mr. Markow provided the unusual combined professional abilities of an attorney and a registered pharmacist, and Mr. Carson furnished a keen insight into the type of regulation peculiar to this study.

Respectfully submitted,

WILLIAM H. HODGES, *Chairman*

J. SAMUEL GLASSCOCK, *Vice-Chairman*

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ADDITIONAL STATEMENT OF DELEGATE STANFORD E. PARRIS

Although I concur with the recommendations of the Commission contained in the foregoing report, I am constrained to point out what I consider to be a defect in the report in the nature of an omission therefrom.

That defect is the failure of the Commission to recommend the inclusion of the so-called "Second or Subsequent Offense, Section 408," of the Uniform Controlled Substances Act as drafted by the National Conference of Commissioners on Uniform State Laws. That section is designed to impose stiffer penalties on those persons who commit second and subsequent offenses under the Act other than the offense of simple possession of a prohibited substance. That section reads as follows:

(Section 408. (Second or Subsequent Offenses.)

(a) Any person convicted of a second or subsequent offense under this Act may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) For purposes of this Section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this Act or under any statute of the United States or of any State relating to narcotic drugs, marihuana, depressant, stimulant or hallucinogenic drugs.

(c) This Section does not apply to offenses under Section 401 (c).)

I would recommend the adoption of the section as written except as to numbering changes where applicable.

In all fairness it should be mentioned that the Commission considered and discussed the inclusion of the subsequent offense section during its deliberations but rejected the same with the apparent majority consensus being that "sufficient penalties for repeaters are now provided in the recidivist statutes." (§ 53-296, Code of Virginia 1954, as amended.) That section reads as follows:

§ 53-296. Convicts previously sentenced to like punishment; additional confinement.—When a person convicted of an offense, and sentenced to confinement therefor in the penitentiary, is received therein, if it shall come to the knowledge of the Director of the Department of Welfare and Institutions that he has been sentenced to a like punishment in the United States prior to the sentence he is then serving, the Director of the Department of Welfare and Institutions shall give information thereof without delay to the Circuit Court of the city of Richmond. Such court shall cause the convict to be brought before it, to be tried upon an information filed, alleging the existence of records of prior convictions and the identity of the prisoner with the person named in each. The prisoner may deny the existence of any such records, or that he is the same person named therein, or both. Either party may, for good cause shown, have a continuance of the case for such reasonable time as may be fixed by the court. The existence of such records, if denied by the prisoner, shall be first determined by the court, and if it be found by the court that such records exist, and the prisoner says that he is not the same person mentioned in such records, or remains silent, his plea, or the fact of his silence, shall be entered of record, and a jury shall be impaneled to inquire whether the convict is the same person mentioned in the several records. If they find that he is not the same

person, he shall be remanded to the penitentiary; but if they find that he is the same person, or if he acknowledge in open court after being duly cautioned, that he is the same person, he may be sentenced to be confined in the penitentiary for such additional time as the court trying the case may deem proper. This section, however, shall not apply to successive convictions of petit larceny.

If the Circuit Court of the city of Richmond cannot, on the evidence available, make a determination of the convict's allegation of illegality of his prior conviction by reason of unrecorded matters of fact relative to his prior conviction, the Circuit Court of the city of Richmond may certify such question for hearing and determination to the court of said conviction which court shall conduct a hearing and make a finding of fact and determination of such unrecorded matters of fact, sending a certified copy of its order to the Circuit Court of the city of Richmond.

The purpose of the recidivist statute is to discourage repetition of criminal acts by individuals by imposing increased punishment on habitual offenders who have been convicted and sentenced to the penitentiary for the conduct of multiple similar offenses. A given criminal offense is considered therefore to be an aggravated offense simply because it is a repetitive one.

The Virginia Supreme Court stated in the case of Tyson v. Hening, 205 Va. 389 (1964) "additional punishment is imposed because the former punishment proved to be inefficacious in accomplishing the work of reform for which it was designed and intended."

The court has also established the principle however, that the recidivist statutes must be strictly construed against the Commonwealth. In addition, it could reasonably be argued that a given criminal could in today's drug activities commit acts that were not "similar offenses" under the language and intent of the recidivist statutes, and as those various offenses are defined and prohibited by the draft statute accompanying the Commission report.

The exploding drug abuse problem in the past ten years has reached epidemic proportions. No longer is the problem confined to a few major cities or to a particular economic group. Today it encompasses almost every nationality, race and economic level. It has moved from the major urban areas into the suburban and even rural communities, and has manifested itself in every area of the Commonwealth.

The development of rehabilitation, treatment and educational programs for addicts, drug dependent persons and potential drug abusers must be continued and vigorously expanded. But in the instance of those persons, some of whom will, regardless of such programs, engage in criminal drug activities, and particularly in the instance of repeated offenders, the penalties for criminal activity must be timely, inevitably and harshly applied as an attempted deterrent to their continued criminal drug activity.

For these reasons I would like to see the Commission report, the draft statute and any legislation adopted include a "Second and Subsequent Offense" provision.

ADDITIONAL STATEMENT OF DELEGATE J. SAMUEL GLASSCOCK

I concur in the report of the Commission except in its recommendation regarding the confiscation of motor vehicles and other property used in connection with the illegal manufacture, sale or distribution of controlled substances. Provisions of this type can easily result in unequal penalties for the same offense, undue effort on the part of innocent persons in order to prevent confiscation of their property and unnecessary work on Commonwealth Attorneys and law enforcement authorities in following the confiscation procedure, storing vehicles, etc. The degree of punishment one receives for such an offense should be based on the person's acts, not on the particular model and make of automobile he may be driving. The proposed confiscation provision calls for the same result whether the person charged is distributing a small quantity of marijuana to a friend or selling a hundred pounds of heroin to a pusher.

It seems that more equal justice would be provided by not enacting the proposed changes in the confiscation statute.

ADDITIONAL STATEMENT OF DRS. EARNEST B. CARPENTER AND GEORGE J. CARROLL

As physicians, we strongly object to the majority recommendation of the Commission that § 54-524.19 of the Code of Virginia be amended to permit the State Board of Pharmacy to take action against the medical profession. The traditional philosophy of Virginia's regulation of professions and occupations is that members of one's own profession or occupation are best qualified to regulate that particular profession or occupation. In keeping with this philosophy, it is our opinion, as well as the unanimous opinion of the members of the State Board of Medical Examiners, that physicians should police physicians and pharmacists should police pharmacists. Although the Board of Pharmacy is charged with the responsibility of administering the drug laws, the Board of Medical Examiners has the legal authority to take action against any licensed physician who should violate any drug law.

If an amendment to § 54-524.19 is necessary, as the majority of the Commission has suggested, we feel that this amendment should be ameliorated by the words "If no action is taken by the Board of Medical Examiners." This added language would better adhere to the aforementioned traditional philosophy by first giving the physicians an opportunity to regulate their own members and if they failed to do so, the Board of Pharmacy would then be free to act.

In all other respects, we concur with the recommendations contained in this report.

A BILL

To amend and reenact §§ 54-524.2 as amended, 54-524.16, 54-524.17, 54-524.19, 54-524.21, 54-524.23, 54-524.31, 54-524.33, 54-524.34, 54-524.35, 54-524.40, 54-524.47, 54-524.53, 54-524.56, 54-524.58:1, 54-524.59, 54-524.67, 54-524.68, 54-524.72, 54-524.75, 54-524.76, 54-524.77, 54-524.103 and 54-524.104 of the Code of Virginia; to further amend such Code by adding §§ 54-524.22:1, 54-524.47:1, 54-524.47:2, 54-524.47:3, 54-524.59:1, 54-524.84:1 through 54-524.84:13, 54-524.101:1, 54-524.101:2, 54-524.102 and 54-524.104:1; and repealing §§ 54-524.22, 54-524.42, 54-524.43, 54-524.63, 54-524.64, 54-524.70, 54-524.71, 54-524.74, 54-524.79 through

54-524.84, and 54-524.101 so as to conform certain provisions of The Drug Control Act, with provisions of the Uniform Controlled Substances Act, additional registration required, classification of substances and authority to change classification, offenses, penalties and procedures.

1. That §§ 54-524.2 as amended, 54-524.16, 54-524.17, 54-524.19, 54-524.21, 54-524.23, 54-524.31, 54-524.33, 54-524.34, 54-524.35, 54-524.40, 54-524.47, 54-524.53, 54-524.56, 54-524.58:1, 54-524.59, 54-524.67, 54-524.68, 54-524.72, 54-524.75, 54-524.76, 54-524.77, 54-524.103 and 54-524.104 of the Code of Virginia be amended and reenacted and to amend the Code of Virginia by adding §§ 54-524.22:1, 54-524.47:1, 54-524.47:2, 54-524.47:3, 54-524.59:1, 54-524.84:1 through 54-524.84:13, 54-524.101:1, 54-524.101:2, 54-524.102 and 54-524.104:1 as follows:

§ 54-524.2. Legislative Finding; definitions.—(a) Finding.—The practice of pharmacy in the State of Virginia is declared a professional practice affecting the public health, safety and welfare and is subject to regulation and control in the public interest.

(b) Definitions.—As used in this chapter, unless the context otherwise indicates:

(1) "Administer" means the ~~giving of a dose of a drug to a patient for his immediate need, either by a practitioner or by his authorized agent under the direction of the practitioner.~~ *direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:*

(i) a practitioner (or, in his presence, by his authorized agent), or

(ii) the patient or research subject at the direction and in the presence of the practitioner.

(2) "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of drugs or devices.

(3) "Animal" means any animate being, which is not human, endowed with the power of voluntary action.

(3a) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(4) "Board" means the State Board of Pharmacy.

(4a) "Bureau" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, or its successor agency.

(5) "Compound" means the taking of two or more ~~measured~~ ingredients and fabricating them into a single preparation, usually referred to as a dosage form.

(6) "Controlled ~~drug~~ *substance*" means a drug ~~or~~, substance *or immediate precursor* in schedules I through ~~V~~ *VI* of article ~~6 (§ 54 524.80 et seq.)~~ *6.1* of this chapter. The term shall not include distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Title 3.1 or Title 4 of the Code of Virginia.

(7) "Cosmetic" means all (a) articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance, and (b) articles intended for use as a component of any such articles; except that such term shall not include soap.

(7a) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed or dispensed the substance or any substance represented in any manner to be a controlled substance.

(8) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of ~~a controlled~~ drug *any item regulated by this chapter,* whether or not there exists an agency relationship.

(9) "Device" means instruments, apparatus, and contrivances, including their components, parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals.

(10) "Dispense" means ~~the issuing of one or more doses of a drug or a device in a suitable container appropriately labeled, for subsequent administration to or use by a patient.~~ *to deliver a drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.*

(10a) "Dispenser" means a practitioner who dispenses.

(11) "Distribute" means to deliver *other than by administering or dispensing* a controlled ~~drug~~ *substance.* "Distributor" means a person who ~~delivers a controlled drug~~ *distributes.*

(12) "Drug" means (a) ~~articles~~ *substances* recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (b) ~~articles~~ *substances* intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; (c) ~~articles~~ *substances,* other than food, intended to affect the structure or any function of the body of man or other animals; ~~and~~ *or* (d) ~~articles~~ *substances* intended for use as a component of any article specified in clause (a), (b) or (c); but does not include devices *or their components, parts or accessories.*

(12a) "Immediate precursor" means a substance which the Board of Pharmacy has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(13) "Label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the out-

side container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(14) "Labeling" means all labels and other written, printed or graphic matter (a) upon an article or any of its containers or wrappers, or (b) accompanying such article.

(14a) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of any item regulated by this chapter, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

(1) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or

(2) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(15) "Manufacturer" means every person who ~~produces, derives, prepares, processes, compounds or packages drugs, devices, or cosmetics; or every person who repackages or otherwise changes the container or the labeling for purposes of sale or other disposition to any person who is not the ultimate user or consumer~~ *manufactures.*

(16) "Marijuana" means any part of the plant Cannabis sativa L., whether growing or not; and the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds; but shall not include the resin extracted from any part of such plant, the mature stalks of such plant, fiber produced from such stalk, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

"Hashish" means the resin extracted from any part of the plant Cannabis sativa L., whether growing or not, and every compound, manufacture, salt, derivative, mixture or preparation of such resins, or any resin extracted from the mature stalks of said plant.

(17) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium, ~~coca leaves, and opiates,~~ *opiates, and any salt, compound, derivative, or preparation of opium or opiates.*

(b) ~~A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates,~~ *Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (a), but not including the isoquinoline alkaloids of opium.*

(c) ~~A substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in clauses (a) and (b), except that the words "narcotic drug" as used in this chapter shall not include decocainized coca~~

~~leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine~~. *Opium poppy and poppy straw.*

(d) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(17a) "New drug" means: (a) any drug (except a new animal drug or an animal feed bearing or containing a new animal drug) the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof, except that such a drug not so recognized shall not be deemed to be a "new drug" if at any time prior to the enactment of this chapter it was subject to the Food and Drugs Act of June 30, 1906, as amended, and if at such time its labeling contained the same representations concerning the conditions of its use; or

(b) Any drug (except a new animal drug or an animal feed bearing or containing a new animal drug) the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

(18) "Official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

(19) "Official written order" means an order written on a form provided for that purpose by the United States Bureau of Narcotics and Dangerous Drugs, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided then on an official form provided for that purpose by the State Board of Pharmacy.

(20) "Opiate" means any ~~controlled drug~~ *substance* having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. *It does not include, unless specifically designated as controlled under Article 6.1 of this chapter (§§ 54-524.84:1 et seq.), the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levoratatory forms.*

(21) "Opium poppy" means the plant of the species Papaver somniferum L., except the seeds thereof.

(22) "Original package" means the unbroken container or wrapping in which any drug or medicine is enclosed together with label and labeling, put up by or for the manufacturer, wholesaler, or distributor for use in the delivery or display of such article.

(23) "Person" shall be construed to import both the plural and singular, as the case demands, and includes individual, partnership, corporation, association, governmental agency, trust, or other institution or entity.

(24) "Pharmacist" means a natural person who holds a valid license issued by the Board to practice pharmacy under the laws of this State.

(25) "Pharmacy" shall mean *and include* every ~~place or~~ establishment, ~~except manufacturers and distributors or as hereinafter provided in which prescriptions or drugs are prepared, compounded, dispensed, re packaged or relabeled~~. or institution where (a) the practice of pharmacy is conducted; *(b) drugs, medicines or medicinal chemicals are dispensed, offered for sale, given away or displayed for sale at retail; (c) where prescriptions are compounded or dispensed; or (d) which has upon it or displayed within it or affixed to or used in connection with it, a sign bearing the word or words, "pharmacist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "medicine store," "drug sundries," "prescriptions filled," or any word or words of similar or like import, or with respect to which any of the above words are used in any advertisement, the effect of which would tend to indicate that the practice of pharmacy is being conducted in such establishment.*

(26) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(26a) "Practice of pharmacy" is the practice that is concerned with the art and science of preparing, compounding and dispensing of drugs, medicines and devices used in the diagnosis, treatment, or prevention of disease, whether compounded or dispensed on the prescription of a medical practitioner, or otherwise legally dispensed or sold, and shall include the proper and safe storage and distribution of drugs, the maintenance of proper records, therefor, and the responsibility of providing information, as required, concerning such drugs and medicines and their therapeutic values and uses in the treatment and prevention of disease.

The words "drug" and "devices", as used in this definition, shall not include surgical or dental instruments, physical therapy equipment, X-rays apparatus, their component parts or accessories.

The "practice of pharmacy" shall not include the operations of a manufacturer or wholesaler.

(27) "Practitioner" means: *(a)* a physician, dentist, veterinarian, *scientific investigator,* or other person licensed ~~in this State to prescribe or administer drugs or devices which are subject to this chapter~~., *registered or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this State.*

(b) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this State.

(28) "Prescription" shall mean and include an order for drugs or medical supplies, written or signed or transmitted by word of mouth, telephone, telegraph or other means of communication to a pharmacist ~~or to a patient~~ by a duly licensed physician, dentist, veterinarian or other practitioner, ~~licensed~~ *authorized* by law to prescribe and administer such drugs or medical supplies.

(29) "Production" or "produce" includes the manufacture, planting, cultivation, growing or harvesting of a controlled ~~drug~~ *substance.*

(30) "Proprietary medicine" means a completely compounded nonprescription drug in its unbroken, original package which does not con-

tain any controlled ~~drug~~ *substance* as defined in this chapter and is not in itself poisonous, and which is sold, offered, promoted or advertised directly to the general public by or under the authority of the manufacturer or primary distributor thereof, under a trademark, trade name or other trade symbol privately owned, and the labeling of which conforms to the requirements of this chapter and applicable federal law; provided that this definition shall not include (a) a drug which is only advertised or promoted professionally to licensed practitioners, (b) a narcotic or drug containing a narcotic, (c) a drug which may be dispensed only upon prescription or the label of which bears substantially the statement "Warning—may be habit-forming," or (d) a drug intended for injection.

(31) "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as individual, proprietor, agent, servant or employee.

(32) "Wholesaler" or "distributor" means every person, except a manufacturer, engaged in the business of distributing, supplying, selling or otherwise disposing of drugs ~~or medicines~~ *cosmetics or devices* to any person who is not the ultimate user or consumer; provided that no person shall be subject to any State or local tax as a wholesale merchant by reason of this definition.

§ 54-524.16. Powers and duties of Board generally.—The Board shall regulate the practice of pharmacy and the manufacturing, dispensing, selling, distributing, processing, compounding, or other disposal of drugs, cosmetics and devices, control the character and standard of all drugs, cosmetics and devices within the State, investigate all complaints as to the quality and strength of all drugs, cosmetics and devices and take such action as may be necessary to prevent the manufacturing, dispensing, selling, distributing, processing, compounding and other disposal of such drugs, cosmetics and devices as do not conform to the requirement of law *and in so regulating the Board shall consider any of the following criteria as they are applicable.*

(a) Maintenance of the quality, quantity, integrity, safety and efficacy of drugs or devices distributed, dispensed or administered.

(b) Compliance with the prescriber's instructions regarding the drug, its quantity, quality and directions for use.

(c) Requiring controls and safeguards against diversion of drugs or devices.

(d) Maintaining the integrity of, and public confidence in, the profession and improving the delivery of quality pharmaceutical services to the citizens of Virginia.

(e) The maintenance of complete records of the nature, quantity or quality of drugs or substances distributed or dispensed, of all transactions involving controlled substances or drugs or devices so as to provide adequate information to the patient, the practitioner or the Board.

(f) Control of factors contributing to abuse of legitimately obtained drugs, devices, or controlled substances.

(g) The promotion of scientific or technical advances in the practice of pharmacy and the manufacture and distribution of controlled drugs, devices or substances.

(h) Such other factors as may be relevant to, and consistent with, the public health and safety.

The Board may engage and pay for such professional and other services as it may deem necessary in investigating violations of the law, and the enforcement of its provisions. The Board may transact all business relating to the practice of pharmacy.

§ 54-524.17. Bylaws, rules and regulations.—The Board may, subject to the provisions of Chapter 1.1 (§ 9-6.1 et seq.) of Title 9, of the Code, make such rules and regulations, not inconsistent with the laws of the State, as may be necessary for the lawful exercise of its powers. *Copies of such regulations or bylaws which have been certified by the Secretary of the Board shall be accepted as competent evidence in a court of law and shall be deemed prima facie evidence of compliance with all of the provisions of law regarding their promulgation by the Board.*

§ 54-524.19. Power of inspection.—The members of the Board and their duly authorized agents shall have the power to inspect in a lawful manner the drugs, cosmetics and devices which are manufactured, stored or dispensed in the State, and for this purpose shall have the right to enter and inspect during business hours any pharmacy, or any other place in the State of Virginia where drugs, cosmetics or devices are manufactured, stored or dispensed. The Board shall report any evidence of violation of the provisions of this chapter by practitioners of medicine, homeopathy, osteopathy, chiropractic, naturopathy, chiropody (podiatry) or physical therapy, to the Board of Medical Examiners for action by it, *except that any practitioner licensed or seeking a license under this chapter may be proceeded against by the Board of Pharmacy in the manner prescribed by law for other licensees hereunder.*

§ 54-524.21. Qualifications of pharmacist.—In order to be licensed and registered as a pharmacist within the meaning of this chapter, an applicant shall present to the Board satisfactory evidence that he is at least twenty-one years of age; of good moral character; that he is a graduate in pharmacy of a school of pharmacy approved by the State Board of Pharmacy; that he is a citizen of the United States of America; and that he has had a suitable period of experience acceptable to the Board; *and he must pass the examination prescribed by the Board.* The period of practical experience required under this section shall not exceed twelve months.

§ 54-524.22:1. The Board of Pharmacy may revoke, suspend, refuse to renew any license and/or impose a civil monetary penalty provided for in § 54-524.107 or deny any application if it finds that:

(a) The person is not of good moral character;

(b) He has been negligent in the practice of pharmacy, manufacturing or distributing;

(c) He has been guilty of unprofessional conduct as prescribed in § 54-524.35;

(d) He shall become incompetent to practice pharmacy or wholesale or manufacture or distribute because of his mental or physical condition;

(e) He uses drugs or intoxicating liquors to the extent that he is unfit for the performance of his professional obligations and duties;

(f) He has engaged in conduct involving gross immorality so as to bring reproach upon his profession;

(g) He has engaged in or attempted any fraud or deceit upon the consumer, practitioner or the Board in connection with the practice of pharmacy or manufacturing or wholesaling;

(h) He has assisted or allowed unlicensed persons to engage in the practice of pharmacy, or manufacturing or wholesaling except as provided by this chapter or regulations of the Board;

(i) He has violated or cooperated with others in violating any provisions of law relating to practice of pharmacy, the manufacturing, distributing or dispensing of any drugs, or of any regulation of the Board; or

(j) His federal registration to manufacture, distribute or dispense controlled substances has been revoked or suspended.

No such license shall be revoked until the licensee or permittee has been given reasonable notice and an opportunity to be heard in accordance with Chapter 1.1 (§ 9-6.1 et seq.) of Title 9 of the Code, and which action by the Board shall be in addition to any punishment imposed by law for such violation.

§ 54-524.23. Applicant to be licensed as pharmacist; fee.—Every person desiring to be licensed by examination as a pharmacist shall file with the secretary-treasurer of the Board an application, duly verified under oath, setting forth the name and age of the applicant, the place or places at which, and the time spent in, the study of the science and art of pharmacy *and other information required by the Board.*

Every applicant for original licensure by examination as a pharmacist shall pay to the secretary-treasurer of the Board the sum of fifty dollars.

§ 54-524.31. Permit to conduct pharmacy.—(a) No person shall conduct a pharmacy without first obtaining a permit from the Board.

(b) The application for such permit shall be made on a form provided by the Board and signed by a pharmacist who will be in full and actual charge of the pharmacy and who will be fully engaged in the practice of pharmacy at the location designated on the application.

(c) The application shall show the corporate name and/or trade name and shall list any pharmacist in addition to the pharmacist-in-charge practicing at the location indicated on the application.

(d) If the owner is other than the pharmacist making the application, the type of ownership shall be indicated and shall list any partner or partners, and, if a corporation, then the corporate officers and directors.

(e) The permit shall be issued only to the pharmacist who signs the application as the pharmacist-in-charge and as such assumes the full responsibilities for the legal operation of the pharmacy; provided, however, that nothing contained herein shall be construed to negate any responsibility of any pharmacist or other person.

(f) Upon termination of practice by the pharmacist-in-charge, or upon any change in partnership composition, or upon the acquisition of the existing corporation by another person, the permit previously issued shall be surrendered to the Board by the pharmacist-in-charge and an application for a new permit may be made in accordance with the requirements of this chapter.

(g) The pharmacist to whom such permit is issued shall provide safeguards against diversion of all controlled ~~drugs~~ *substances*.

(h) An application for a pharmacy permit shall be accompanied by a fee of twenty-five dollars. All permits shall expire on December thirty-first of each year.

(i) Every pharmacy must be equipped so that prescriptions can be properly filled. The Board of Pharmacy shall prescribe the minimum of such professional and technical equipment, which a pharmacy shall at all times possess, and such list shall include the latest revisions of the United States Pharmacopoeia and the National Formulary. No permit shall be issued or continued for the conduct of a pharmacy until or unless the provisions of this chapter and regulations promulgated by the Board have been complied with.

(j) Each day during which a person is in violation of this section shall constitute a separate offense.

§ 54-524.33. Injunction.—In addition to the remedy provided in ~~§ 54-524.22~~ § *54-524.22:1* or any other remedies at law, the Board may apply to a court of equity of the proper venue for an injunction to restrain any person, partnership, corporation, or other type of firm, from ~~the practice of pharmacy~~ *any activity regulated by this chapter which is* in violation of any regulation of the Board or any ~~law regulating the practice of pharmacy~~ *provisions of this chapter*. The Board shall not be compelled to allege or prove that an adequate remedy at law does not exist.

§ 54-524.34. Certificate of registration for physicians to practice pharmacy.—In towns having a population of one thousand or less in rural districts any physician regularly licensed under the laws of Virginia shall be granted by the Board of Pharmacy a certificate of registration to practice pharmacy, unless, for good cause shown, the applicant is proven to be morally or professionally unfit *or for any ground specified in § 54-524.22:1 of this chapter*; such certificate shall be renewed annually and the Board shall charge and receive the sum of twenty-five dollars for the issuance of each such license or renewal thereof.

§ 54-524.35. When pharmacist considered guilty of unprofessional conduct.—Any pharmacist shall be considered guilty of unprofessional conduct who (1) is found guilty of any crime involving grave moral turpitude, or is guilty of fraud or deceit in obtaining a certificate of registration; ~~or~~ ~~(2) is an habitual drunkard or habitually addicted to the use of Schedule I, Schedule II, Schedule III or Schedule V drugs~~; or ~~(3)~~ *(2)* issues, publishes, broadcasts by radio, or otherwise, or distributes or uses in any way whatsoever advertising matter in which statements are made about his professional service which have a tendency to deceive or defraud the public, contrary to the public health and welfare; or ~~(4)~~ *(3)* publishes, advertises or promotes, directly or indirectly, in any manner whatsoever, any amount, price, fee, premium, discount, rebate or credit terms for professional services or for drugs containing narcotics or for any drugs which may be dispensed only by prescription.

§ 54-524.40. Application for Class A manufacturing permit; fee.—Every person desiring to manufacture any drug, *substance,* cosmetic, dentifrice, or device ~~controlled by this chapter~~ shall *annually* apply to the Board for a Class A manufacturing permit on a form prescribed by the Board. The application shall be accompanied by the required fee of fifty dollars which shall also be paid as the fee for renewal of such permit. Separate applications shall be made and separate permits issued for each specific place of manufacturing. *Each such registration shall expire on December thirty-first next following its issuance or renewal.*

§ 54-524.47. Proprietor of pharmacy exempted. — Nothing in this article shall be construed ~~to apply to~~ *require* the proprietor of a pharmacy *to register as a manufacturer or distributor* if the products manufactured or purchased are dispensed within the premises and not sold for distribution and resale outside the premises.

§ 54-524.47:1. (a) Every person who manufactures, distributes or dispenses any substance which is controlled in Schedules I through V or who proposes to engage in the manufacture, distribution or dispensing of any such controlled substance except those persons who are registered under the provisions of §§ 54-524.25 or 54-524.31 shall obtain annually a controlled substances registration certificate issued by the Board in accordance with its rules and regulations, and such registration shall be in addition to other registration requirements enumerated in this chapter or otherwise required by law.

(b) Registration under this section and under all other applicable registration requirements shall entitle the registrant to lawfully possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by this registration and in conformity with the other provisions of this chapter.

(c) The following persons need not register and may lawfully possess controlled substances in Schedules I through V:

(1) an agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

(2) a common or contract carrier or warehouseman, or an employee thereof, whose possession thereof is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

(d) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

§ 54-524.47:2. (a) The Board shall register an applicant to manufacture or distribute controlled substances included in Schedules I through V unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the Board shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(2) compliance with applicable State and local law;

(3) any convictions of the applicant under any Federal and State laws relating to any controlled substance;

(4) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;

(5) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(6) suspension or revocation of the applicant's Federal registra-

tion to manufacture, distribute, or dispense controlled substances as authorized by Federal law; and

(7) any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those specified in the registration.

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the law of this State. The Board need not require separate registration under this section for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this section in another capacity. Practitioners registered under Federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this State upon furnishing the evidence of that Federal registration.

(d) Applications for controlled substances registration certificates shall be made on a form prescribed by the Board and such application shall be accompanied by a fee of five dollars which also be paid as the fee for annual renewal of such registration.

§ 54-524.47:3. (a) A registration under § 54-524.47:2 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Board upon a finding that the registrant:

(1) has furnished false or fraudulent material information in any application filed under this chapter;

(2) has been convicted of a felony under any State or Federal law relating to any controlled substance;

(3) has had his Federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances;

(4) has violated or cooperated with others in violating any provision of this chapter or rules or regulations of the Board relating to the manufacture, distribution or dispensing of controlled substances.

(b) The Board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) If the Board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the State.

(d) The Board shall promptly notify the Bureau of all orders suspending or revoking registration and all forfeitures of controlled substances.

§ 54-524.53. Physicians, dentists, and veterinarians supplying medicine for patients.—This chapter shall not be construed to interfere with

any legally qualified practitioner of medicine, dentistry, osteopathy, chiropody (podiatry), or veterinary medicine, who is not the proprietor of a store for the dispensing or retailing of drugs, or who is not in the employ of such a proprietor, in the compounding of his own prescriptions or the purchase and possession of such drugs and medicines as he may require, or to prevent him from administering or supplying to his patients such medicines as he may deem proper, or from making a charge for such medicines as are not sold to his patients for his own convenience or for the purpose of supplementing his income, nor with the sale by merchants and retail dealers of proprietary medicines as defined in this chapter, *provided that nothing herein shall be construed to exempt any such person from the registration requirements of § 54-524.47:2 or the record requirement of § 54-524.56.*

§ 54-524.56. Persons required to keep record of drugs; contents and form of record.—(a) Upon the effective date of this act, or within six months thereafter, each person manufacturing, compounding, processing, selling, dispensing or otherwise disposing of drugs in Schedules I, II, III, or Schedule V shall make a complete and accurate record of all stocks of such drugs on hand. Thereafter, complete and accurate records of all such drugs shall be maintained for three years. Each two-year period after June twenty-six, nineteen hundred seventy, at the time of his regular fiscal inventory, each person manufacturing, producing, compounding, processing, selling, distributing, dispensing or otherwise disposing of such drugs shall prepare a complete and accurate inventory of each such drug in his possession.

(b) The record of such drugs received shall in every case show the date of receipt, the name and address of the person from whom received and the kind and quantity of drugs received; the kind and quantity of drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced. The record of all drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity of drugs; and any person selling, administering, dispensing or otherwise disposing of such drugs shall make such record at the time of each transaction. Every such record shall be kept for a period of three years from the date of the transaction recorded. The keeping of a record required by or under the federal laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of drugs lost, destroyed or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction or theft.

(c) The form of records shall be prescribed by the Board.

(d) Whenever any registrant discovers a theft or any other unusual loss of any controlled substance, he shall immediately report such theft or loss to both the law-enforcement officials of his city or county and to the Board.

§ 54-524.58:1. Manufacturing and administering Schedule I drugs.—It shall be lawful for a person to manufacture, and for a practitioner to administer, Schedule I drugs provided:

(a) The manufacturer and practitioner are expressly authorized to engage in such activities by the Attorney General of the United States, or pursuant to the federal Food, Drug and Cosmetic Act; and

(b) The manufacturer ~~holds a permit issued pursuant to~~ § ~~54~~ ~~524.40~~ *and/or dispenser is registered under all appropriate provisions of this chapter;* and

(c) That any Schedule I drug so manufactured must be sold or furnished on an official written order to a practitioner or other authorized person only; and

(d) The manufacturer and practitioner comply with all other requirements of this chapter.

§ 54-524.59. ~~(1)~~ *(a)* A duly licensed manufacturer or wholesaler may ~~sell~~ *distribute* Schedule II drugs to any of the following persons, but only on official written orders:

~~(a) To a manufacturer, wholesaler, or pharmacist;~~

~~(b) To a practitioner;~~

~~(c) To a person in charge of a hospital, but only for use by or in that hospital;~~

~~(d) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical purposes.~~

~~(2) A duly licensed manufacturer or wholesaler may sell Schedule II drugs to any of the following persons:~~

(1) To a manufacturer or wholesaler who has been issued permits pursuant to §§ 54-524.40 and 54-524.47:2;

(2) To a pharmacy which has been issued a permit pursuant to § 54-524.31;

(3) To a person who has been issued a controlled substance registration certificate pursuant to § 54-524.47:2, provided the certificate of such person authorizes such purchase;

~~(a)~~ *(4)* On a special written order accompanied by a certificate of exemption, as required by the federal laws, to a person in the employ of the United States government or of any state, territorial, district, county, municipal, or insular government, purchasing, receiving or possessing drugs by reason of his official duties;

~~(b)~~ *(5)* To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, for the actual medical needs of persons on board such ship or aircraft, when not in port; provided, however, that such drugs shall be sold to the master of such ship or person in charge of such aircraft only in pursuance of a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States Public Health Service; *and*

~~(c)~~ *(6)* To a person in a foreign country if the provisions of the federal laws are complied with.

~~(3)~~ *(b)* A duly licensed manufacturer or wholesaler may ~~sell~~ *distribute* drugs classified in Schedule III ~~Schedule IV and Schedule V~~ *through Schedule VI* to all the persons listed in subsection (a) of this section without an official written order.

§ 54-524.59:1. A licensed physician may receive controlled substances from or on behalf of a patient for qualitative or quantative analysis purposes only, without an official order form, provided that within twenty four hours of its receipt the physician shall mail or deliver the entire sample to the State Division of Laboratories. If the sample is mailed, it shall be sent by registered or certified mail, postage prepaid, with return receipt requested; if personally delivered, he shall obtain a receipt from the Division, all such receipts or returns shall be kept on file for three years and shall be available for inspection by the Board at any reasonable time.

§ 54-524.67. When pharmacist may sell or dispense drugs. — A pharmacist, acting in good faith, may sell and dispense drugs to any person pursuant to a prescription of a practitioner as follows:

(a) A drug listed in Schedule II shall be dispensed only upon receipt of a written prescription that is properly executed, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal laws of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed; provided, however, that:

(1) In emergency situations, as prescribed by the Board by regulation not inconsistent with the federal law, such drugs may be dispensed pursuant to an oral prescription;

(2) Whenever a pharmacist dispenses any drug listed within Schedule II on a prescription issued by a practitioner, he shall affix to the container in which such drug is dispensed, a label showing *the serial number or names of the drug; the date of initial filling;* his name, *and* address, ~~and registry number~~, or the name, *and* ~~address, and registry number~~ of the pharmacy; the name and address of the patient or, if the patient is an animal, the name and address of the owner of the animal and the species of the animal; the name, address, ~~and registry number~~ of the practitioner by whom the prescription was written; and such directions as may be stated on the prescription.

(b) A drug controlled by Schedule III ~~or Schedule IV~~ through *VI* shall be dispensed upon receipt of a written or oral prescription as follows:

(1) If the prescription is written, it shall be properly executed, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name and address of the person prescribing. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed.

(2) If the prescription is oral, the practitioner shall furnish the pharmacist with the same information as is required by law in the case of a written prescription for drugs and compounds, except for the signature of the prescriber. The pharmacist who fills such a prescription shall be required to comply with all the provisions of law.

§ 54-524.68. When prescriptions may be refilled.—Prescriptions may be refilled as indicated:

(a) A prescription for a drug in Schedule II may not be refilled.

(b) A prescription for a drug in Schedule III *or IV* may not be filled

or refilled more than six months after the date on which such prescription was issued and no such prescription ~~may be~~ authorized to be refilled, ~~nor~~ *may* be refilled more than five times, except that any prescription for such a drug after six months after the date of issue, or after being refilled five times, may be renewed by the practitioner issuing it either in writing, or orally, if promptly reduced to writing and filed by the pharmacist filling it.

(c) A prescription in Schedule ~~IV~~ *VI* may not be refilled, unless authorized by the practitioner either on the face of the original prescription or orally by the practitioner. Oral instructions shall be reduced promptly to writing by the pharmacist and filed on or with the original prescription.

§ 54-524.72. Drugs which may be sold without prescription.—The following drugs controlled by Schedule ~~IV~~ *VI* may be sold without a prescription by persons other than pharmacists: drugs of the sulfonamide group, hormones, or hormone drug preparations and antibiotics in forms which are unacceptable or unfit for treatment of humans, antibiotics in medicated feeds and hormones or hormone drug preparations in medicated feeds, manufactured for use in the control of animal diseases when sold in the original, unbroken packages of the manufacturer, plainly labeled to indicate their veterinary nature, and giving directions for their use and adequate caution as to the dangerous character of such drugs.

§ 54-524.75. No prescription for preparations listed pursuant to Schedule V.—A preparation listed pursuant to Schedule V may be dispensed without a prescription, provided:

(1) That the preparation is dispensed only by a pharmacist directly to the person requesting the preparation;

(2) That the preparation is dispensed only to a person who is at least eighteen (18) years of age;

(3) That the pharmacist requires the person requesting the preparation to furnish suitable identification including proof of age when appropriate;

(4) That the pharmacist does not dispense to any one person, or for the use of any one person or animal, any narcotic drug preparation or preparations, when he knows, or can by reasonable diligence ascertain, that such dispensing will provide the person to whom or for whose use, or the owner of the animal for the use of which, such preparation is dispensed, within forty-eight consecutive hours, with more than ~~one~~ *two* hundred and thirty milligrams of *such preparation containing* opium, or more than ~~three~~ *one* hundred twenty ~~five milligrams of codeine, or more than one hundred and thirty~~ milligrams of ~~dihydrocodeinone, or more than sixty five milligrams of ethylmorphine, or more than thirty two and five tenths milligrams of diphenoxylate~~. *any other preparation which contains any substance in Schedule V.*

(5) In dispensing such a narcotic drug preparation, the pharmacist shall exercise professional discretion to insure that the preparation is being dispensed for medical purposes only.

(6) Any pharmacist shall, at the time of dispensing, make and keep a record showing the date of dispensing, the name and quantity of the preparation, the name and address of the person to whom the preparation is dispensed, and enter his initials thereon. Such records shall be maintained pursuant to § 54-524.56.

§ 54-524.76. Fraud, deceit and forgery.—(a) No person shall obtain

or attempt to obtain any drug or procure or attempt to procure the administration of any drug: (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the forgery or alteration of a prescription or of any written order; or (3) by the concealment of a material fact; or (4) by the use of a false name or the giving of a false address.

(b) Information communicated to a physician in an effort unlawfully to procure any drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(c) No person shall furnish false or fraudulent information in or omit any information from, or willfully make a false statement in, any prescription, order, report, record, or other document required by this chapter.

(d) No person shall use in the course of the manufacture or distribution of a controlled drug a license number which is fictitious, revoked, suspended, or issued to another person.

(e) No person shall, for the purpose of obtaining any drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian or other authorized person.

(f) No person shall make or utter any false or forged prescription or false or forged written order.

(g) No person shall affix any false or forged label to a package or receptacle containing any drug.

(h) This section shall not apply to officers and employees of the United States, of this State or of a political subdivision of this State acting in the course of their employment, who obtain such drugs for investigative, research or analytical purposes; ~~or to manufacturers or laboratories, their agents or employees acting in the course of their employment, who purchase such drugs for investigative, research or analytical purposes in connection with the sale or dispensing of such drugs, but not for human use~~.

§ 54-524.77. Chemical analyses. ~~It shall be the duty of the State Department of Agriculture and Commerce to make such chemical analyses as may be necessary for carrying out the provisions of this chapter~~. In any prosecution for ~~a misdemeanor~~, or preliminary hearing of, ~~a felony~~ *any criminal offense* under this chapter, the certificate of analysis of a chemist performing ~~such~~ *an* analysis *as may be necessary for carrying out the provisions of this chapter, performed* for the Commonwealth *in any chemical laboratory operated by the Commonwealth or any of its political subdivisions and designated or authorized by the Chief Medical Examiner of the Commonwealth* when *such certificate is* duly attested by the chemist, shall be admissible in evidence as evidence of the facts therein stated and the results of the analysis referred to therein, provided that the certificate of analysis of the drug or drugs shall be ~~made available to the defendant, or his attorney,~~ *filed with the clerk of the court hearing the case* at least ~~twenty four hours~~ *seven days* prior to the trial *or preliminary hearing*. On motion of the accused or any party in interest, in a trial for a misdemeanor *or felony* the court may require the chemist making the analysis to appear as a witness and be subject to cross-examination, provided such motion is made within a reasonable time prior to the day on which the case is set for trial; provided that the chemist so appearing shall be considered the State's witness.

Article 6.1

Standards and Schedules

§ 54-524.84:1. (a) The Board shall administer this article and may add substances to or delete or reschedule all substances enumerated in the schedules in §§ 54-524.84:4, 54-524.84:6, 54-524.84:8, 54-524.84:10 or 54-524.84:12 pursuant to the procedures of Chapter 1.1 of Title 9 of this Code. In making a determination regarding a substance, the Board shall consider the following:

(1) the actual or relative potential for abuse;

(2) the scientific evidence of its pharmacological effect, if known;

(3) the state of current scientific knowledge regarding the substance;

(4) the history and current pattern of abuse;

(5) the scope, duration, and significance of abuse;

(6) the risk to the public health;

(7) the potential of the substance to produce psychic or physiological dependence liability; and

(8) whether the substance is an immediate precursor of a substance already controlled under this Article.

(b) After considering the factors enumerated in subsection (a) the Board shall make findings with respect thereto and issue a rule controlling the substance if it finds the substance has a potential for abuse.

(c) If the Board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the Board, the Board shall similarly control the substance under this act after the expiration of 30 days from publication in the Federal Register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance without following the provisions specified in subsections (a) and (b) of this section, unless within that 30 day period, the Board objects to inclusion, rescheduling, or deletion. In that case, the Board shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the Board shall publish its decision, which shall be final unless altered by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this act by the Board control under this act is stayed until the Board publishes its decision.

(e) Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Title 4 of this Code.

§ 54-524.84:2. The controlled substances listed or to be listed in the schedules in §§ 54-524.84:4, 54-524.84:6, 54-524.84:8, 54-524.84:10 or 54-524.84:12 are included by whatever official, common, usual, chemical, or trade name designated.

§ 54-524.84:3. The Board shall place a substance in Schedule I if it finds that the substance:

(1) has high potential for abuse; and

(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

§ 54-524.84:4. (a) The controlled substances listed in this section are included in Schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Acetylmethadol;

(2) Allylprodine;

(3) Alphacetylmethadol;

(4) Alphameprodine;

(5) Alphamethadol;

(6) Benzethidine;

(7) Betacetylmethadol;

(8) Betameprodine;

(9) Betamethadol;

(10) Betaprodine;

(11) Clonitazene;

(12) Dextromoramide;

(13) Dextrorphan;

(14) Diampromide;

(15) Diethylthiambutene;

(16) Dimenoxadol;

(17) Dimepheptanol;

(18) Dimethylthiambutene;

(19) Dioxaphetyl butyrate;

(20) Dipipanone;

(21) Ethylmethylthiambutene;

(22) Etonitazene;

(23) Etoxeridine;

(24) Furethidine;

(25) Hydroxypethidine;

(26) Ketobemidone;

(27) Levomoramide;

(28) Levophenacylmorphan;

(29) Morpheridine;

(30) Noracymethadol;

(31) Norlevorphanol;

(32) Normethadone;

(33) Norpipanone;

(34) Phenadoxone;

(35) Phenampromide;

(36) Phenomorphan;

(37) Phenoperidine;

(38) Piritramide;

(39) Proheptazine;

(40) Properidine;

(41) Racemoramide;

(42) Trimeperidine.

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-N-Oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) Dihydromorphine;

(9) Etorphine;

(10) Heroin;

(11) Hydromorphinol;

(12) Methyldesorphine;

(13) Methyldihydromorphine;

(14) Morphine methylbromide;

(15) Morphine methylsulfonate;

(16) Morphine-N-Oxide;

(17) Myrophine;

(18) Nicocodeine;

(19) Nicomorphine;

(20) Normorphine;

(21) Phoclodine;

(22) Thebacon.

(d) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) 3,4-methylenedioxy amphetamine;

(2) 5-methoxy-3,4-methylenedioxy amphetamine;

(3) 3,4,5-trimethoxy amphetamine;

(4) Bufotenine;

(5) Diethyltryptamine;

(6) Dimethyltryptamine;

(7) 4-methyl-2, 5-dimethoxylamphetamine;

(8) Ibogaine;

(9) Lysergic acid diethylamide;

(10) Marihuana;

(11) Mescaline;

(12) Peyote;

(13) N-ethyl-3-piperidyl benzilate;

(14) N-methyl-3-piperidyl benzilate;

(15) Psilocybin;

(16) Psilocyn;

(17) Tetrahydrocannabinols.

§ 54-524.84:5. The Board shall place a substance in Schedule II if it finds that:

(1) the substance has high potential for abuse;

(2) the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(3) the abuse of the substance may lead to severe psychic or physical dependence.

§ 54-524.84:6. (a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Alphaprodine;

(2) Anileridine;

(3) Bezitramide;

(4) Dihydrocodeine;

(5) Diphenoxylate;

(6) Fentanyl;

(7) Isomethadone;

(8) Levomethorphan;

(9) Levorphanol;

(10) Metazocine;

(11) Methadone;

(12) Methadone — Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

(13) Moramide—Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;

(14) Pethidine;

(15) Pethidine — Intermediate — A, 4-cyano-1-methyl-4-phenylpiperidine;

(16) Pethidine — Intermediate — B, ethyl-4-phenylpiperidine-4-carboxylate;

(17) Pethidine — Intermediate — C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(18) Phenazocine;

(19) Piminodine;

(20) Racemethorphan;

(21) Racemorphan.

§ 54-524.84:7. The Board shall place a substance in Schedule III if it finds that:

(1) the substance has a potential for abuse less than the substances listed in Schedules I and II;

(2) The substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

§ 54-524.84:8. (a) The controlled substances listed in this section are included in Schedule III.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Phenmetrazine and its salts;

(3) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;

(4) Methylphenidate.

(c) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other Schedules;

(2) Chlorhexadol;

(3) Glutethimide.

(4) Lysergic acid;

(5) Lysergic acid amide;

(6) Methyprylon;

(7) Phencyclidine;

(8) Sulfondiethylmethane;

(9) Sulfonethylmethane;

(10) Sulfonmethane.

(d) Nalorphine.

(e) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per

dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) The Board may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) from the application of all or any part of this Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

§ 54-524.84:9. The Board shall place a substance in Schedule IV if it finds that:

(1) the substance has a low potential for abuse relative to substances in Schedule III;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

§ 54-524.84:10. (a) The controlled substances listed in this section are included in Schedule IV.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Barbital;

(2) Chloral betaine;

(3) Chloral hydrate;

(4) Ethchlorvynol;

(5) Ethinamate;

(6) Methohexital;

(7) Meprobamate;

(8) Methylphenobarbital;

(9) Paraldehyde;

(10) Petrichloral;

(11) Phenobarbital.

(c) The Board may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (b) from the application of all or any part of this Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

§ 54-524.84:11. The Board shall place a substance in Schedule V if it finds that:

(1) the substance has low potential for abuse relative to the controlled substances listed in Schedule IV;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) the substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

§ 54-524.84:12. (a) The controlled substances listed in this section are included in Schedule V.

(b) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

§ 54-524.84:13. The following classes of drugs shall be controlled by Schedule VI:

(a) Any compound, mixture, or preparation containing any stimulant or depressant drug exempted from Schedule III.

(b) Every drug or device, not included in Schedules I, II or III, which because of its toxicity or other potentiality for harmful effect, or

the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts qualified by scientific training and experience to evaluate its safety and efficacy as safe for use except by or under the supervision of a practitioner licensed by law to prescribe or administer such drug or device.

(c) Any drug or drug preparation, not included in Schedules I, II, or III, required by federal law to bear on its label the legend: "Caution: Federal Law Prohibits Dispensing Without Prescription."

§ 54-524.101:1. Except as authorized in this chapter, it shall be unlawful for any person to manufacture, sell, give, distribute or possess with intent to manufacture, sell, give or distribute a controlled substance.

(a) Any person who violates this section with respect to a controlled substance classified in Schedules I, II or III shall upon conviction be imprisoned for not less than five nor more than forty years and fined not more than twenty-five thousand dollars, provided, that if such person gave, distributed or possessed with intent to give or distribute such controlled substance only as an accommodation to another individual and not with intent to profit thereby nor to induce the recipient or intended recipient of the controlled substance to use or become addicted to or dependent upon such controlled substance, he shall upon conviction be imprisoned for not less than one nor more than ten years or, in the discretion of the jury or the court trying the case without a jury by confinement in jail not exceeding twelve months and fined not more than one thousand dollars.

Provided, further, that if the violation of the provisions of this article consist of the filling by a pharmacist of the prescription of a person authorized under this article to issue the same, which prescription has not been received in writing by the pharmacist prior to the filling thereof, and such written prescription is in fact received by the pharmacist within one week of the time of filling the same, or if such violation consists of a request by such authorized person for the filling by a pharmacist of a prescription which has not been received in writing by the pharmacist and such prescription is, in fact, written at the time of such request and delivered to the pharmacist within one week thereof, either such offense shall constitute a misdemeanor and be punishable only by a fine not in excess of one hundred dollars.

(b) Any person who violates this section with respect to a controlled substance classified in Schedules IV, V or VI shall upon conviction be confined in jail for not more than twelve months and fined not more than one thousand dollars.

(c) A conviction for a violation of this section with respect to possession with intent to manufacture, sell, give or distribute may be based solely upon evidence as to the quantity of any controlled substance unlawfully possessed.

§ 54-524.101:2. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter.

(a) Any person who violates this section with respect to any controlled substance classified in Schedules I or II other than marijuana shall upon conviction be imprisoned for not less than one nor more than ten years or in the discretion of the jury or the court trying the case without a

jury by confinement in jail not exceeding twelve months and fined not more than five thousand dollars.

(b) Any person who violates this section with respect to a controlled substance classified in Schedule III or marijuana shall upon conviction be confined in jail for not more than twelve months and fined not more than one thousand dollars.

§ 54-524.102. Whenever any person who has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marihuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section, pleads guilty to or is found guilty of possession of a controlled substance under § 54-524.101:2, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings.

§ 54-524.103. Distribution of certain drugs to persons under eighteen; penalty.—It shall be unlawful for any person who is at least eighteen years of age to knowingly or intentionally distribute any drug classified in Schedule I, II or III to any person under eighteen years of age *who is at least three years his junior.* Any person violating this provision shall upon conviction be imprisoned in the penitentiary for a period not less than ~~five~~ *ten* or more than ~~forty~~ *fifty* years, ~~or~~ *and* fined not more than fifty thousand dollars.

§ 54-524.104. Any person who ~~attempts~~ ~~or~~ conspires to commit any offense defined in this chapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the ~~attempt~~ ~~or~~ conspiracy.

§ 54-524.104:1. (a) Any person who attempts to commit any offense defined in this chapter which is a felony shall be imprisoned for not less than one nor more than ten years.

(b) Any person who attempts to commit any offense defined in this chapter which is a misdemeanor shall be confined in jail not to exceed six months or fined no more than five hundred dollars or both.

2. That §§ 54-524.22, 54-524.42, 54-524.43, 54-524.63, 54-524.64, 54-524.70, 54-524.71 54-524.74, 54-524.79 through 54-524.84 and 54-524.101 of the Code of Virginia are repealed.

A BILL

To amend and reenact § 18.1-346, as amended, of the Code of Virginia relating to the seizure and forfeiture of personal property used in connection with certain offenses in the drug laws; disposition of same.

Be it enacted by the General Assembly of Virginia:

1. That § 18.1-346, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 18.1-346. ~~All cannabis, cocoa (coca) leaves, heroin, cocaine, opium, morphine, or laudanum, or any compound, manufacture, mixture, salt, derivative or preparation thereof; or any synthetic substitute for cannabis, cocoa (coca) leaves, heroin, cocaine, opium, morphine, or laudanum, or any compound, manufacture, mixture, salt, derivative or preparation thereof, or any controlled drug as defined in article 1 (§ 54 524.1 et seq.), chapter 15.1, of Title 54 of the Code of Virginia, used in violation of § 18.1 345 of the Code of Virginia or §§ 54 524.1 to 54 524.109, inclusive, of the Code, known as "The Drug Control Act," or found in the possession of any person contrary to "The Drug Control Act"; and~~ All money, medical equipment, office equipment, laboratory equipment, *motor vehicle or other conveyance,* and all other personal property of any kind or character, used in connection with the ~~use or possession~~ *illegal manufacture, sale or distribution* of ~~such drugs~~ *controlled substances* in violation of ~~law~~ *§ 54-524.101 of this Code,* shall be forfeited to the Commonwealth and may be seized by an officer to be disposed of ~~as~~ *in the same manner as* provided ~~by law~~ *for the disposition of motor vehicles confiscated for illegally transporting alcoholic beverages and all of the provisions specified in § 4-56 of this Code shall apply mutatis mutandis.*

A BILL

To amend and reenact §§ 37.1-1 and 37.1-123, as amended, of the Code of Virginia, relating to definitions used in the mental health laws; authority to place patients in other institutions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.1-1 and 37.1-123, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 37.1-1. Definitions.—As used in this title except where the context requires a different meaning or where it is otherwise provided, the following words shall have the meaning ascribed to them:

(1) *"Board"* means the State Hospital Board;

(2) *"Boarding home"* means a home having a minimum of fifteen beds which provides twenty-four hour custodial care, which has been and is duly licensed pursuant to provisions of this title;

(3) *"Commissioner"* means the Commissioner of Mental Hygiene and Hospitals;

(4) *"Department"* means the Department of Mental Hygiene and Hospitals;

(5) *"Drug addict"* means a person who, through use of habit-forming drugs *or other drugs enumerated in the Virginia Drug Control Act as controlled drugs,* has become dangerous to the public or himself or unable to care for himself or his property or family *or because of such drug use, it is medically determined that he is in need of medical or psychiatric care, treatment, rehabilitation or counseling;*

(6) [Reserved.]

(7) *"Feebleminded"* means a person who has been adjudicated legally incompetent by a court of record or other constituted authority because of mental deficiency under chapter 4 (§ 37.1-127 et seq.) of this title;

(8) *"Hospital"* or *"hospitals"* when not modified by the words "state" or "private" shall be deemed to include both State hospitals and private hospitals devoted to or with facilities for the care and treatment of the mentally ill or mentally deficient;

(9) *"Inebriate"* means a person who through use of alcoholic liquors has become dangerous to the public or himself or unable to care for himself or his property or his family;

(10) *"Insane"* means a person who has been adjudicated legally incompetent by a court of record or other constituted authority because of mental disease under chapter 4 (§ 37.1-127 et seq.) of this title;

(11) *"Justice"* includes only the judges, associate judges and substitute judges of county and municipal courts as defined in § 16.1-5 and of juvenile and domestic relations courts within the meaning of chapter 8 (§ 16.1-139 et seq.) of Title 16.1 of this Code, as well as the special justices authorized by § 37.1-88, and shall not include a justice of the peace or mayor;

(12) *"Legal resident"* means any person who has resided in this State continuously for a period of one year without public support for himself or his spouse or minor children;

(13) *"Mental retardation"* means subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior;

(14) *"Mentally deficient"* means any person afflicted with mental defectiveness from birth or early childhood to such an extent that he is incapable of caring for himself or managing his affairs, who for his own welfare or the welfare of others or of the community requires supervision, control or care;

(15) *"Mentally ill"* means any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others, or of the community, he requires care and treatment; provided, that, for the purposes of chapter 2 (§ 37.1-63 et seq.) of this title, the term "mentally ill" shall be deemed to include any person who is afflicted with mental deficiency or mental retardation or is a drug addict or inebriate;

(16) *"Patient"* means a person certified or admitted to a hospital according to the provisions of this title;

(17) *"Private hospital"* means a hospital, institution or sanatorium which is duly licensed pursuant to the provisions of this title;

(18) *"Private institution"* except as used in chapter 8 (§ 37.1-179 et seq.) of this title, means an establishment which is not operated by the Board and which is licensed under such chapter for the care or treatment of mentally ill or mentally deficient persons, including psychiatric wards of general hospitals, but does not include an establishment solely for care or treatment of persons addicted to the intemperate use of narcotic drugs, alcohol or other stimulants;

(19) *"Property"* as used in §§ 37.1-12 through 37.1-18 includes land and structures thereon;

(20) *"State hospital"* means a state hospital, training school, sanatorium or other such state institution for the care and treatment of the mentally ill or mentally deficient or mentally retarded;

(21) *"Superintendent"* means the chief executive officer of a hospital;

(22) *"System of hospitals"* or *"hospital system"* means the entire system of hospitals as defined in this section under the general supervision and control of the Department.

§ 37.1-123. In lieu of placing a patient at board in a private home, the superintendent of a hospital may, subject to regulations adopted by the State *Hospital* Board ~~of Health~~, place such patient in a nursing home or other institution licensed by *either* the State Board of Health, *the State Hospital Board or the State Board of Welfare and Institutions;* provided, that the cost to the State of such placement shall not exceed the maximum fixed in § 37.1-121.

HOUSE JOINT RESOLUTION NO. —

Directing the Department of Welfare and Institutions to conduct a study and develop a plan for the treatment of drug addicts accused of violations of the drug laws or confined in jails for convictions of such laws.

Whereas, the treatment and rehabilitation of drug addicts is the most effective element in any plan to abate or reduce the heinous drug problem which plagues our society today; and

Whereas, since intemperate use of drugs involves violations of our criminal laws, most drug addicts are eventually brought to justice for such violations; and

Whereas, medical treatment and rehabilitation for those addicts who are charged with crimes is just as important to society as criminal proceedings, punishment and criminal rehabilitation; and

Whereas, in only a few instances are medical treatment and rehabilitation facilities now available to drug addicts charged with violations of the laws; now, therefore, be it

Resolved by the House of Delegates, the Senate of Virginia concurring, That the Department of Welfare and Institutions is hereby directed to conduct a study and develop a plan for the treatment and rehabilitation of all drug addicts throughout the State who are charged with violations of criminal laws. In developing such plan, the Department shall consider:

1. The need for such services in all areas of the Commonwealth;

2. The security of prisoners;

3. The Constitutional requirements for a speedy trial and the necessity of not impeding the process of justice; and

4. Making maximum use of all available treatment and rehabilitation facilities, both private and public, which now exist or may be developed in the future.

The Department shall conclude its work and submit its plan and the recommendations to the Governor and General Assembly not later than December fifteen, nineteen hundred seventy-two.