REPORT OF THE

JOINT SUBCOMMITTEE OF THE COURTS OF JUSTICE

COMMITTEES OF THE SENATE AND HOUSE OF DELEGATES

STUDYING THE POSSIBLE NEED FOR A REVISION OF

VIRGINIA'S MARIJUANA LAWS

TO

THE COURTS OF JUSTICE COMMITTEES OF

THE SENATE AND HOUSE OF DELEGATES

SENATE DOCUMENT NO. 16

COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES AND SUPPLY
RICHMOND
1979

MEMBERS OF JOINT SUBCOMMITTEE

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Research assistance was also provided by the Virginia State Crime Commission.

Report of the Joint Subcommittee of the Courts of

Justice Committees of the Senate and House of Delegates

Studying the Possible Need for a Revision of

Virginia's Marijuana Laws

To

The Courts of Justice Committees of

the Senate and House of Delegates

Richmond, Virginia

December, 1978

To: The Courts of Justice Committees of

The Senate and House of Delegates

I. INTRODUCTION

A joint subcommittee of the Courts of Justice Committees of the Senate and House of Delegates, having been authorized to conduct a study of the possible need for a revision of Virginia's marijuana laws under Senate Joint Resolution No. 93, submits the following report as the product of its deliberations. The text of Senate Joint Resolution No. 93, agreed to by the Senate and House of Delegates in the 1978 Session of the General Assembly, follows.

SENATE JOINT RESOLUTION NO. 93

Requesting the Senate and House Courts of Justice Committees to study the possible need for a revision of criminal penalties for possession and distribution of marijuana.

WHEREAS, present law imposes for the manufacture, sale, gift, distribution, or possession with intent to manufacture, sell, give, or distribute marijuana the same potential sentence as for similar conduct with regard to certain other controlled substances, including heroin; and

WHEREAS, the possibility exists that a distinction in penalties for the manufacture, sale, gift, distribution, or possession with intent to do the foregoing of marijuana from similar conduct respecting other controlled substances, including heroin, may create a shift in emphasis in law enforcement from marijuana offenses to other more serious controlled substances offenses; and

WHEREAS, the suggestion has been made that Virginia's criminal penalties for the manufacture, sale, gift, distribution, or possession with intent to do the foregoing of marijuana are more severe than the penalties of all but two other states for the same conduct; and

WHEREAS, the value of jail or prison sentences as a deterrent to the offense of possession of marijuana has been questioned; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Committees for Courts of Justice of the Senate and the House of Delegates are requested to form a joint subcommittee to study the possible need for revision of criminal penalties imposed for the manufacture, sale, gift, distribution, or possession with intent to do the foregoing of marijuana and criminal penalties for the offense of possession of marijuana.

The Joint Subcommittee may call upon the Virginia State Crime Commission for research assistance during the course of its study.

The Joint Subcommittee shall submit a final report, including any recommendations for legislation, to the Committees for Courts of Justice of the Senate and the House of Delegates on or before December fifteen, nineteen hundred seventy-eight.

II. LEGISLATIVE HISTORY

In 1972 the Virginia General Assembly adopted Senate Joint Resolution No. 60 which directed law enforcement agencies in Virginia to concentrate their efforts upon persons engaged in the trafficking of controlled substances and upon violations which involve the abuse of those drugs which present the greatest danger of harm to both the user and to society.

In September, 1975, the Joint Legislative Audit and Review Commission prepared a report entitled "Preliminary Evaluation of Virginia's Drug Abuse Control Program" which concluded that Virginia law enforcement agencies had failed to follow the directives of Senate Joint Resolution No. 60.

In support of that conclusion the JLARC report cites drug arrest statistics for both state and local law enforcement agencies which demonstrate a steady increase in the number of marijuana related arrests, stated as a percentage of all drug arrests. In 1971, approximately 43% of all drug arrests were marijuana related. By 1972, that figure had increased to 55%, and, following the adoption of Senate Joint Resolution No. 60, the figure increased to 69% in 1973 and to 77% in 1974.

The 1977 figures, which are the latest figures available, indicate that the percentage of marijuana related arrests has increased to 82% of all drug arrests made by local law enforcement agencies and 81.6% of all drug arrests made by the Virginia State Police. It is also significant to note that during 1977, 66% of all drug arrests were for marijuana possession. This figure is a composite of state and local law enforcement statistics.

In the City of Norfolk, during the most recent period for which figures are available, 80% of all drug arrests were for marijuana possession, and only 10% of all drug arrests involved substances other than marijuana.

Other significant findings of the 1975 JLARC report are:

1. 60% of all marijuana cases involve one ounce of the substance or less.

2. Law enforcement efforts have not had a significant impact on the availability or use of marijuana.

3. The money and manpower committed to controlling marijuana use greatly exceeds its social costs or potential for individual harm.

4. Nine out of ten marijuana users have never been arrested.

5. Marijuana does not lead to aggressive behavior or to crimes against persons or property.

6. There is no evidence to suggest that marijuana use necessarily leads to the use of other drugs.

Upon consideration of the foregoing JLARC findings and upon consideration of the ever increasing number of marijuana related arrests, stated as a percentage of all drug arrests, indicating the continuing failure of law enforcement agencies to comply with the directives of Senate Joint

Resolution No. 60, the 1978 Session of the Virginia General Assembly adopted Senate Joint Resolution No. 93 offered by Senator Frederick C. Boucher and others.

Senate Joint Resolution No. 93 directs a Joint Subcommittee of the Senate and House of Delegates Committees for Courts of Justice to examine whether a change in criminal penalties for marijuana possession, distribution and possession with intent to distribute would have the effect of redirecting law enforcement efforts toward persons engaged in the trafficking or abuse of those drugs which present the greatest danger or harm to both the users and to society and to those persons distributing large quantities of marijuana.

III. PROCEEDINGS OF THE JOINT SUBCOMMITTEE

The subcommittee was composed of Senators Joseph V. Gartlan, Jr., Russell I. Townsend, Jr., Edward M. Holland, Dudley J. Emick, Jr., and Frederick C. Boucher, who were appointed by the Chairman of the Senate Committee for Courts of Justice, and Delegates A. L. Philpott, C. Hardaway Marks, John D. Gray, Theodore V. Morrison, Jr., Thomas W. Moss, Jr., J. Samuel Glasscock and Richard R. G. Hobson, who were appointed by the Chairman of the House of Delegates Committee for Courts of Justice. Senator Frederick C. Boucher was elected Chairman of the subcommittee, and Delegate Theodore V. Morrison, Jr. was elected Vice-Chairman. Legal assistance to the subcommittee was provided by K. Marshall Cook from the Division of Legislative Services. Patrice S. Wall, a staff member of the Virginia State Crime Commission, provided research assistance, and Robert F. Doutt staffed the subcommittee on behalf of the Senate Clerk's Office.

During May and June of 1978, the subcommittee resolved to direct its inquiry toward providing answers to the following questions:

(A) Should the cultivation of marijuana for personal use be punished as severely as the cultivation of marijuana with the intent to distribute same?

(B) If the penalties for the possession of marijuana were distinguished from the penalties for the possession with the intent to distribute and the distribution of those drugs which have a greater potential for harm to the user and to society as a whole, including heroin, PCP, etc., would a shift in law enforcement emphasis to the traffickers in those more dangerous substances be encouraged?

(C) Would the categorization of the penalties for possession with intent to distribute and distribution of marijuana based upon the amount of the substance involved encourage a shift in law enforcement emphasis to the traffickers of large amounts of marijuana?

(D) Would a change in penalties for marijuana possession encourage a shift in emphasis in law enforcement efforts from those persons who possess marijuana for personal use to the traffickers of controlled substances and to those persons who abuse the drugs which have the greatest potential for personal and social harm?

(E) Is there a disparity in application of the deferred judgment statute for marijuana possession first offenders, and if so, should remedial action be taken?

(F) Is there a disparity in application of the citation procedure for marijuana possession offenders, and if so, should remedial action be taken?

(G) Does the Division of Consolidated Laboratory Services presently have an unacceptable turn-around time for the resubmission to prosecuting authorities of marijuana samples, and if so, should remedial action be taken?

(H) Are there appropriate medical uses for THC, the active ingredient in marijuana? If there are such appropriate medical uses, should the distribution and use of that substance be permitted pursuant to medical prescription?

In the course of its delibertions, the subcommittee conducted public hearings in Richmond, Roanoke, Fairfax County and Norfolk. Various references are made to the testimony illicited at these hearings in the Findings and Recommendations section of this report.

IV. PRESENT VIRGINIA PENALTIES FOR CRIMINAL VIOLATIONS WITH RESPECT TO SUBSTANCES CONTROLLED IN SCHEDULES I AND II

A statement of the present Virginia penalties for offenses associated with both marijuana and other Schedule I and II controlled substances is useful as a prelude to the findings and recommendations of the subcommittee.

A. Penalties for Possession of Schedule I and II Controlled Substances.

1. Marijuana Possession. Section 18.2-250(b) makes possession of marijuana a Class I misdemeanor, with a punishment not to exceed twelve months in jail and/or a fine not to exceed $1,000.00. Section 18.2-251 provides for a discretionary deferred sentencing of first offenders. Under this provision, successful completion of a probationary period leads to the striking of the offense from the defendant's record for all purposes except a subsequent marijuana possession proceeding.

2. Possession of Other Schedule I and II Controlled Substances. Section 18.2-250(a) makes possession of Schedule I and II drugs a Class 5 felony, with a punishment of one to ten years imprisonment, or, in the discretion of the trier of fact, a term in jail not to exceed twelve months and/or a fine not to exceed $1,000.00.

B. Penalties for Distribution of Schedule I and II Controlled Substances.

1. Basic Penalty. Under Section 18.2-248 the penalty for manufacturing, selling, giving, distributing or possessing with intent to do the foregoing of both marijuana and other Schedule I and II controlled substances is a term of five to forty years imprisonment and a fine of not more than $25,000.00. For a second offense involving an opiate or synthetic opiate, the penalty is five years to life imprisonment.

Cultivation of marijuana in any quantity is considered "manufacturing", and, therefore, incurs the penalty of five to forty years imprisonment and and a fine of not more than $25,000.00.

2. Accomodation. Section 18.2-248 defines "accomodation" as a transfer of a controlled substance under such circumstances that the transferor did not intend to profit thereby and did not intend the recipient to become addicted to the controlled substance. Marijuana accomodation is a Class 1 misdemeanor. Other Schedule I and II controlled substances accomodation is a Class 5 felony.

3. Distribution of Controlled Substances to Persons Under Eighteen Years of Age. Section 18.2-255 imposes a sentence of ten to fifty years imprisonment and a fine of not more than $50,000.00 upon any person who distributes any Schedule I, II, or III controlled substance, including marijuana, to any person under eighteen years of age who is at least three years his junior.

V. FINDINGS AND RECOMMENDATIONS OF THE JOINT SUBCOMMITTEE

Based upon the arrest statistics cited in Subdivision I of this report and upon the testimony, both written and oral, which was presented to the subcommittee during its public hearings, the subcommittee makes the following findings and submits the following recommendations.

The subcommittee recognizes that (1) the current state of scientific and medical knowledge concerning the effects of marijuana makes it necessary to acknowledge the potential harm which may be incumbent upon its use; and (2) marijuana is widely used and pervasive among the citizens of Virginia, notwithstanding its possible harmful effects; and (3) present legislation enacted to forbid the use of marijuana has drawn a large segment of Virginia's population within the criminal justice system without succeeding in deterring the expansion of marijuana use.

It is, therefore, the intent of the subcommittee to recommend a reasonable penalty system which is responsive to the current state of knowledge concerning marijuana and which directs the greatest efforts of law enforcement agencies toward the commercial traffickers of the controlled substances presenting the greatest potential for harm both to the individual and to society and to the distributors of large quantities of marijuana.

A. Cultivation of Marijuana for Personal Use.

As previously noted, present law does not distinguish the cultivation of marijuana for personal use from the cultivation of the substance for distribution. The penalty in both instances is imprisonment for a term of five to forty years and a fine of not more than $25,000.00.

The suggestion had been made that it would be more appropriate to impose upon persons who cultivate marijuana for their own use the same penalty that is imposed upon persons who are in possession of marijuana for personal use rather than the penalty which is imposed upon persons who distribute marijuana or possess it with intent to distribute. Senate Bill No. 384, patroned in the 1978 General Assembly by Senator Russell I. Townsend, was designed to punish the cultivation of marijuana for personal use as a Class 1 misdemeanor, the present penalty for possession of marijuana for personal use. Senate Bill No. 384 was carried over in the Senate Committee for Courts of Justice and referred to this subcommittee for consideration.

Staff research revealed that twenty-eight states punish the cultivation of marijuana for personal use differently than cultivation for distribution. Twenty-six of those states have adopted the definition of "manufacture" contained in the Uniform Controlled Substances Act, which distinguishes cultivation for personal use from cultivation for distribution purposes by excepting from the definition of "manufacture" the "preparation or compounding of a controlled substance by an individual for his own use...."

The subcommittee decided that it would be appropriate to treat cultivation of marijuana for personal use differently than cultivation for distribution. The subcommittee does not recommend the effectuation of this distinction through the adoption of the definition of "manufacture" contained in the Uniform Controlled Substances Act because the Act's personal use exception applies to all controlled substances rather than just to marijuana.

Therefore, the subcommittee recommends that § 54-525.2(b) (14a) be amended by exempting from the definition of "manufacture" the "planting, cultivating, tending, propagating, preparing, or harvesting of marijuana by an individual for his own use...." Should this amendment be enacted, persons who are cultivating marijuana for personal use would be chargeable with possession of marijuana under the terms of § 18.2-250. All of the elements of possession of marijuana would be present.

B. Penalties for Distribution of Marijuana and Possession of Marijuana with Intent to Distribute.

As noted under Subdivision IV. of this report, present law imposes a potential penalty of five to forty years imprisonment and a fine of not more than $25,000.00 upon any person who distributes any Schedule I or II controlled substance. Therefore, the potential penalty is the same for a person who distributes a very small quantity of marijuana for profit as for a person who distributes for profit a large quantity of heroin, PCP or other substance with a greater potential for harm to the user and to society.

The subcommittee is of the opinion that distinguishing the penalties for marijuana distribution from penalties for distribution the other Schedule I and II controlled substances would have the effect of creating a shift in law enforcement emphasis from the marijuana offenses to the offenses involving the distribution of those more harmful substances.

The subcommittee is also of the opinion that a categorization of the marijuana distribution offenses based upon the amount of the substance involved would have the effect of creating a shift in law enforcement emphasis from the distributors of small amounts of the substance to the commercial traffickers of large quantities.

Therefore, the subcommittee recommends the following schedule of penalties for the offense of marijuana distribution or possession with intent to distribute:

1. For amounts up to and including one-half ounce: A Class 1 misdemeanor (incarceration for a period not to exceed twelve months and/or a fine not to exceed $1,000.00).

2. For amounts greater than one-half ounce but less than five pounds: A Class 5 felony (imprisonment for not less than one nor more than ten years, or in the discretion of the trier of fact, incarceration for not more than twelve months and/or a fine of not more than $1,000.00).

3. For amounts of five pounds or more: A Class 3 felony (a term of imprisonment for not less than five nor more than twenty years).

In reaching this recommendation, the subcommittee was of the opinion that distinguishing the penalties for marijuana distribution from those for the distribution of other Schedule I and II controlled substances including heroin, PCP, etc., would properly emphasize the seriousness of the distribution of the latter drugs. The subcommittee was also of the opinion that graduation of the penalties for marijuana distribution based upon the amount of the substance involved would properly emphasize the relative seriousness of the distribution of large amounts of marijuana as opposed to the distribution of very small amounts.

Under the subcommittee's recommendation, the distribution or possession with intent to distribute of Schedule I and II controlled substances would continue to be punishable by a term of imprisonment of from five to forty years and/or by a fine not to exceed $25,000.00. If the subcommittee's recommendations are enacted, § 54-524.84:4(d) should be amended to delete marijuana from Schedule I since marijuana distribution will be punishable by a separate statute.

The subcommittee recommends no change in § 18.2-255 which imposes a sentence of ten to fifty years imprisonment and a fine of not more than $50,000.00 upon any person who distributes any Schedule I, II or III controlled substance, including marijuana, to any person under eighteen years of age who is at least three years his junior.

Many witnesses testifying at the subcommittee's public hearing indicated support for a penalty distinction between marijuana distribution offenses on the one hand and the distribution offenses for heroin and other more dangerous drugs on the other. In particular, this position was taken by Lewis Hurst, Executive Director of the Virginia State Crime Commission and former head of the Narcotics Enforcement Division of the Norfolk Police Department, and by spokesmen for the Alexandria Sheriff's Department, the Fairfax County Police Department, the Police Department of the Town of Blacksburg and the Norfolk Commonwealth's Attorney's Office.

There was also substantial support for the graduation of marijuana distribution penalties based upon the amount of the substance involved. Lewis Hurst stated that a graduation of the penalties based upon amount would create a shift in emphasis in law enforcement to the commercial traffickers of marijuana and to the traffickers of other more dangerous drugs. Also supporting this position were spokesmen for the Blacksburg and Abingdon Police Departments.

The subcommittee considered the question of whether a graduation of marijuana penalties based upon amount would create evidentiary problems with regard to the submission of representative samples. The legal staff of the Joint Subcommittee concluded that representative samples are admissible as proof of the quantity and condition of the entire lot:

> "A sample is receivable in evidence to show the qualtity or condition of the entire lot or mass from which it is taken. The requirement is merely that the mass should be substantially uniform with reference to the quality in question and that the sample portion should be of such a nature as to be fairly representative." II Wigmore, Evidence § 439 (1940).

Other authorities are in accord. State vs. Absher , 237 S. E. 2d 749, 752(N.C. App. 1977), citing State vs. Hayes , 291 N.C. 293 S., 230 E. 2d 146 (1976); 3 Jones, Evidence § 15:13 (1973); 29 Am. Jur. 2d Evidence §§ 773, 776 (1967); Annot. , 95 A.L.R. 2d 673 (1964); McCord, The Admissibility of Sample Data into a Court of Law , 4 U.C.L.A. L. Rev. 232 (1957).

Research staff of the Joint Subcommittee also attempted to contact law enforcement authorities in each of the 32 states which base their marijuana penalties on the amount of the drug possessed or sold in order to determine whether evidentiary problems of the type being considered have arisen. Of the 20 states responding, 16 indicated that representative marijuana samples are routinely admitted as evidence of the character of the whole. Of the remaining 4 states responding, three had such small upper graduation limits, one ounce to one and one-half ounces, that large seizures posed no practical problem. The remaining state, South Dakota, responded that it has had no experience with large quantities.

Based upon the foregoing legal and empirical research, the subcommittee was of the opinion that the admission of representative samples of seized marijuana would be permissible in Virginia.

C. The Offense of Possession of Marijuana for Personal Use.

As noted in the introductory remarks to this Subdivision V, the subcommittee finds that the present state of scientific and medical knowledge makes it necessary to acknowledge the potentially damaging effects of marijuana to the user. The subcommittee is unanimously of the opinion that possession of marijuana for personal use should not be legalized, and the subcommittee takes the position that nothing contained in its recommendation on this subject should be interpreted as an official encouragement or sanction of the possession or use of marijuana.

As further stated in the introductory remarks to this subdivision, marijuana is widely used and pervasive among the citizens of this State, notwithstanding its potential harmful effects and notwithstanding the present criminal penalties incumbent upon its possession and use. The subcommittee finds that present criminal sanctions enacted to forbid the use of marijuana have drawn a large segment of Virginia's population into the criminal justice system without succeeding in deterring the expansion of marijuana use while substantially drawing upon the resources of the criminal justice system.

The subcommittee was mindful of a presentation by James J. Kilpatrick on the CBS Radio Network on January 2, 1978, regarding the question of the effect of criminal laws regarding marijuana use upon the resources of the criminal justice system. In particular, Mr. Kilpatrick stated as follows:

> "As a practical matter, it strikes me as just plain stupid to divert scarce police manpower to the senseless pastime of making marijuana busts.... it's absurd, as I see it, to squander police resources on 441,000 marijuana arrests a year. These cases clog our courts. They leave a lasting stigma upon the young people who get arrested, and they are not useful as a deterrent."

Mr. Kilpatrick concluded that marijuana possession should become a civil infraction as opposed to a criminal offense.

The subcommittee heard testimony from a number of law enforcement representatives who advocated some reduction in the present penalties for marijuana possession. Lewis Hurst of the State Crime Commission stated that in his opinion removal of jail sentences for first offenders would have the effect of diverting law enforcement efforts toward the commercial traffickers and abusers of other controlled substances. Support for a lessened penalty was also forthcoming from the Alexandria Sheriff's Department.

The subcommittee's research indicated that ten states have removed jail sentences for first offenders. Among the states are Mississippi and North Carolina. The statutory scheme employed by those ten states involves the imposition of a fine, generally $100.00, as the penalty for a first offense. Penalties become progressively more severe with the second and subsequent marijuana possession offenses. Typically, a potential jail sentence is encountered at the second offense level.

The subcommittee decided that the goals of diverting police attention to the more serious drug offenses, relieving present pressure on the criminal justice system, and removing the potential for selective and possibly discriminatory application of the present potential 12 month jail sentence could be accomplished by making a first offense of marijuana possession a Class 3 misdemeanor rather than a Class 1 misdemeanor. A Class 3 misdemeanor is punishable by a fine of $500.00. It is the subcommittee's view that by retaining the substantial fine of $500.00, and by continuing to treat marijuana possession as a misdemeanor, enactment of this recommendation by the General Assembly would not constitute an official sanction of marijuana possession or use, nor would it tend to encourage marijuana possession or use in Virginia.

The subcommittee is of the opinion that the deferred judgment treatment of first offenders under § 18.2-251 is desirable, and the penalty recommendations contained in this Subdivision V. (C.) of this Report should not be construed as a statement of legislative intent that § 18.2-251 be employed on a less frequent basis.

The subcommittee's staff contacted those states which have removed jail sentences for first offenders in order to determine whether or not that change in the law has been accompanied by an increase in marijuana usage. The staff determined that available data from those states does not support the proposition that removal of jail sentences for first offenders is accompanied by an

increase in marijuana usage.

The staff also attempted to determine whether or not the removal of jail sentences for first offenders in those states was accompanied by an increase in the arrest of commercial traffickers. While the data from some states indicated a sustantial increase in felony non-marijuana drug arrests (18% in California), the available data was too incomplete for firm conclusions.

D. Operations of the Citation Procedure for Marijuana Arrests.

Section 19.2-74 of the Code of Virginia provides that law enforcement officers shall issue summonses to any person who commits a misdemeanor in the law enforcement officer's presence, which summons shall require the offender to appear at a time and place to be specified in the summons. The summons requirement has the following two exceptions:

1. If the arresting officer has reasonable cause to believe that the offender will not appear at the time and place specified, he is directed to take the offender before a magistrate who shall determine whether or not probable cause exists that the offender is likely to disregard the summons; and

2. If the arresting officer reasonably believes that the offender is likely to cause harm to himself or to any other person, the officer may take such person before a magistrate and request the issuance of a warrant.

Virtually all of the marijuana possession arrests in Virginia arise from offenses committed in the presence of a law enforcement officer, and § 19.2-74 should apply to those arrests.

Testimony at the subcommittee's public hearings revealed a wide disregard of the provisions of § 19.2-74. In many of the jurisdictions in Virginia, persons who are apprehended for marijuana possession are taken into physical custody and subjected to the routine criminal justice process. This procedure occurs in many jurisdictions without the arresting officer complying with the requirements of the statute that physical arrest shall not be made without a finding under one of the two foregoing exceptions.

It is clear that the intent of the General Assembly is not being followed by large numbers of law enforcement agencies. The subcommittee, however, finds that the language of the statute is clear and that it cannot be strengthened through amendment. Therefore, the subcommittee will propose a joint resolution directing law enforcement agencies in Virginia to follow the requirements of § 19.2-74 and directing the Criminal Justice Services Commission to make an explanation of the provisions of this section a priority in the training of new law enforcement personnel and in the in-service training of present law enforcement personnel. A copy of this Joint Resolution is attached to this Report as Appendix I.

E. Operation of the Deferred Judgment Statute.

As noted under Subdivision IV. of this report, § 18.2-251 provides for a discretionary deferred sentencing of marijuana possession first offenders. Under this provision, successful completion of the probationary period leads to the striking of the offense from the defendant's record for all purposes except a subsequent marijuana possession proceeding.

Testimony at the subcommittee's public hearing revealed that the deferred judgment statute is respected and applied in most jurisdictions in Virginia; however, there are rare instances where judges refuse to apply the deferred judgment statute.

The subcommittee also learned that General District Court Judges in the City of Richmond employ the deferred judgment statute but place all offenders on active probation under the auspices of Offender Aid and Restoration's drug rehabilitation program. The director of OAR of Richmond testified that in his opinion the referral of these defendants to his program is inappropriate. He is of the opinion that persons whose only association with drug abuse is the occasional use of marijuana are not proper subjects for drug rehabilitation. He is of the further opinion that the referral of such persons to his program diverts his resources from areas where his staff can be of true assistance.

In light of the foregoing exceptions to the generally excepted procedure of applying the deferred

judgment statute without active probation or other terms and conditions, the subcommittee considered a proposal to make application of the deferred judgment statute without terms and conditions mandatory for first offenders. Such a recommendation would prevent any marijuana possession first offenders from incurring a criminal record for that offense. However, it would also remove any potential for imposing a fine, or for requiring treatment for offenders who might truly need drug rehabilitation or other counseling. Therefore, the subcommittee does not recommend legislation which would make § 18.2-251 treatment mandatory or which would prohibit active probation under the statute.

The subcommittee is also of the view that its recommendation reclassifying the first offense of marijuana possession from a Class 1 misdemeanor to a Class 3 misdemeanor should not result in any reduced application of the deferred judgment statute.

F. Testing of Marijuana Samples by the Division of Consolidated Laboratory Services.

Testimony presented at the subcommittee's public hearing reveals that the Division of Consolidated Laboratory Services presently has a turn-around time of approximately two months on the testing and resubmission of marijuana samples. However, at the present time, the subcommittee does not recommend legislation authorizing evidentiary admission in marijuana prosections of the result of field tests for determining the presence of THC, nor does the subcommittee recommend at this time any increase in marijuana testing staff for the Division.

The subcommittee believes that the workload of the Division should be monitored closely after implementation of the new penalty provisions.

G. Medical Applications of THC.

Testimony was presented at the Richmond and Fairfax County public hearings by medical doctors experienced with cancer treatments to the effect that THC, the active ingredient in marijuana, relieves the nausea which accompanies cancer treatments in the form of chemotherapy. The medical testimony also indicated that THC relieves the intraoccular pressure which is a symptom of glaucoma.

As of the writing of this report, four states, Illinois, Louisiana, Florida and New Mexico have statutorily recognized that THC has appropriate medical uses. The subcommittee is of the opinion that some genuine relief to cancer and glaucoma patients could be forthcoming through the administration of THC pursuant to medical prescription. Therefore, the subcommittee recommends that criminal penalties in Virginia should be removed for the distribution and use of THC pursuant to medical prescription.

CONCLUDING COMMENTS

Legislation which incorporates the changes outlined in this Report is attached as Appendix II. The joint subcommittee wishes to express its gratitude to the Virginia State Crime Commission for making available to the subcommittee the services of Lewis W. Hurst and Patrice S. Wall, without whose help much of the empirical research conducted for this study would not have been possible.

Respectfully submitted,

Frederick C. Boucher, Chairman

Theodore V. Morrison, Jr., Vice Chairman

Russell I. Townsend, Jr.

Joseph V. Gartlan, Jr.

Edward M. Holland

A. L. Philpott

C. Hardaway Marks

John D. Gray

Thomas W. Moss, Jr.

J. Samuel Glasscock

Richard R. G. Hobson

SEPARATE STATEMENT OF

DUDLEY J. EMICK, JR.

I concur in the findings and recommendations of the joint subcommittee with the exception of the recommendation contained in Subdivision V (C) of the report to reclassify the penalty for the first offense of marijuana possession from a Class 1 misdemeanor to a Class 3 misdemeanor.

Dudley J. Emick, Jr.

APPENDIX I

SENATE JOINT RESOLUTION NO.....

Requesting the Criminal Justice Services Commission make instruction concerning the application by law enforcement personnel of the provisions of § 19.2-74 of the Code of Virginia in arrests for misdemeanor offenses involving marijuana possession a priority in the training of new law-enforcement personnel and in the in-service training of current personnel.

WHEREAS, in nineteen hundred seventy-eight, a joint subcommittee of the Senate and House of Delegates Committees for Courts of Justice was created pursuant to Senate Joint Resolution No. 93 to conduct a study of the laws of the Commonwealth concerning the possession and distribution of marijuana; and

WHEREAS, the subcommittee held public hearings in Richmond, Roanoke, Fairfax and Norfolk and obtained substantial testimony from law-enforcement personnel; and

WHEREAS, portions of that testimony revealed that some law-enforcement agencies in Virginia do not issue summonses to persons charged with marijuana possession when the offense is committed in the presence of the arresting officer as required by § 19.2-74 of the Code of Virginia; and

WHEREAS, it is the view of the aforesaid subcommittee that the provisions of § 19.2-74 should be so employed; and

WHEREAS, the subcommittee is of the view that the provisions of § 19.2-74 are unequivocal and not subject to strengthening through amendment; and

WHEREAS, the subcommittee believes that the aforementioned disregard of the provisions of § 19.2-74 is primarily due to a lack of knowledge of the requirements of the section by law-enforcement personnel; now, therefore, be it

RESOLVED by the Senate of Virginia, the House of Delegates concurring, That the Criminal Justice Services Commission make instruction concerning the application by law-enforcement personnel of the provisions of § 19.2-74 of the Code of Virginia in arrests for misdemeanor offenses involving marijuana possession a priority in the training of new law enforcement personnel and in the in-service training of current personnel.

APPENDIX II

A BILL to amend and reenact §§ 18.2-247, 18.2-248, 18.2-249, 18.2-250, 18.2-251, 18.2-252, 18.2-253, 18.2-254, 18.2-255, 18.2-257, 18.2-258, 18.2-258.1, 54-524.2, 54-524.56 and 54-524.84:4 and to amend the Code of Virginia by adding sections numbered 18.2-248.1, 18.2-250.1 and 18.2-251.1 of the Code of Virginia, relating to the possession, manufacture, cultivation and sale of marijuana; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-247, 18.2-248, 18.2-249, 18.2-250, 18.2-251, 18.2-252, 18.2-253, 18.2-254, 18.2-255, 18.2-257, 18.2-258, 18.2-258.1, 54-524.2, 54-254.56, and 54-524.84:4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is further amended by adding sections numbered 18.2-248.1, 18.2-250.1 and 18.2-251.1, as follows:

§ 18.2-247. Use of terms "controlled substances" and "Schedules I, II, III, IV, V and VI" in Title 18.2.—Wherever the terms "controlled substances", *"marijuana"* and "Schedules I, II, III, IV, V and VI" are used in Title 18.2, such terms refer to those terms as they are used or defined in The Drug Control Act, Chapter 15.1 (§ 54-524.1 et seq.) of Title 54 of this Code.

§ 18.2-248. Penalties for the manufacture, sale, gift, distribution or possession with intent to manufacure, sell, give or distribute a controlled substance.—Except as authorized in the Drug Control Act, Chapter 15.1 (§ 54-524.1 et seq.) of Title 54 of this Code, 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 Schedule I or II shall upon conviction be imprisoned for not less than five nor more than forty years and fined not more than twenty-five thousand dollars; any person, upon a second or subsequent conviction of a violation of this section involving an opiate or synthetic opiate drug, may in the discretion of the court or jury imposing the sentence, be sentenced to ~~confinement in the penitentiary for a term of life~~ imprisonment *for life* or for any period not less than five years; provided, that if such person prove that he gave, distributed or possessed with intent to give or distribute a controlled substance classified in Schedule I or II ~~other than marijuana~~ only as an accommodation to another individual who is not an inmate in a penal institution as defined in § 53-19.18 or in the custody of an employee thereof, 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 be guilty of a Class 5 felony ~~; and provided further, that if such person prove that he gave, distributed or possessed with intent to give or distribute marijuana 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 be guilty of a Class 1 misdemeanor~~ .

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 Class 4 misdemeanor.

(a1) ~~Any person who gives, distributes or possesses marijuana as an accommodation and not with intent to profit thereby, to an inmate of a penal institution as defined in § 53-19.18, or in the custody of an employee thereof shall be guilty of a Class 5 felony.~~

(b) Any person who violates this section with respect to a controlled substance classified in Schedules III, IV or V shall be guilty of a Class 1 misdemeanor.

§ 18.2-248.1. Penalties for manufacture, sale, gift, distribution or possession with intent to

manufacture, sell, give or distribute marijuana.—Except as authorized in the Drug Control Act, Chapter 15.1 (§ 54-524.1 et seq.) of Title 54 of this Code, it shall be unlawful for any person to manufacture, sell, give, distribute or possess with intent to manufacture, sell, give or distribute marijuana.

(a) Any person who violates this section with respect to:

(1) not more than one-half ounce of marijuana is guilty of a Class 1 misdemeanor;

(2) more than one-half ounce but not more than five pounds of marijuana is guilty of a Class 5 felony;

(3) more then five pounds of marijuana is guilty of a Class 3 felony.

Provided, that if such person prove that he gave, distributed or possessed with intent to give or distribute marijuana only as an accommodation to another individual and not with intent to profit thereby nor to induce the recipient or intended recipient of the marijuana to use or become addicted to or dependent upon such marijuana, he shall be guilty of a Class 1 misdemeanor.

(b) Any person who gives, distributes or possesses marijuana as an accommodation and not with intent to profit thereby, to an inmate of a penal institution as defined in § 53-19.18, or in the custody of an employee thereof shall be guilty of a Class 5 felony.

§ 18.2-249. Seizure and forfeiture of property used in connection with illegal manufacture, sale or distribution of controlled substances.—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 illegal manufacture, sale or distribution of controlled substances in violation of § 18.2-248 (a) *or of marijuana in violation of § 18.2-248.1* , shall be forfeited to the Commonwealth and may be seized by an officer to be disposed of in the same manner as provided 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.

The agency seizing the motor vehicle or other conveyance shall be permitted the use and operation of the motor vehicle or other conveyance, after court forfeiture, for the investigation of narcotics and controlled substances in the State of Virginia by the agency seizing the motor vehicle or other conveyance. The agency using or operating each motor vehicle shall have insurance on each vehicle used or operated for liability and property damage.

§ 18.2-250. Possession of controlled substances unlawful.—A. 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 the Drug Control Act (§ 54-524.1 et seq.).

Upon the prosecution of a person for a violation of this section, ownership or occupancy of premises or vehicle upon or in which a controlled substance was found shall not create a presumption that such person either knowingly or intentionally possessed such controlled substance.

(a) Any person who violates this section with respect to any controlled substance classified in Schedules I or II of the Drug Control Act ~~other than marijuana~~ shall be guilty of a Class 5 felony.

(b) Any person other than an inmate of a penal institution as defined in § 53-19.18 or in the custody of an employee thereof, who violates this section with respect to a controlled substance classified in Schedule III ~~or marijuana~~ shall be guilty of a Class 1 misdemeanor.

(c) Violation of this section with respect to a controlled substance classified in Schedule VI shall be punishable as a Class 4 misdemeanor.

B. The provisions of this section shall not apply to members of State, federal, county, city or town law-enforcement agencies when possession of a controlled substance or substances is necessary in the performance of their duties.

§ 18.2-250.1. Possession of marijuana unlawful.—A. It is unlawful for any person knowingly or intentionally to possess marijuana 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 the Drug Control Act (§ 54-524.1 et seq.).

Upon the prosecution of a person for violation of this section, ownership or occupancy of the premises or vehicle upon or in which marijuana was found shall not create a presumption that such person either knowingly or intentionally possessed such marijuana.

Any person who violates this section shall be guilty of a Class 3 misdemeanor; any person, upon a second or subsequent conviction of a violation of this section, shall be guilty of a Class 1 misdemeanor.

B. The provisions of this section shall not apply to members of State, federal, county, city or town law-enforcement agencies when possession of marijuana is necessary for the performance of their duties.

§ 18.2-251. Persons charged with first offense may be placed on probation; discharge.—Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, 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 enters a plea of not guilty to possession of a controlled substance under § 18.2-250 *or to possession of marijuana under § 18.2-250.1* , the court, upon such plea if the facts found by the court would justify a finding of guilt, 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.

§ 18.2-251.1. Use of marijuana for medical purposes permitted.—A. No person shall be prosecuted under §§ 18.2-250 or 18.2-250.1 for the possession of marijuana or tetrahydrocannabinol when that possession occurs pursuant to a valid prescription or order of a practitioner issued in the course of his professional practice.

B. No practitioner shall be prosecuted under §§ 18.2-248 or 18.2-248.1 for dispensing or distributing marijuana or tetrahydrocannabinol for medical purposes when such action occurs in the course of his professional practice.

C. No pharmacist shall be prosecuted under §§ 18.2-248 to 18.2-248.1 for dispensing or distributing marijuana or tetrahydrocannabinol to any person who holds a valid prescription or order of a practitioner for such substance issued in the course of such practitioner's professional practice.

§ 18.2-252. Suspended sentence conditioned upon submission to periodic medical examinations and tests.—Notwithstanding any other provision of law to the contrary, the trial judge or court trying the case of any person found guilty of violating any law concerning the use, in any manner, of drugs, controlled substances, narcotics, *marijuana,* noxious chemical substances and like substances, may condition any suspended sentence by first requiring such person to agree to undergo periodic medical examinations and tests to ascertain any use or dependency on the substances listed above and like substances. The frequency and completeness of such examinations and tests shall be in the discretion of such judge or court, and the results of the examinations and tests given to the judge or court as ordered. The cost of such examinations and tests shall be paid by the State and taxed as a part of the costs of such criminal proceedings. The judge or court, in his or its discretion, may enter such additional orders as may be required to aid in the rehabilitation of such convicted person.

§ 18.2-253. Disposal of seized substances.—All controlled substances , *marijuana* or paraphernalia the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer or have been seized in connection with violations of this chapter, shall be forfeited and disposed of as follows:

(a) Upon written application by the Division of Consolidated Laboratory Services the court may order the forfeiture of any such substance or paraphernalia to the Division for research and training purposes and for destruction pursuant to regulations of the United States Department of Justice Drug Enforcement Administration and of the State Board of Pharmacy once these purposes have been fulfilled.

(b) In the event no application is made under subsection (a) hereof, the court shall order the destruction of all such substances or paraphernalia which order shall state the existence and nature of the substance or paraphernalia, the quantity thereof, the location where seized, the person or persons from whom the substance or paraphernalia was seized and the manner whereby such item shall be destroyed. A return under oath, reporting the time, place and manner of destruction shall be made to the court and to the Board of Pharmacy by the officer to whom the order is directed. A copy of the said order and affidavit shall be made a part of the record of any criminal prosecution in which the substance or paraphernalia was used as evidence and shall, thereafter, be prima facie evidence of its contents.

(c) No such substance or paraphernalia used or to be used in a criminal prosecution under this chapter shall be disposed of as provided by this section until all rights of appeal have been exhausted.

§ 18.2-254. Commitment of convicted person for treatment.—The court trying the case of any person alleged to have committed any offense designated by this article or by the Drug Control Act (§ 54-524.1 et seq.) or in any other criminal case in which the commission of the offense was motivated by, or closely related to, the use of drugs and determined by the court to be in need of treatment for the use of drugs may commit such person, upon his conviction and with his consent and the consent of the receiving institution, to any facility for the treatment of persons for the intemperate use of narcotic or other controlled ~~drugs~~ *substances* , licensed or supervised by the State Mental Health and Mental Retardation Board, if space be available in such facility, for a period of time not in excess of the maximum term of imprisonment specified as the penalty for conviction of such offense or, if sentence be determined by a jury, not in excess of the term of imprisonment as set by such jury. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. The court may revoke such commitment, at any time, and transfer the person to an appropriate penal institution. Upon presentation of a certified statement from the Commissioner of Mental Health and Mental Retardation to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

§ 18.2-255. 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 *or marijuana* 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 ten nor more than fifty years, and fined not more than fifty thousand dollars.

§ 18.2-257. Attempts.—(a) Any person who attempts to commit any offense defined in this article or in The Drug Control Act (§ 54-524.1 et seq.) which is a felony shall be imprisoned for not less than one nor more than ten years; provided, however, that any person convicted of attempting to commit a felony for which a lesser punishment may be imposed may be punished according to such lesser penalty.

(b) Any person who attempts to commit any offense defined in this article or in The Drug Control Act which is a misdemeanor shall be guilty of a Class 2 misdemeanor *; provided, however, that any person convicted of attempting to commit a misdemeanor for which a lesser punishment may be imposed may be punished according to such lesser penalty* .

§ 18.2-258. Certain premises deemed common nuisance. (a) Any office, store, shop, restaurant, dance hall, theater, poolroom, clubhouse, storehouse, warehouse, dwelling house, apartment, building of any kind, vehicle, vessel, boat, or aircraft, which with the knowledge of the owner, lessor, agent of any such lessor, manager, chief executive officer or operator thereof, is frequented by persons

under the influence of illegally obtained controlled substances *or marijuana* , as defined in § 54-524.2 of this Code or for the purpose of illegally obtaining possession of, manufacturing or distributing controlled substances *or marijuana* , or which is used for the illegal possession, manufacture or distribution of controlled substances *or marijuana* , shall be deemed a common nuisance. It shall be unlawful for such owner, lessor, agent of any such lessor, manager, chief executive officer or operator to knowingly permit, establish, keep or maintain such a common nuisance.

(b) The penalties provided in this section shall be in addition to any other penalty provided by law.

§ 18.2-258.1. Obtaining drugs, procuring administration of controlled substances, etc., by fraud, deceit or forgery.—A. It shall be unlawful for any person to obtain or attempt to obtain any drug or procure or attempt to procure the administration of any controlled substance *or marijuana* : (i) by fraud, deceit, misrepresentation, or subterfuge; or (ii) by the forgery or alteration of a prescription or of any written order; or (iii) by the concealment of a material fact; or (iv) by the use of a false name or the giving of a false address.

B. It shall be unlawful for any person to 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 Chapter 15.1 (§54-524.1 et seq.) of Title 54.

C. It shall be unlawful for any person to use in the course of the manufacture or distribution of a controlled substance *or marijuana* a license number which is fictitious, revoked, suspended, or issued to another person.

D. It shall be unlawful for any person, for the purpose of obtaining any controlled substance *or marijuana* , to falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian or other authorized person.

E. It shall be unlawful for any person to make or utter any false or forged prescription or false or forged written order.

F. It shall be unlawful for any person to affix any false or forged label to a package or receptacle containing any controlled substance.

G. 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 the agents or duly authorized representatives of any pharmaceutical manufacturer who obtain such drugs for investigative, research or analytical purposes and who are acting in the course of their employment; provided that such manufacturer is licensed under the provisions of the Federal Food, Drug and Cosmetic Act; and provided further, that such pharmaceutical manufacturer, its agents and duly authorized representatives file with the Board such information as the Board may deem appropriate.

H. Any person who shall violate any provision herein shall be guilty of a Class 6 felony.

§ 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 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 by his authorized agent and under his direction), 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 ingredients and fabricating them into a single preparation, usually referred to as a dosage form.

(6) "Controlled substance" means a drug, substance or immediate precursor in Schedules I through VI of article 6.1 (§ 54-524.84:1 et seq.) 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 (§ 3.1-1 et seq.) or Title 4 (§ 4-1 et seq.) 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.

(8) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of 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 to deliver a drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing and 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 substance. "Distributor" means a person who distributes.

(12) "Drug" means (a) articles or 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 or substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; (c) article or substances, other than food, intended to affect the structure or any function of the body of man or other animals; or (d) articles or 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 outside 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 *planting, cultivating, tending, harvesting, production, preparation or propagation of marijuana by an individual for his own use or the* preparation, compounding, packaging or labeling of a controlled substance *or marijuana* :

(1) By a practitioner as an incident to his administering or dispensing of a controlled substance *or marijuana* 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 manufactures.

(16) "Marijuana" means any part of a plant of the genus Cannabis whether growing or not; and the seeds or resin thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or its resin; but shall not include any oily extract containing one or more cannabinoids unless such extract shall contain less than twelve percent of tetrahydrocannabinol by weight, or 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 oil" means any oily extract containing one or more cannabinoids, but shall not include any such extract with a tetrahydrocannabinol content of less than twelve percent by weight.

(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, opiates, and any salt, compound, derivative, or preparation of opium or opiates;

(b) 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) 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 extraction 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 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 (§ 54-524.84:1 et seq.) of this chapter, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory 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 establishment 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 personal health service that is concerned with the art and science of selecting, procuring, recommending, administering, preparing, compounding, packaging and dispensing of drugs, medicines and devices used in the diagnosis, treatment, or prevention of disease, whether compounded or dispensed on a prescription or otherwise legally dispensed or distributed, 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 or glasses or lenses for the eyes.

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

(27) "Practitioner" means:

A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, prescribe and administer, conduct research with respect to, 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 by a duly licensed physician, dentist, veterinarian or other practitioner, 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 substance *or marijuana* .

(30) "Proprietary medicine" means a completely compounded nonprescription drug in its unbroken, original package which does not contain any controlled substance *or marijuana* 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, 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.

§ 54-524.56. Persons required to keep record of drugs; contents and form of record.—(a) Upon June twenty-six, nineteen hundred seventy, or within six months thereafter, each person manufacturing, compounding, processing, selling, dispensing or otherwise disposing of drugs in Schedules I, II, III, IV, ~~or~~ Schedule V *or marijuana* 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 two 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; provided, however, if such person as herein described has made a complete and accurate written record of an inventory of such drugs and such record has been signed and dated on the inventory date required pursuant to federal regulations, he shall be deemed to be in compliance with the inventory requirement of this subsection (a).

(a1) On May one, nineteen hundred seventy-nine and every two years thereafter, every person described in subsection (a) hereof shall take a complete and accurate inventory of all stocks of Schedules II through V drugs on hand. An inventory taken by use of an oral recording device shall be promptly reduced to writing and maintained in a written, typewritten or printed form. Such inventory shall be made either as of the opening of business or as of the close of business on the inventory date.

(a2) Every person described herein who was not in business on a previous inventory date shall prepare a complete and accurate inventory of all stocks of Schedule II through V drugs on such date as he first engages in business and shall make a complete and accurate inventory every two years after May one, nineteen hundred seventy-nine pursuant to the provisions of subsection (a1) hereof.

(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 two 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 the Board.

§ 54-524.84:4. Schedule I.—(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) [Repealed.]

(14) Diampromide;

(15) Diethylthiambutene;

(15a) Difenoxin;

(16) Dimenoxadol;

(17) Dimepheptanol;

(18) Dimethylthiambutene;

(19) Dioxaphetylbutyrate;

(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;

(40a) Propiram;

(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;

(8a) Drotebanal;

(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) Hallucinogenic substances. - Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position, and geometric isomers):

(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-dimethoxyamphetamine;

(8) Ibogaine;

(9) Lysergic acid diethylamide;

(10) ~~Marijuana;~~

(11) Mescaline;

(12) Peyote;

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

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

(15) Psilocybin;

(16) Psilocyn;

(17) Tetrahydrocannabinols , *except as present in marijuana* ;

(18) Hashish oil (Some trade or other names: hash oil; liquid marijuana; liquid hashish);

(19) 2,5-dimethoxyamphetamine (Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA);

(20) 4-bromo-2,5-dimethoxyamphetamine (Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA);

(21) 4-methoxyamphetamine (Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine; PMA).