Legislative Note - Legal Analysis of Marijuana Legislation in Illinois

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LEGISLATIVE NOTES

LEGISLATIVE NOTE—LEGAL ANALYSIS OF MARIJUANA LEGISLATION IN ILLINOIS

In 1971, Illinois legislators passed into law the Illinois Controlled Substances Act, and the Cannabis Control Act drafted by the Illinois Legislative Investigating Commission in cooperation with the Governor's office. The combined effect of these two acts was to restructure the law completely in Illinois with regard to dangerous drugs. The new law discarded minimum mandatory penalties and recategorized drugs according to their actual or relative potential for abuse, and as to scientific evidence of their pharmacological effects and risk to the public health. Likewise, Illinois separated marijuana from this scheduling scheme into a separate act—the Cannabis Control Act. This act firmly established marijuana as a non-narcotic drug. Previously, notwithstanding the relatively mild pharmacological effects of marijuana, it was classified as a “narcotic.” As such, offenders were treated with harsh mandatory penalties extending even to life imprisonment. Hence, under the Cannabis Control Act, provision was made for a more humane penalty structure. It classifies drugs more realistically for penalty purposes, treating distribution violations differently from possession and separating distribution of marijuana and hallucinogens from distribution of addictive narcotics. Possession of large amounts of common illicit drugs—quantities large enough for major trafficking, not individual use—is treated as a serious crime, while individual possession of small amounts of the drug is treated as a misdemeanor.

Change in our country is a multifarious process. The Illinois legislators' change in attitude toward marijuana is an excellent study of how societal values and norms evolve, manifesting this new awareness in their laws. As one focuses in on the mechanisms of the evolutionary process—

public opinion, courts, and the legislators themselves, we may better understand the forces that motivated such a dramatic change in our law. Likewise, a study of Illinois' legislative evolution is an apt vehicle for the study of two broader phenomena—the public policy formation process and the evolution of American values in the twentieth century.

Hence, it will be the purpose of this study: (1) to examine the multifarious vehicles for change in the Illinois law—public opinion, federal policy, the courts, and the Illinois legislators themselves to better understand the intricate mechanics of total change; and (2) to understand how legislators respond to these complex set of forces and manifest change into law.

HISTORICAL BACKGROUND

The change in attitude toward marijuana on the part of the Illinois legislature over the last half century may be first analyzed through viewing the legislative history and underlying change in public opinion which fostered this evolution in our recent history. There are two assumptions which underlie this discussion: (1) prior to the 1960's, public opinion regarding marijuana was a fusion of policies of the federal government as implemented in their legislative response to the problem; and (2) prior to the 1960's, Illinois' legislative response, as well as other states, was largely derivative of this federal policy and attitude. Hence, we must understand how the interplay of federal policy and public opinion has evolved through forty years of history to allow a more individualistic and reasoned response by the state of Illinois to the marijuana question.

Marijuana's legislative history is characterized by: (1) a lack of any systematic investigation into the scientific and pharmacological nature of the drug; (2) a reliance in drafting the legislation on myths generated from many sources which infiltrated every phase of society and became the commonly held values of the American people concerning marijuana; and (3) propaganda campaigns on the part of the Federal Bureau of Narcotics to encourage the states to follow the federal lead in adopting their stringent legislative proposals.5

Illinois first passed legislation regarding marijuana in the 1930's. First, in 1931 with the "Narcotic Drug Control Law" and again in 1935 with the adoption of the "Uniform Narcotics Drug Act." Illinois had:

classified marijuana as a narcotic drug and (2) had prohibited its use except for medical purposes. Hence, marijuana offenses were treated as offenses involving habit-forming drugs and, as such, were afforded felony penalties in Illinois.

It may justifiably be asked, why in this period when public opinion had not crystalized with regard to intoxicants generally, did Illinois choose to integrate marijuana with the "habit-forming" drugs on the basis of virtually no scientific knowledge? This phenomenon can be understood simply by realizing that Illinois' policy formation process was derivative again of a national movement to integrate the nation's newly conceived narcotic policy on the state and federal levels. Illinois indeed was affected by two larger movements toward nationalization—the trend toward creation and dissemination of uniform state laws and the general concern in the late 1920's and early 1930's with crime manifested by the creation in 1930 of the nearly autonomous Federal Bureau of Investigation.

Indeed, as the groundwork had been laid by these two movements, so in 1930 the establishment of the autonomous Federal Bureau of Narcotics was the last step in the nationalization process. This autonomous body, lead by the resourceful and zealous Commissioner Anslinger, was anxious to carry out its crusade against marijuana.

In order to set the stage for legislation controlling marijuana use, the F.B.N. set about to promote the notion that the marijuana smoker was a serious threat and responsible for an increasing number of crimes, particularly crimes of violence. As a result of massive propaganda, the in-

8. The nation's narcotic policy had indeed been manifested previously "[In the form of a tax act, . . . [the Harrison Narcotic Law in 1914, which] controls the importation, manufacture, processing, buying, selling, dispensing, or giving away opium, coca leaves, and all other compounds, derivatives and preparations." D. MAURER & V. VOGEL, LEGAL CONTROL FOR DRUGS OF ADDICTION IN NARCOTICS CASES: PROSECUTION AND DEFENSE 260 (1970).

9. Supra note 5, at 1030.

10. Further, in 1930, the enforcement of narcotic laws was severed from the Bureau of Prohibition and established as the separate Bureau of Narcotics in the Treasury Department. The existence of this separate agency has done as much as any single factor to influence the course of drug regulation from 1930 to 1970. NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE, THE TECHNICAL PAPERS OF THE FIRST REPORT OF THE NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE, MARIHUANA: A SIGNAL OF MISUNDERSTANDING, Appendix, at 485 (1972).

11. D. SMITH, THE NEW SOCIAL DRUG—CULTURAL, MEDICAL AND LEGAL PERSPECTIVES ON MARIJUANA 105 (1970). The FBN widely publicized several "examples" of heinous crimes, which they claimed were directly related to the use of marijuana. For example:

"In 1935, a 30 year-old male assaulted a 10-year old girl, admitted being under the influence of marijuana, so "crazy", convicted in a court trial. Hanged. . . .
evitable link was made in the popular consciousness between marijuana and crime. This widely held myth, more than any other factor, promoted the national outcry for stringent legal restraints against marijuana.\textsuperscript{12} 

By the time Illinois had first prohibited the manufacture, sale and possession of marijuana in 1931,\textsuperscript{13} some 18 states had done so as well.\textsuperscript{14} Yet the Federal Bureau of Narcotics became increasingly insistent that the states were not doing enough and that if they did not step up their efforts, the F.B.N. would be forced to seek legal controls at the federal level. Hence, in 1932, cannabis was included in an optional provision of the Uniform Narcotic Drug Act providing felony penalties for its violation.\textsuperscript{15} In response to the efforts of the F.B.N. in 1935, Illinois passed the Uniform Narcotic Drug Act and by 1937, every state had enacted some form of legislation relating to marijuana and 35 states had enacted the uniform act. Hence, the trend toward nationalization, coupled with the unprecedented propaganda campaign by the F.B.N., the classification of cannabis as a "habit-forming" drug, and the fact that there was little or no empirical study or evaluation of the actual effects of the drug, characterized Illinois' initial legislative experience.

Illinois greatly accelerated its attack on marijuana in the 1950's. Two aspects of Illinois legislation are especially troublesome and constitute the particular targets for reform by the 1971 General Assembly:

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In 1921, male, 30, beat to death with rock T. Bernhardt, boy, 14, while herding cattle in pasture; accused boy of polluting his water supply. Boy's head crushed, one eye gouged out, and missing. Arrested several hours later, he screamed and tore jail furnishings. Smoking marijuana at the time; claimed insane, found to be sane. Hanged. . .” *Id.* at 109.

It is clear that the "causal relationship" between marijuana and crime is tenuous, at best, and in some cases outright fabrication.

12. To illustrate the extent to which this propaganda campaign had infiltrated the public consciousness, even the most enlightened institutions and segments of the populace were speaking in the Bureau of Narcotics' terms. The American Institute of Criminal Law and Criminology of Northwestern University published a statement in 1932 regarding the effects of cannabis and its "linkage with crime." They said: "The barrier of control over the emotions is lowered and the smoker may commence to boast, shout or dance. Any contradictions or restraint now offered may excite a state of frenzy leading to actions of uncontrollable violence or even murder." Hayes & Bowery, *Marijuana*, 23 J. THE AM. INST. OF CRIM. L. & CRIM. 1088 (1932).

In a further characterization of the effects of the drug, the article states "if continued, the inevitable result is insanity, those familiar with it describe as absolutely incurable, and, without exception ending in death.” *Id.* at 1090.

13. *ILL. REV. STAT. ch. 38, §§ 22-1 et. seq. (1931).*


15. 1932 *HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND PROCEEDINGS 324-38 (1932).*
(1) classification as a narcotic drug; and (2) the harsh mandatory sentencing.

In 1957, the 1935 Act was replaced by the legislature with a revised Uniform Narcotic Drug Act.16 This Act amended from time to time was in effect until the 1971 revision. It defines marijuana as a “narcotic drug,” together with heroin, opium and other substances.17 The irony of the situation is that while marijuana-related activities were penalized under the Uniform Narcotics Act, drugs such as barbituates, amphetamines (speed) and “LSD” were placed under the “depressant or stimulant drugs” category under the Illinois Drug Control Abuse Act enacted in 1967.18 The first conviction of unlawful sale of “depressant or stimulant drugs” is deemed a misdemeanor punishable by imprisonment for not more than one year, with probation permitted,19 while the sale of marijuana, as a narcotic, was a felony with a penalty of ten years to life with no possibility of release or parole.20 Thus, marijuana, a drug substantially less toxic than either “LSD” or “speed” was treated to a far more severe penalty structure, with no possibility of release on parole for a first offense.21 All these inconsistencies were necessarily due to the misclassification of marijuana as a “narcotic drug.” This misclassification has had two very real effects: (1) it has inhibited any real research and rational dialogue among legislators, and (2) it has bred this punitive response toward marijuana offenders which is reflected in its felony classification.

Another necessary by-product of the misclassification system was the establishment of penalties which are greatly out of proportion to the crime which has been committed.22 For example, the provision for minimum

17. Dr. Stanley Yolles, former Director of the National Institute of Mental Health recently said: “Marijuana is not a narcotic except by statute. Narcotics are opium or its derivatives—like heroin, and morphine—and some synthetic chemicals with opium-like activity.” Hearings on S. 1895 Before the Subcomm. to Investigate Juvenile Delinquency of the House Comm. on the Judiciary, 91st Cong., 1st Sess., at 275 (1969).
22. For unlawful sale, penalties of imprisonment in the penitentiary for from 10 years to life were provided for a first offense, and imprisonment in the penitentiary for life for subsequent offenses. Stiff penalties were also provided for possession. Felony status was conferred for possession of “any narcotic drug.” For a first offense, a fine of not more than $5,000.00 and imprisonment of not less
mandatory sentencing of ten years to life imprisonment for conviction of sale of any narcotic drug was operative regardless of the defendant’s background and record, the amount of marijuana sold, or the facts of the case leading to the conviction. No distinction was drawn between a first offender who sells or gives away a single marijuana cigarette to a friend and a person who sells ten pounds of heroin to professional distributors. The statute required imposition of the harsh penalties without regard to any mitigating circumstances which might have been present and despite the trial judge’s belief that the defendant should be released on probation or sentenced to a minimum term. There was, therefore, a need for more discretion in the courts in sentencing and progressive probation to allow for variables in responsibility. The vindictive mandate of the old law allowed no provision for individual considerations.

As drug abuse increased in the late 1940’s, pressure was once more brought to bear by the Bureau of Narcotics for increased penalty provisions on the state and federal levels. By this time, however, there were grave doubts in even the most conservative minds about the relationship between marijuana smoking and insanity or violence. It was time for a new theme to emerge to justify the increasing severity of the law. The architect of the theory that marijuana leads to insanity and crimes of violence, Commissioner Anslinger, propounded yet another myth—that marijuana is but a “stepping stone” to harder drugs. As a result of this new line of reasoning, Congress increased penalties in two waves of legislation: the Boggs Act of 1951 and the Narcotic Control Drug Act in 1956. The F.B.N. encouraged the states to modify their existing marijuana legislation in line with this federal model. This was justified on the basis that a first violation provided for a minimum penalty of from 5 years to life regardless of the narcotic drug involved or the amount possessed; while the subsequent violation provided for a minimum penalty of from 5 years to life regardless of the narcotic drug involved or the amount possessed. ILL. REV. STAT. ch. 38, § 22-40(5) (1969).

23. Supra note 20.
25. There was a reported upswing of young people addicted to heroin a few years after World War II. Supra note 11 at 112.

The Boggs Act was directed in large part against the federal judiciary since a key provision removed judicial discretion in sentencing by providing that upon conviction for a second or subsequent offense the imposition or execution of the sentence could not be suspended nor probation granted. In the same vein, harsh mandatory minimum sentences were urged for drug peddlers because it was felt that some federal judges had been lax in enforcing the narcotics laws. 97 Cong. Rec. 8197-98, 8207, 9211, 82nd Cong., 1st Sess. (1951).
basis that a further proliferation of marijuana offenses and increase in penalties would strangle "the drug monster" once and for all.\textsuperscript{29} Illinois again responded to the combination of the widely disseminated "myth" and federal legislation.\textsuperscript{30}

The period from 1960 to 1970, the last phase in our historical analysis, was characterized by several phenomena. First, the use of the drug began to spread—its usage no longer confined itself to the ghetto or to any specific socio-economic group. The problem became an issue of major concern to a greater percentage of the population. Second, the middle class use and concern with marijuana induced a new inquiry into the scientific and medical basis of the drug, which in turn spurred a new legislative approach.\textsuperscript{31}

Some of the inconsistencies in the old law came to the fore with Congress' passage of the Drug Abuse Control Amendments of 1965.\textsuperscript{32} This legislation established a Bureau of Drug Abuse Control within the Food and Drug Administration and created misdemeanor penalties for the illegal manufacture and sale of depressant and stimulant drugs and hallucinogens. Congress then increased the penalties for sale or manufacture of LSD and the other controlled drugs to five years.\textsuperscript{33} But this was only the first step in straightening out the obvious irrationalities in the law. What had been obvious with the passage of the 1965 Drug Amendments became glaring with this reorganization—that is, the tremendous disparity in penalties for violations involving dangerous drugs, as opposed to marijuana. As change first took place and more people became


\textsuperscript{30} Even while the Boggs Act was still pending in Congress, the Bureau of Narcotics encouraged the states to modify their existing narcotic and marijuana legislation to enact "penalties similar to those provided in the Boggs Bill which would be of material assistance in the fight against the narcotic traffic." Supra note 10, at 493.

\textsuperscript{31} The \textit{New York Times} pointed out in 1970 the effect of increased usage of the drug on the populace: "Nobody cared when it was a ghetto problem. Marijuana—well, it was used by jazz musicians or the lower class, so you didn't care if they got 10 to 20 years. But when a nice, middle-class girl or boy in college gets busted for the same thing, then the whole community sits up and takes notice. . . . The problem has begun to come home to roost in all strata of society, in suburbia, in middle-class homes, in the colleges. Suddenly, the punitive, vindictive approach was touching all classes of society. And now the most exciting thing that's really happening is the change in attitude by the people. Now we have a willingness to examine the problem as to whether it's an experimentation or an illness rather than an evil." N.Y. Times, Feb. 5, 1970, at 14.


informed about the inconsistencies in the law, public pressure mounted to make the law conform to the emerging scientific and medical realities being uncovered.

This effort culminated in Congress' passage of the Comprehensive Drug Abuse Prevention and Control Act of 1970.\textsuperscript{34} It discarded minimum mandatory penalties, reduced first offense possession of any drug to a misdemeanor, and firmly established that marijuana is not a narcotic, placing it in a category with hallucinogenic drugs. Recognition of the difference between marijuana and the narcotic drugs was reflected in lower penalties for other marijuana violations.

This nationwide change manifested in the revisions in federal law more than any other factor motivated the change in state laws. The effect was felt both directly and indirectly by Illinois through several forces. Directly, it was felt through Illinois' adoption of the Uniform State Act drafted in conjunction with this new federal law by the National Conference of Commissioners on Uniform State Laws.\textsuperscript{35} This Act was drafted to achieve uniformity between the laws of the several states and the federal government.\textsuperscript{36} The indirect effect the federal policy change had on the states is a logical extension of the historical influence federal policy has had in the area of drug legislation. Just as the anti-marijuana crusade shaped public mores through the "fifties," so this "new morality" operated with respect to altering the national attitude toward marijuana in the "seventies."

In summary, as long as the so-called deviant groups were the primary offenders, public opinion remained passive. The law fed upon myths—marijuana leads to crime, marijuana is merely a stepping stone to harder drugs—which became commonly held values and eventually constituted the tenor of the marijuana laws. The public accepted the inquisition of the marijuana offenders so long as the majority remained unaffected. However, in light of the increased awareness of the medical and scientific realities, coupled with a "new majority" of drug users—old values and commonly expressed myths began to disintegrate.

**JUDICIAL APPROACH**

Having studied the evolution of legislative hostility to marijuana, it is worthwhile to consider the fate of marijuana users in the courts during this


\textsuperscript{35} Uniform Controlled Substances Act §§ 101-601 (1970).

\textsuperscript{36} This thrust of the Uniform State Act was spoken of by Governor Ogilvie in his "Special Message on Drug Abuse." He remarked generally that regulation is more efficient and effective if the regulatory laws and policies are uniform. *Supra* note 4, at 4.
evolutionary period. The courts in the period from 1930-1965 summarily rejected the substantive constitutional arguments.\textsuperscript{37} Appeals in marijuana cases tended to focus on three contentions particularly germane to drug violations: procedural objections arising from interrelated statutory schemes on the state and federal levels punishing essentially the same conduct; objections to police conduct intrinsic to victimless crimes; and objections to sufficiency of evidence at trial.

One of the most significant developments engendered by the new class of marijuana users and the shift in medical opinion is the vigorous wave of substantive constitutional attacks on the marijuana laws launched in 1965. The tenor of these attacks is the insistence on rationality in the legislative process. Contending that marijuana is a harmless euphoriant, the challengers have questioned governmental authority to prohibit its use at all. Arguing that it is no more, and perhaps less, harmful than alcohol and tobacco, the challengers have indicted as irrational the disparity in regulations of the substances. Conversely, the challengers have vigorously attacked the arbitrary inclusion of marijuana in the legislative classification “narcotics” with admittedly harmful opiates and cocaine. Finally, the severity of the punishments imposed for marijuana violations has been attacked as violative of the eighth amendment’s cruel and unusual punishment clause. Coupled with these arguments has been the fact that the state and federal legislatures never conducted meaningful investigation into the effects of the drug, but relied instead on hearsay and emotional pleas, which lends further weight to attacks on the constitutionality of the law.\textsuperscript{38}

To date, in most states, statutes prescribing mandatory sentences for possession and sale of marijuana for personal use as well as its classification as a narcotic drug have been upheld against all substantive constitutional attacks. One such instance was a Massachusetts case, Commonwealth v. Leis, in which broad constitutional issues were raised by the defendant. The defendants in this case attacked the entire state Narcotics Drug Law as it applied to marijuana.\textsuperscript{39} They contended, that this law as it applied to marijuana, went beyond the police power of the commonwealth and did not achieve a valid legislative end—the protection of health, safety or welfare. Further, they contended that the Narcotics Drug Law invidiously discriminated against a particular group, directly because of their choice of

\textsuperscript{37} Supra note 10, at 1124.

\textsuperscript{38} Supra note 2, at 1125.

an intoxicant and indirectly because of their philosophical and other beliefs which differed from the philosophy and beliefs of many other members of society who compose the majority.\textsuperscript{40}

The Chief Justice of the Superior Court of the Commonwealth of Massachusetts, Joseph Tauro, in rejecting this argument found "marijuana to be in fact a harmful and dangerous drug and ruled that its possession and use do not rise to the level of a fundamental right." As a consequence, he ruled that the Narcotics Drug Act as applied to marijuana was a valid exercise of the state's police power,\textsuperscript{41} and that the treatment accorded by law to other drugs, such as heroin or alcohol vis a vis marijuana, did not constitute a denial of the equal protection of the laws.\textsuperscript{42}

Judge Tauro recited much of the historical rationalization for mandatory penalties in support of his decision:

\begin{quote}
[T]he habitual use of marijuana is particularly prevalent among individuals with marginal personalities exhibiting feelings of inadequacy, anxiety, disaffiliation, alienation and frustration or suffering from neuroses, psychoses or other mental disorders. Such persons constitute a significant percent of our population, and it is precisely among this type of individual that marijuana may cause psychological dependence.\textsuperscript{43}
\end{quote}

The fact that such arguments were posited in support of the existing statute bespeaks the fact that it was becoming increasingly harder for the law to sustain and survive constitutional attacks.

Judge Tauro's comments concerning the court becoming a forum for this type of debate is particularly enlightening. He contends that the type of argument which illustrates the relative harmless nature of marijuana is a dangerous innovation. He believes the judicial forum is becoming a weapon for those who seek legislative revisions that would "regulate the manufacture, possession and use of marijuana in place of present laws which command total prohibition."\textsuperscript{44}

This case is illustrative in the light of Illinois' recent judicial experience with these very issues. The Supreme Court of Illinois in \textit{People v. McCabe},\textsuperscript{45} held that the classification of marijuana under the Narcotic Drug Act was arbitrary and deprived the defendant charged with unlawful sale of marijuana of equal protection of the law.\textsuperscript{46}

\begin{footnotes}
40. \textit{Id.} at 5.
42. J. \textsc{Tauro}, \textsc{Marijuana and Relevant Problems}—1969, 174, 175 (1969).
43. \textit{Id.} at 178.
44. \textit{Id.} at 188.
46. \textit{Id.} at 408.
\end{footnotes}
The McCabe case was an appeal from a conviction for the unlawful sale of marijuana. At the time of the trial in May, 1969, defendant, Thomas McCabe, was 21 years old. He attended grade and high school in Aurora, as did his two older brothers and his younger sister. His father has taught in the Aurora Public School system for 21 years, and at the present he teaches at Franklin Junior High School in Aurora.

Defendant had never been arrested prior to his arrest in this case. Defendant and his wife, Peggy, have two children, Cariann, born in August, 1967, and Daniel, born November 23, 1968.

At the time of the trial, defendant was attending Waubonsee Community College in Aurora. Since graduating from high school, defendant had several jobs with businesses in Aurora. Brief for Appellant at 20, People v. McCabe, 49 Ill. 2d 388, 275 N.E.2d 407 (1971).

Defendant-appellant, Thomas McCabe, was tried in the Circuit Court of Kane County before Judge John A. Krause. After the jury returned the verdict of guilty, the trial court sentenced defendant to imprisonment in the penitentiary for 10 years to 10 years and one day. Despite the defendant's lack of any prior criminal record, his comparative youth, his roots in the community, his fine family background and a young family dependent upon him; although the sale of marijuana involved was for $40.00 to an adult; and despite the trial judge's recognition that a 10-year sentence was inordinately severe, the judge nevertheless felt compelled to impose the sentence mandated by the Illinois Criminal Code. The defense on appeal sought reversal on constitutional grounds attacking the validity of the statute itself.

Defendant's first argument was limited to the proposition that the old legislative classification of marijuana with the "narcotic drugs" rather than with the "depressant or stimulant drugs" was unsupported—indeed, was contradicted—by the present state of scientific and factual knowledge about the comparative natures and effects of the various drugs dealt with in the Illinois statutes. Further, that a mandatory minimum sentence of 10 years in prison (rather than a maximum of one year with the possibility of probation), for the sale of a small amount of marijuana by a person never before convicted, (or for the similar sale of "depressant or stimulant drugs") violates defendant's constitutional rights under the due process and equal protection clauses of the Illinois and United States Constitutions.

Stated generally, the equal protection clause demands:

That equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property . . . that no im-

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49. Supra note 47, at 48.
pediment should be imposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances. ...50

However, equal protection does not require that all persons be dealt with identically.51 In striking a balance between equal and identical treatment, the United States Supreme Court has employed the doctrine of "reasonable classifications," which holds that legislative classifications "must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis."52 The defense in McCabe contended that the classification of marijuana was unreasonable and irrational in light of the statute's purpose.

In essence, the court, in McCabe, implicitly found this classification unreasonable. The Illinois Supreme Court first credenced the fact that equal protection does not deny the state's power to classify in the exercise of their police power, but then noted the judicial obligation to insure that the power to classify has not been exercised arbitrarily. In accordance with Skinner v. Oklahoma53 and McLaughlin v. Florida,54 the court stated that it is necessary to determine whether, indeed, any rational basis does exist to justify the substantially greater penalties imposed for a first conviction for the sale of marijuana than for a first conviction for the sale of a drug named in the Drug Abuse Control Act.55 In doing so, the court assessed the relevant scientific, medical and sociological data. The court then concluded that there is indeed no rational basis for this classification system. It found that "neither the chemical properties of the drugs nor their effects on the behavior of the users provides any justifiable or reasonable basis for the sharply disparate penalties which are imposed for a first sale of marijuana and for a first sale of a drug under the Drug Abuse Control Act." Marijuana, in terms of abuse characteristics, shares much more in common with the barbiturates, amphetamines and, particularly, the hallucinogens that it does with the "hard drugs" classified in the Narcotics Drug Act.

The court determined, therefore, that the absence of a rational basis for distinguishing first convictions for sale of marijuana from first convictions for sale of drugs placed in the Drug Abuse Control Act (the depressant and stimulant category) compels the conclusion that the present

classification of marijuana offends the equal protection clause of the United States Constitution and the Illinois Constitution.

Analytically, this decision is significant in that the court uses scientific and medical testimony as a tool for the determination of the classification scheme's rationality. Few courts have gone into the scientific testimony or credenced its importance for making such judicial determinations quite so extensively as the McCabe court. It is this new judicial trend which is the underlying thesis of most of the recent legislative changes regarding marijuana; that classification systems of drugs should be reflective of scientific and medical realities of the day rather than merely an attempt to legislate social or moral considerations.

It is ironic, that while this case was pending, the Illinois legislature was in the process of changing the law, and indeed, the Cannabis Control Act was signed into law August 16, 1971, while the opinion itself was not handed down until October 15, 1971. Therefore, the Act's subsequent removal of marijuana's narcotic status as well as reduction in penalties took much of the effect out of the decision. Yet, the case is still significant when thought of in the following terms: (1) The court is on record as excoriating the old law and in so doing negates the concepts behind its formation; (2) the court struck a blow at the arbitrary use of legislative authority in emphasizing the concept that law should reflect the scientific and medical realities of the day; (3) it may prove a precedent for action in other states in striking down state statutes which maintain a harsh and retributive stance toward marijuana; (4) it may foreshadow a judicial trend toward asserting further the individual's right to differ. The court impliedly balances the right of an individual to differ against the state's assertion of the police power in its protection of the public. In the balancing process, it strikes a blow at arbitrary legislative standards perpetuated in the name of the public good.

LEGISLATIVE APPROACH

The technical Papers of the First Report of the National Commission on Marijuana and Drug Abuse considers § 1 of the Cannabis Control Act of Illinois as the best statement of the thinking underlying the recent trends toward reconsideration of sanctions imposed against marijuana use to date:

The General Assembly recognizes that (1) the current state of scientific and medical knowledge concerning the effects of cannabis makes it necessary to acknowledge the physical, psychological and sociological damage which is incumbent upon its use; and (2) the use of cannabis occupies the unusual position of being widely used and pervasive among the citizens of Illinois despite its harmful effects;
and (3) previous legislation enacted to control or forbid the use of cannabis has often unnecessarily and unrealistically drawn a large segment of our population within the criminal justice system without succeeding in deterring the expansion of cannabis use. It is, therefore, the intent of the General Assembly, in the interest of the health and welfare of the citizens of Illinois, to establish a reasonable penalty system which is responsive to the current state of knowledge concerning cannabis and which directs the greatest efforts of law enforcement agencies toward the commercial traffickers and large-scale purveyors of cannabis.

This expression of legislative intent is in itself a unique statement. It acknowledges, that although controls are still necessary, until the final verdict is in as to the harmful nature of the drug, these controls should be grounded in scientific and medical reality based on the available data.

The Illinois Supreme Court noted in McCabe that studies of the characteristics and effects of marijuana had been made by psychiatrists, pharmacologists, sociologists and law enforcement officials. This is contrary to the studies conducted by the commissions of the thirties; where law enforcement officials would testify on the pharmacological effects of the drug and classifications systems were developed as a result. Recent scientific and medical authorities have gone quite far in debunking the myths that served as the basis of the massive propaganda campaigns throughout marijuana's history.

Further, the Illinois legislature delineates another motivating factor in their statement of intent: that the prior law had "unnecessarily and unrealistically drawn a large segment of the population within the criminal justice system . . . without deterring cannabis use." Further, when legislators test the efficacy of the marijuana laws they are confronted with a balancing. They must balance: (a) the high cost of the enforcement of the law; (b) the encouragement of police misconduct in enforcing the law; (c) the overcriminalization of many segments of our society; (d) the selective enforcement of the law, i.e., consequences of the statute bearing unequally on age, racial and occupational groups; and (e) the stigma of severe penalties associated with marijuana offenses with the deterrent value. Using these criteria the Illinois legislature thereby determined that there was no purpose being served by the harsh, mandatory penalties. In light of the present-day knowledge con-

56. 49 Ill. 2d at 339, 275 N.E.2d at 210.
58. Supra note 26, at 81-82.
60. Id.
cerning the relatively mild effects of the drug, the severe punitive mode of analysis underlying total prohibition becomes anathema, nullifying the basic morality of the criminal law. In the words of John Stuart Mill:

The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant. 61

CHANGES IN THE ILLINOIS LAW

In delineating the changes in Illinois law, this paper will systematically look at the new law, the specific change it wrought, the problem in the previous law this revision sought to eliminate, and a comparison of the change in the Illinois law with the relative progress in the change in the laws of other states.

(1) Reduction of Penalty From Felony to Misdemeanor

Illinois was one of the first states to reduce penalties for possession of marijuana from a felony to a misdemeanor. Although marijuana was still under the auspices of the Uniform Narcotics Act, as of July 18, 1969, Chapter 38, Section 22-40, Subsection 5 was amended to provide misdemeanor penalties for possession of under 2.5 grams of not more than 1 year imprisonment or a fine of not more than $1,500.00, or both. Before the amendment, an equivalent amount of marijuana would have afforded a felony penalty of from 2 to 10 years imprisonment with a fine of not more than $5,000.00.

This felony status aligned with heavier penalties for marijuana offenses is costly to both the criminal justice system 62 and to the individual. 63 The argument typically posited by legislators for increasing the penalty is that possession is easier to prove than sale and when possession is merely a misdemeanor actual peddlers who can be convicted only of possession

61. J. SKOLNICK, COERCION TO VIRTUE 589 (1968).
62. The felony status is costly to the criminal justice system in terms of time. A felony prosecution may require a preliminary hearing, a grand jury hearing, an arraignment and a trial at which the indigent defendant may have to be provided with an attorney at public expense. While the policeman appears in court only once in misdemeanor proceedings, he may have to appear several times in the course of a felony prosecution. Supra note 26, at 81-82.
63. The felony status is costly to society by overcriminalizing large segments of the nation's youth. An empirical study of the enforcement of state and federal marijuana laws by the First National Commission on Marijuana and Drug Abuse indicates that almost all of those arrested follow a McCabe pattern i.e., they are between the ages of 18 and 25 and with no prior contact with the criminal justice system. FIRST REPORT OF THE NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE, MARIHUANA: A SIGNAL OF MISUNDERSTANDING 144 (March, 1972).
escape with light sentences. But these "supposed" benefits are self-
defeating in the last analysis when thought of in terms of their cost.

(2) Categorization and Treatment of Drugs According to Specific Criteria

In 1971, with major changes in federal narcotic and dangerous drug laws came the need for the states to revise similarly their respective drug control statutes. Previously, most states had adopted the Uniform Narcotic Drug Act because it was designed to correspond to the previous federal law. After 1970, however, the enactment of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 made the relationship with the Uniform Act meaningless. To promote a reasonable amount of uniformity in the law, the National Conference of Commissioners on Uniform State Laws responded by announcing its draft of the Uniform Controlled Substances Act. This Act was intended to become a model for all state drug laws to replace the Uniform Narcotic Drug Act and once again achieve nation-wide uniformity.

In Illinois, variations of the model act began to be introduced by a number of interested legislators. Of course, many of the provisions were not compatible with Illinois statutes, the Criminal Code in particular. Therefore, a number of substantial changes had to be made in the Model Act to tailor the new law to the particular needs of Illinois. The result was the introduction of the Illinois Controlled Substances Act by members of the Illinois Crime Investigating Commission—the Act that ultimately became law in Illinois.64

The Act combines under one comprehensive system the control of all drugs which have a potential for abuse, except marijuana, which is the subject of the Cannabis Control Act. The drugs embraced in the Act include narcotics, stimulants, depressants and hallucinogens, technically "controlled substances."65 These drugs are "controlled" or classified in schedules according to their relative potential for abuse. Likewise, the severity of the penalty relates to the perceived danger of the drug.66

Illinois has gone beyond the federal government in scheduling marijuana in its own act with reference to the drug as its own unique phenomenon. Likewise, in several respects, Illinois has asserted its autonomy in tailoring the law to its own particular needs, recognizing that the

65. Supra note 59, at 3.
Uniform Act is not intended to prevent a state from adding or removing substances from the schedules, or from reclassifying substances from one schedule to another, provided the procedure specified in Section 201 is followed.

Section 201 provides that to bring a substance under control through the administrative procedures, the designated state authority will make findings with respect to the criteria designated in the Act. To avoid potential state constitutional problems, as well as allegations of improper legislative delegation of authority, a procedure has been set out which will require substances controlled by federal laws to be controlled under the state law after the designated authority is notified and after the expiration of thirty days from the date of publication in the Federal Register of a final order controlling the substance under federal law.

Hence, although the scheduling is designated by the federal government, there is provision for administration of these schedules under state law. Further, there is a procedure in Illinois for changing the scheduling. Under §§ 201(a) and (b) of the Illinois Controlled Substances Act, it is required that a change must be approved by the Dangerous Drug Advisory Council and submitted as legislation to the succeeding term of the General Assembly. Without affirmative action by the General Assembly within one year, the proposed scheduled change would be void.67

Eight criteria were posited by the Uniform Commission to determine the scheduling of a particular drug: (1) its actual or relative potential for abuse; (2) scientific evidence of its pharmacological effects; (3) the statement of current scientific knowledge regarding the substance; (4) its history and current pattern of abuse; (5) the scope, duration and significance of abuse; (6) what, if any, risk there is to the public health; (7) its psychic or physiological dependence liability; and (8) whether the substance is an immediate precursor of a substance already controlled.68 The criterion which is most often used to control drugs and indeed provides the greatest controversy is: “potential for abuse.”

It is important here to note that the House Committee was speaking of “potential” rather than “actual” abuse. In considering a drug for control, it would not be necessary to show that abuse presently exists, but only that there are indications of a potential for abuse. This is borne out by the Committee’s statement that the “Secretary of Health, Education and Welfare should not be required to wait until a number of lives have been de-


68. UNIFORM CONTROLLED SUBSTANCES ACT § 201 (1970).
stroyed or substantial problems have already arisen before designating a drug as subject to controls of the bill."

This determination of future or potential abuse is ambiguous at best. Illinois, recognizing that this criterion is too broad and that any substance may be viewed as having a "potential for abuse" (caffeine, alcohol, nicotine) in the right quantity, has sought to make this category more specific by adding two other criteria: (1) the immediate harmful effect in terms of potentially fatal dosage; and (2) the long-range effects in terms of permanent health impairment. Hence, by adding these two criteria, the Illinois statute has narrowed the category and made it more specific in terms of the relationship between the effect and the amount of the dosage in determining whether it is, in fact, harmful for purposes of the act. This is an important innovation because the scheduling criterion was designed to reflect the scientific realities of the drug in its relative potential for abuse.

The overall intent of the aforementioned section is to create reasonable flexibility within the Uniform Act so that, as new substances are discovered or found to have an abuse potential, they can be speedily brought under control. But it is essential that this desired flexibility in the scheduling procedure be tempered by current scientific and medical knowledge. This has been done under Illinois' scheme in two ways: (1) the criterion upon which the scheduling is based is as specific as possible in determining what equation is necessary and desirable in determining a "dangerous drug;" and (2) the establishment of a Dangerous Drug Advisory Council, consisting of leading medical and pharmacological professionals to advise the appropriate person or agency on control of substances.

To note the widespread acceptance of this approach and its importance in a nationwide context, to date, 30 jurisdictions have enacted this Uniform Act, and it is under consideration in at least 17 other jurisdictions.

(3) Separation of Marijuana Out of the Scheduling Criteria

Illinois' most dramatic deviation from the uniform scheduling criteria

69. Id.
70. Illinois Controlled Substances Act, ILL. REV. STAT. ch. 56 1/2, § 1201(a) (1971).
71. UNIFORM CONTROLLED SUBSTANCES ACT § 201 Comment 12 (1970).
72. ILL. REV. STAT. ch. 91 1/2, § 120.1 (1969).
73. Supra note 10, at 548.
is with respect to the categorization of marijuana. Under federal law, cannabis is listed under "Schedule One," which is the most stringent classification. "Schedule One" drugs are characterized by two criteria: (1) a high potentiality for abuse and (2) no accepted medical use.

Hence, deletion of the marijuana provision from Schedule One was a dramatic move on the part of Illinois legislators and indeed a step ahead of the federal scheduling in that regard. This scheduling took into account the social and scientific realities of the relatively mild nature of the drug and determined that federal classification would continue to severely stigmatize the drug user. But, more crucial than this, the separation of marijuana into a separate act, allows legislators to treat marijuana as the unique phenomenon that it is. Although its properties are dissimilar to other drugs in the scheduling scheme, the federal government has persisted in linking it with other, harder drugs by its association with them. Illinois has terminated this "guilt by association," by treating it as a separate entity, under its own act, the Cannabis Control Act, which establishes a regulatory system for the production, distribution and possession of marijuana.

The term "cannabis" refers to all of the pharmacologically active parts of the Cannabis Sativa plant, and includes marijuana, hashish and tetrahydrocanabinol. The effect of this statute is basically two-fold: (1) It has eliminated marijuana's erroneous label as a narcotic drug by removing the drug from the Uniform Narcotic Drug Act; and (2) concurrent with its removal, has realigned the harsh and unrealistic penalty structure which reflected its narcotic status to conform with current scientific and sociological variables.

(4) Realignment of Penalty Structure Regarding Cannabis In Accord With Scientific and Social Realities

The Cannabis Control Act is different in that it deals extensively with amounts possessed or delivered. Under its previous laws, penalties were meted out, by-and-large, regardless of the amount involved. In the new

74. Likewise, Illinois deviates from the federal scheduling scheme with regard to methamphetamine which is placed in schedule II instead of schedule III as in Federal law. ILL. REV. STAT. ch. 56½, § 1205 (1971).
75. UNIFORM CONTROLLED SUBSTANCES ACT § 203 (1970).
77. Twelve jurisdictions still classify marijuana as a narcotic. Supra note 10, at 548.
act, the amounts chosen for cut off points reasonably accomplish the type of selective control which best fulfills the purposes of the act.

Dealing first with possession, under § 4 of the Cannabis Control Act, penalties for possession are presently divided into five categories in Illinois:78

- 2.5 grams or less .............................................. Not more than 90 days.
- 2.5 to 10 grams ............................................... Not more than 180 days.
- 10 to 30 grams ............................................... Not more than 1 year.
- 10 to 500 grams ............................................... 1 to 3 years.
- More than 500 grams ........................................ 1 to 5 years.

There are variable effects from this scheme. It illustrates, to begin with, the trend toward leniency for possession as opposed to transfer or sale—primarily involving the major drug trafficker. With several gradations of "possession" offenses, with possession of successively larger quantities subject to more stringent penalties, it is easier to differentiate the possessor from the seller. For example, a specified amount might be presumed to be possessed for personal use (less than about 10 grams), while a specified larger amount might be presumed to be possessed with intent to sell (approximately greater than 30 grams in Illinois). This system serves as a type of shorthand in delineating who indeed is possessing for personal use, as opposed to those who intend to traffic in the drug. In turn, it illustrates a further trend in the law toward increasingly sanctioning the use of marijuana for one's own use, in one's own home.79

Although the Uniform Act does not specify penalties, the comment to § 401 does suggest that "simple possession," meaning possession for personal use, as opposed to possession with intent to sell, should be classified as a misdemeanor. Lastly, this type of scheme eliminates the greatest difficulty with the old law—the harsh mandatory nature of the penalty with no discretion in the court at sentencing—in abrogation of their traditional authority in this sphere.

Further, with respect to the provisions for sale, we can again see the trend of infusing flexibility into a previously arbitrary penalty structure.80

78. Supra note 10, at 560.
80. Here again, sale is divided into five different categories:
- 2.5 grams or less—Not more than 180 days.
- 2.5 to 10 grams—Not more than 1 year or 1 to 2 years.
- 10-30 grams—Not more than 1 to 3 years.
- 30 to 500 grams—1 to 4 years.
- More than 500 grams—1 to 7 years.

Supra note 10, at 560.
These provisions separate the trafficker from the casual user or "casual deliverer." Under this section, delivery of not more than 2.5 grams of marijuana without consideration is punishable by not more than 90 days in jail.

The Uniform Act provides for the "conditional discharge" of a first offender of either possession or delivery of not more than 2.5 grams. In some 30 states, which now provide for "conditional discharge," a judge may place the offender on probation for a certain period of time. If at the conclusion of this time of probation the offender has not breached the conditions of his probation, the judge can dismiss the charge against him. In addition, 13 of these jurisdictions provide for expungement of all records of the offense, including the arrest record. This means that a first offender who has been granted a conditional discharge will not be in any way affected in the future by his single confrontation with the marijuana laws.

Illinois provides, in § 10 of the Cannabis Control Act: "discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualification or disabilities imposed by law upon conviction of a crime."

Another important provision of the Cannabis Control Act is § 9—"the Calculated Criminal Cannabis Conspiracy"—an offense unique in Illinois. One is guilty of this offense when he: (1) Possesses or sells more than 30 grams of marijuana; (2) such violation is a part of a conspiracy undertaken or carried on with two or more other persons; and (3) he receives in return anything of greater value than $500.00, or he organizes, directs or finances such violation or conspiracy. The penalty for this offense is from three to ten years imprisonment and a fine of not more than $200,000.00. This provision is aimed at the professional criminal, whom, again, the Illinois law attempts to seek out and afford a separate criminal standard. Here, Illinois' statutory scheme is "attempting to treat the exceptional case exceptionally, and the routine case flexibly," indeed to

81. ILL. REV. STAT. ch. 56½, § 705 (1971).
82. Other jurisdictions with "casual delivery" or "accommodation" provisions are: Delaware, Iowa, Michigan, Minnesota, Missouri, New Mexico, South Carolina, Tennessee, Utah, West Virginia, and the Virgin Islands. Supra note 10, at 550.
84. There are several variations within the conditional discharge concept. The most frequent provision applies solely to first offense possession regardless of the age of the offender. A few jurisdictions limit the application of conditional discharge to those under 21 at the time of the offense. Supra note 10, at 550.
85. Supra note 10, at 550.
86. Statement of John E. Ingersoll Before the Subcomm. on Juvenile Delinquency of the Senate Committee on the Judiciary 10 (Oct. 20, 1969).
root out the source of the problem rather than to severely punish the victim.

CONCLUSION

Hence, Illinois has gone full circle in its treatment of marijuana offenders. Their new realistic and rehabilitative stance is illustrative of the realization that 50 years of myth-making concerning the relative properties of marijuana had bred a harsh retributive stance which was more a by-product of individual moral values than related to the actual threat posed by the drug's use. Two aspects of the Illinois policy, (1) classification of the drug according to its relative potential for abuse, *i.e.*, its perceived harm to society; and (2) punishment meted out in accord with the relative danger posed by the individual's activity in relation to the drug are truly reflective of present-day sociological and scientific realities.

The *First Report of the National Commission on Marijuana and Drug Abuse* foreshadows a possible nationwide trend in recommending: (1) possession of marijuana for a personal use should no longer be an offense; and (2) casual distribution of small amount of marijuana for no remuneration, or an insignificant remuneration not involving profit would no longer be an offense. Short of this decriminalization of the drug, Illinois provides the most enlightened approach to the drug abuse problem. Through its flexibility, Illinois' legislation inherently exemplifies the idea that there is much yet to be learned about the relative effects of marijuana, while attempting to utilize all the expertise now available and remaining open to accommodate future discoveries.

*Pamela Platt*

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## APPENDIX I
### COMPARATIVE CHART—ILLINOIS LAW BEFORE AND AFTER THE CANNABIS CONTROL ACT

<table>
<thead>
<tr>
<th>WEIGHT OF MARIJUANA</th>
<th>CANNABIS CONTROL ACT</th>
<th>PRIOR LAW</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Possession</strong> § 4</td>
<td></td>
</tr>
<tr>
<td>a) Less than 2.5 grams</td>
<td>90 days</td>
<td>ch. 38 § 22-40(5): not more than 1 yr. or $1,500</td>
</tr>
<tr>
<td></td>
<td><strong>Manufacture</strong> § 5</td>
<td>Subsequent offense: 2-10 yrs., $5,000, no probation</td>
</tr>
<tr>
<td></td>
<td>180 days</td>
<td>ch. 38 § 22-40(3): 10 yrs. to life</td>
</tr>
<tr>
<td></td>
<td><strong>Subsequent offense:</strong></td>
<td>Subsequent offense: life, no probation</td>
</tr>
<tr>
<td>b) 2.5 to 10 grams</td>
<td>180 days</td>
<td>1st offense—possible discharge no provision</td>
</tr>
<tr>
<td></td>
<td><strong>Possession</strong></td>
<td>ch. 38 § 22-40(6): 2-10 yrs. $5,000</td>
</tr>
<tr>
<td></td>
<td><strong>Manufacture</strong></td>
<td>Subsequent offense: 5 yrs. to life, no probation</td>
</tr>
<tr>
<td></td>
<td>not more than 1 yr. or 1-2 yrs.</td>
<td>10 yrs. to life</td>
</tr>
<tr>
<td>c) 10 to 30 grams</td>
<td><strong>Possession</strong></td>
<td>Subsequent offense: life</td>
</tr>
<tr>
<td></td>
<td>not more than 1 yr.</td>
<td>2-10 yrs.</td>
</tr>
<tr>
<td></td>
<td>Subsequent offense:</td>
<td>5 yrs. to life</td>
</tr>
<tr>
<td></td>
<td>not more than 1 yr. or 1-3 yrs.</td>
<td></td>
</tr>
<tr>
<td>d) 30 to 500 grams</td>
<td><strong>Possession</strong></td>
<td>Subsequent offense: life</td>
</tr>
<tr>
<td></td>
<td>1-3 yrs.</td>
<td>2-10 yrs.</td>
</tr>
<tr>
<td></td>
<td>Subsequent offense:</td>
<td>Subsequent offense:</td>
</tr>
<tr>
<td></td>
<td>2-6 yrs.</td>
<td>5 yrs. to life</td>
</tr>
<tr>
<td></td>
<td><strong>Manufacture</strong></td>
<td>10 yrs. to life</td>
</tr>
<tr>
<td></td>
<td>1-4 yrs.</td>
<td>Subsequent offense: life</td>
</tr>
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<td></td>
<td>Subsequent offense:</td>
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</tr>
<tr>
<td></td>
<td>2-8 yrs.</td>
<td></td>
</tr>
<tr>
<td>e) over 500 grams</td>
<td><strong>Possession</strong></td>
<td>Subsequent offense: life</td>
</tr>
<tr>
<td></td>
<td>1-5 yrs.</td>
<td>2-10 yrs.</td>
</tr>
<tr>
<td></td>
<td>Subsequent offense:</td>
<td>Subsequent offense:</td>
</tr>
<tr>
<td></td>
<td>2-7 yrs.</td>
<td>5 yrs. to life</td>
</tr>
<tr>
<td></td>
<td><strong>Manufacture</strong></td>
<td>10 yrs. to life</td>
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<tr>
<td></td>
<td>1-7 yrs.</td>
<td>Subsequent offense: life</td>
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<td></td>
<td>Subsequent offense:</td>
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<td></td>
<td>2-10 yrs.</td>
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</table>

**Section D**
Delivery by person over 18 to person under 18 at least 3 years his junior

**Section 8**
Produces the plant

Twice penalty in Section 5

C.38 Sec. 22-40(1) (under 21) 2-5 yrs.

**Section 9**
Calculated conspiracy

3-10 yrs. $200,000

No specific provision

No specific provision

Probably possession

Probably trafficking

10 yrs. to life

Subsequent offense: life
### APPENDIX II

**CURRENT SELECTED STATE MARIJUANA LAWS**

<table>
<thead>
<tr>
<th>STATE</th>
<th>YEAR OF LAW</th>
<th>UNIF. RM ACT</th>
<th>CLASSIFICATION OF MARIJUANA</th>
<th>CONDITIONAL DISCHARGE FOR FIRST OFFENSE</th>
<th>POSSESSION FOR PERSONAL USE</th>
<th>PENALTY</th>
<th>POSSESSION</th>
<th>SALE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calif.</td>
<td>1970</td>
<td></td>
<td>Narcotic</td>
<td>No</td>
<td>no separate penalty</td>
<td>NMT 1 yr. in county jail OR 1-10 yrs. + NMT $20,000</td>
<td>5 yrs. to life + NMT $20,000 (parole after 3 yrs.)</td>
<td></td>
</tr>
<tr>
<td>Colo.</td>
<td>1971</td>
<td></td>
<td>Narcotic</td>
<td>Yes</td>
<td>NMT 1/2 oz.</td>
<td>NMT 1 yr. +/or NMT $500 or NMT 1 yr. probation with psychiatric treatment</td>
<td>2-15 yrs + NMT $10,000</td>
<td>2-15 yrs. + NMT $10,000</td>
</tr>
<tr>
<td>Fla.</td>
<td>1971</td>
<td></td>
<td>Narcotic</td>
<td>No</td>
<td>NMT 5 g.</td>
<td>NMT 1 yr. or NMT $1,000</td>
<td>NMT 5 yrs. +/or NMT $5,000</td>
<td>NMT 10 yrs. + NMT $10,000 (no probation)</td>
</tr>
<tr>
<td>Ill.</td>
<td>1971</td>
<td>Yes</td>
<td>Marijuana</td>
<td>Yes</td>
<td>2.5 g. or less</td>
<td>NMT 90 days</td>
<td>30 g.—500 g. 1-3 yrs. more than 500 g. 1-5 yrs.</td>
<td>2-5 g. or less NMT 180 days 2.5 g.—10 g. NMT 1 yr. OR 1-2 yrs.</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2.5 g.—10 g.</td>
<td>NMT 180 days</td>
<td></td>
<td>10 g.—30 g. NMT 1 yr. OR 1-3 yrs.</td>
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<tr>
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<td></td>
<td></td>
<td></td>
<td>10 g.—30 g.</td>
<td>NMT 1 yr.</td>
<td></td>
<td>30 g.—500 g. 1-4 yrs.</td>
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<td></td>
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<td></td>
<td></td>
<td></td>
<td>over 500 g. 1-7 yrs. NMT</td>
</tr>
<tr>
<td>State</td>
<td>Year</td>
<td>Category</td>
<td>Possession</td>
<td>Penalty Description</td>
<td>NMT Penalty</td>
<td>Other Penalty</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Mich.</td>
<td>1971</td>
<td>Yes</td>
<td>Hallucinogen</td>
<td>Yes, no separate penalty</td>
<td>NMT 90 days</td>
<td>+/- or NMT $500</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>8 oz. or more; 1-5 yrs. +/- or NMT $5,000</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>N.M.</td>
<td>1972</td>
<td>Yes</td>
<td>Hallucinogen</td>
<td>Yes, NMT 1 oz. More than 1 oz. Less than 8 oz. $50-$100</td>
<td>NMT 15 days</td>
<td>+/- or NMT $1,000</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$100-$1,000</td>
<td>+/- or NMT 1 yr.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N.Y.</td>
<td>1971</td>
<td>Narcotic</td>
<td>Yes</td>
<td>NMT 1/4 oz. NMT 1 yr.</td>
<td>NMT 1/4 oz.</td>
<td>NMT 1 yr.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ohio</td>
<td>1970</td>
<td>Hallucinogen</td>
<td>No</td>
<td>no separate penalty</td>
<td>NMT 1 yr.</td>
<td>+/- or NMT $1,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Texas</td>
<td>1971</td>
<td>Narcotic</td>
<td>No</td>
<td>no separate penalty</td>
<td>2 yrs. to life</td>
<td>5 yrs. to life</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wisc.</td>
<td>1969</td>
<td>Dangerous</td>
<td>Yes</td>
<td>no separate penalty</td>
<td>NMT 1 yr.</td>
<td>+/- or NMT $500</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

LEGISLATIVE NOTES