

**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

Frederick C. Boucher, Chairman

Theodore V. Morrison, Jr., Vice-Chairman

Dudley J. Emick, Jr.

Joseph V. Gartlan, Jr.

Edward M. Holland

Russell I. Townsend, Jr.

J. Samuel Glasscock

John D. Gray

Richard R. G. Hobson

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

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**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. Doult 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 deliberations, the subcommittee conducted public hearings in Richmond, Roanoke, Fairfax County and Norfolk. Various references are made to the testimony elicited 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 a fine of not more than \$25,000.00.

2. Accommodation. Section 18.2-248 defines "accommodation" 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 accommodation is a Class 1 misdemeanor. Other Schedule I and II controlled substances accommodation 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.

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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(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 quality 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 substantial 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 prosecutions 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 intraocular 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.