

HOUSE No. 1905

By Mr. Flaherty of Boston, petition of Robert H. Quinn (Attorney General) and Michael F. Flaherty for legislation to amend the narcotic drug laws with respect to marijuana and that the crime of possession of marijuana be made a felony or misdemeanor. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-One.

AN ACT AMENDING THE NARCOTIC DRUG LAWS BY REPEALING THE CRIME OF PRESENCE WITH RESPECT TO MARIJUANA AND GIVING THE COURT THE OPTION TO TREAT POSSESSION OF MARIJUANA OR CONSPIRACY TO VIOLATE THE MARIJUANA LAWS AS EITHER A FELONY OR A MISDEMEANOR.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 94 of the General Laws is hereby
2 amended by striking out section 205, as most recently
3 amended by section 1 of chapter 95 of the acts of 1958, and
4 inserting in place thereof the following section: —

5 *Section 205:* Whoever, not being a licensee under section
6 one hundred and ninety-eight B, a pharmacist, a physician, a
7 veterinarian, a dentist, a licensed practical, graduate, or regis-
8 tered nurse acting under the direction of a physician, an em-
9 ployee of an incorporated hospital acting under the direction
10 of its superintendent or official in immediate charge, or a
11 common carrier or messenger when transporting between per-
12 sons mentioned in this section in the same package in which
13 the drug was delivered to him for transportation, is in posses-
14 sion of any narcotic drug, other than heroin or cannabis (some-
15 times called marihuana or marijuana) except by reason of a
16 prescription lawfully and properly issued, shall be punished by
17 a fine of not more than one thousand dollars or by imprison-
18 ment in the state prison for not more than three and one half
19 years, or in jail or house of correction for not more than two
20 and one half years.

1 SECTION 2. Said chapter is hereby further amended by
2 inserting after section 205 the following section: —
3 *Section 205A.* Whoever is in possession of cannabis (some-
4 times called marihuana or marijuana) except in accordance with
5 the provisions of the narcotic drug laws, shall be punished by a
6 fine of not more than one thousand dollars or by imprison-
7 ment in the state prison for not more than three and one half
8 years, or in a jail or house of correction for not more than two
9 and one half years; provided however, that a court may treat
10 and record a violation of this section as a misdemeanor punish-
11 able by a fine of not more than fifty dollars or by imprison-
12 ment for not more than two and one half years in a jail or
13 house of correction.

1 SECTION 3. Said chapter 94 is hereby further amended by
2 striking out section 213A as most recently amended by section
3 2 of chapter 204 of the acts of 1960, and inserting in place
4 thereof the following two sections: —

5 *Section 213A.* Whoever is present at a place where he knows
6 a narcotic drug, other than cannabis (sometimes called mari-
7 huana or marijuana) is illegally kept or deposited, or whoever is
8 in the company of a person, knowing that said person is
9 illegally in possession of a narcotic drug, other than cannabis
10 (sometimes called marihuana or marijuana), or whoever con-
11 spires with another person to violate any narcotic drug law,
12 other than a narcotic drug law relating exclusively to cannabis
13 (sometimes called marihuana or marijuana), may be arrested
14 without a warrant by an inspector whose duty it is to enforce
15 the narcotic drug laws or by a police officer, and may be
16 punished by imprisonment in the state prison for not more
17 than three and one half years, or by imprisonment in a jail or
18 house of correction for not more than two and one half year
19 or by a fine of not more than one thousand dollars.

20 *Section 213B.* Whoever conspires with another person to
21 violate any provision of the narcotic drug laws relating exclu-
22 sively to cannabis (sometimes called marihuana or marijuana)
23 may be punished by imprisonment in the state prison for not
24 more than three and one half years or by imprisonment in a
25 jail or house of correction for not more than two and one half

26 years or by a fine of not more than one thousand dollars;
27 provided, however, that a court may treat and record a viola-
28 tion of this section as a misdemeanor punishable by a fine of
29 not more than fifty dollars or by imprisonment of not more
30 than two and one half years in a jail or house of correction.

1 SECTION 4. Section 38 of chapter 123 of the General
2 Laws, as added by section 4 of chapter 888 of the acts of
3 1970, is hereby amended by striking out the definition of
4 "drug offense" and inserting in place thereof the following
5 definition: —

6 "Drug offense", an act or omission relating to narcotic or
7 harmful drugs which constitutes an offense pursuant to sections
8 one hundred and eighty-seven A, one hundred and eighty-seven
9 B, one hundred and eighty-seven E, one hundred and eighty-
10 seven F, one hundred and ninety-eight, one hundred and
11 ninety-eight A, one hundred and ninety-nine G, two hundred
12 and three, two hundred and five, two hundred and five A, two
13 hundred and six, two hundred and nine, two hundred and
14 eleven, two hundred and twelve, two hundred and twelve A,
15 two hundred and thirteen A, two hundred and thirteen B, two
16 hundred and seventeen or two hundred and seventeen A to two
17 hundred and seventeen D, inclusive, of chapter ninety-four;
18 section twenty-one of subdivision (1) of section twenty-four of
19 chapter ninety; section eight of chapter ninety B; or section
20 sixty-two of chapter one hundred and thirty-one.

1 SECTION 5. Said chapter 123 is hereby further amended by
2 striking out in section 125 the definition of "drug offense" as
3 inserted by section 1 of chapter 889 of the acts of 1969 and
4 inserting in place thereof the following definition: —

5 "Drug offense", an act or omission relating to narcotic or
6 harmful drugs which constitutes an offense pursuant to sections
7 one hundred and eighty-seven A, one hundred and eighty-seven
8 B, one hundred and eighty-seven D, one hundred and eighty-
9 seven E, one hundred and eighty-seven F, one hundred and
10 ninety-eight, one hundred and ninety-eight A, one hundred and
11 ninety-nine F, one hundred and ninety-nine G, two hundred
12 and three, two hundred and five, two hundred and five A, two

13 hundred and six, two hundred and nine, two hundred and
14 eleven, two hundred and twelve, two hundred and twelve A,
15 two hundred and thirteen A, two hundred and thirteen B, two
16 hundred and seventeen or two hundred and seventeen A to two
17 hundred and seventeen D, inclusive, of Chapter ninety-four;
18 section twenty-one of subdivision (1) of section twenty-four of
19 chapter ninety; section eight of chapter ninety B; or section
20 sixty-two of chapter one hundred and thirty-one.