

By Mr. Brennan, a petition (accompanied by bill, Senate, No. 703) of John A. Brennan, Jr., for legislation to amend the controlled substances act by revising the penalty for possession of marihuana. The Judiciary.

The Commonwealth of Massachusetts

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

AN ACT TO AMEND THE CONTROLLED SUBSTANCES ACT BY REVISING THE PENALTY FOR POSSESSION OF MARIHUANA.

*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. The first sentence of the first paragraph of sec-  
2 tion 34 of chapter 94C of the General Laws, as appears in  
3 section 1 of chapter 1071 of the acts of 1971, is hereby  
4 amended by inserting after the word "substance," in line 2,  
5 the words: —

6 , except marihuana,.

1 SECTION 2. The fourth sentence of said first paragraph of  
2 said section 34 of said chapter 94C, as so appears, is hereby  
3 amended by striking out, in lines 1 and 2, the words "mari-  
4 huana or."

1 SECTION 3. Said section 34 of said chapter 94C is hereby  
2 further amended by striking the third paragraph, as amended  
3 by section 247 of chapter 806 of the acts of 1972.

1 SECTION 4. Said chapter 94 C is hereby further amended by  
2 inserting after section 34 the following new section: —

3 *Section 34A.* No person knowingly or intentionally shall  
4 possess marihuana. Notwithstanding any other penalty pro-  
5 vision of this chapter, any person who violates this section by  
6 possessing an ounce or less of marihuana shall be liable to  
7 pay a fine of fifty dollars except as hereinafter provided and  
8 shall be subject to the following procedures and penalties: —

9 It shall be the duty of any police officer who takes cogni-  
10 zance of any violation of this section, forthwith to give the

11 offender a notice, as provided in this section, to appear before  
12 the clerk of the district court having jurisdiction, at any time  
13 during office hours, not later than twenty-one days after the  
14 date of such violation. Such a notice shall be in triplicate form  
15 and shall contain, but not be limited to, the following informa-  
16 tion: the name and the address of the offender, the date, time  
17 and place of violation, the specific offense charged, the name  
18 and badge number of the officer and his division, the amount  
19 of the established fine of fifty dollars, and the time and place  
20 for appearance. Said notice shall also include instructions for  
21 the return of the notice, and a statement which shall read as  
22 follows: — "This notice may be returned by mail, personally,  
23 or by an authorized person, and if properly returned *within*  
24 *twenty-one days* with payment of fifty dollars shall be deemed  
25 non-criminal." Such notice shall be signed by the officer, and  
26 shall be signed by the offender whenever practicable in  
27 acknowledgment that the notice has been received. The of-  
28 ficer shall, if possible, deliver to the offender at the time and  
29 place of the violation, a copy of said notice. Whenever it is not  
30 possible to deliver a copy of said notice to the offender at the  
31 time and place of violation, said copy shall be sent by the  
32 officer *within five days* to the address of the offender. Such a  
33 notice mailed by the officer, his commanding officer, or a  
34 person authorized by his commanding officer shall be deemed  
35 a sufficient notice and a certificate of the officer or person  
36 mailing such notice that it has been mailed in accordance with  
37 this section shall be deemed prima facie evidence thereof and  
38 shall be admissible in any court of the commonwealth as to  
39 the facts contained therein.

40 At or before the completion of each tour of duty, the officer  
41 shall give his commanding officer those copies of each notice  
42 of such violation taken cognizance of during such tour. Said  
43 commanding officer shall retain and safely preserve, one of  
44 such copies and shall at a time not later than the beginning  
45 of the next court day after receipt of such notice deliver an-  
46 other of such copies to the clerk of the court before whom  
47 the offender has been notified to appear. The clerk of each  
48 district court shall maintain a separate docket of all such  
49 notice to appear.

50 Any person notified to appear before the clerk of a district  
51 court, as provided herein, may appear before such clerk and  
52 confess the offense charged, either personally or through an  
53 agent authorized in writing or by mailing to such clerk the  
54 notice accompanied by the fine provided therein, such pay-  
55 ment to be made only by postal note, money order or check  
56 made out to the clerk of the court. Payment of the fifty dollar  
57 fine shall operate as a final disposition of the case.

58 Proceedings under this section shall not be deemed criminal  
59 and no person notified herein shall be required to report to any  
60 probation officer, and no record of the case shall be entered in  
61 the probation records.

62 Should any person notified to appear hereunder fail to ap-  
63 pear and pay the fine provided hereunder, or having appeared  
64 desire not to avail himself of the benefits of the procedure es-  
65 tablished by this section within twenty-one days after the  
66 violation, the clerk shall as soon as possible notify the officer  
67 concerned, who shall forthwith make a complaint against the  
68 offender and follow the procedure established for criminal  
69 cases. If any person fails to appear in accordance with the  
70 summons issued upon such complaint, the clerk shall issue a  
71 warrant for his arrest. Any person found guilty upon a crim-  
72 inal complaint hereunder shall be fined not more than one  
73 hundred dollars for the first offense and not more than three  
74 hundred dollars for a second or subsequent offense.

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