

By Mr. Murphy of Peabody, petition of John E. Murphy, Jr., and other members of the House to amend the Controlled Substances Act by revising the penalty for possession of marihuana. Human Services and Elderly Affairs.

The Commonwealth of Massachusetts

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

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
2 section 34 of chapter 94C of the General Laws, as appearing in
3 section 1 of chapter 1071 of the acts of 1971, is hereby amended by
4 inserting after the words "controlled substance", in line 2, the
5 words ", except marihuana,".

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

1 SECTION 3. Said section 34 of said chapter 94C is hereby
2 further amended by striking out the third paragraph, as most
3 recently amended by section 24 of chapter 806 of the acts of 1972.

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

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

8 It shall be the duty of any police officer who takes cognizance of
9 any violation of this section, forthwith to give the offender a notice,

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

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

46 Any person notified to appear before the clerk of a district court,
47 as provided herein, may appear before such clerk and confess the
48 offense charged, either personally or through an agent authorized

49 in writing or by mailing to such clerk the notice accompanied by
50 the fine provided therein, such payment to be made only by postal
51 note, money order or check made out to the clerk of the court.
52 Payment of the fifty dollar fine established shall operate as a final
53 disposition of the case. Proceedings under this section shall not be
54 deemed criminal and no person notified herein shall be required to
55 report to any probation officer, and no record of the case shall be
56 entered in the probation records.

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

