



The Massachusetts Cannabis Reform Coalition, Inc.

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“We shall by and by want a world of hemp more for our own consumption.” John Adams, 1763

TESTIMONY OF THE MASSACHUSETTS CANNABIS REFORM COALITION INC. IN SUPPORT OF HOUSE BILL 862, SENATE BILL 1151 & SENATE DOCKET 2132

Dr. Keith Saunders, President (Boston)
Attorney Steven S. Epstein, Treasurer (Georgetown)
Fred Hapgood, Clerk (Boston)
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Michael Crawford, Director (Newbury)
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Graham Steele, Director (Framingham)
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A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives: and they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the commonwealth.

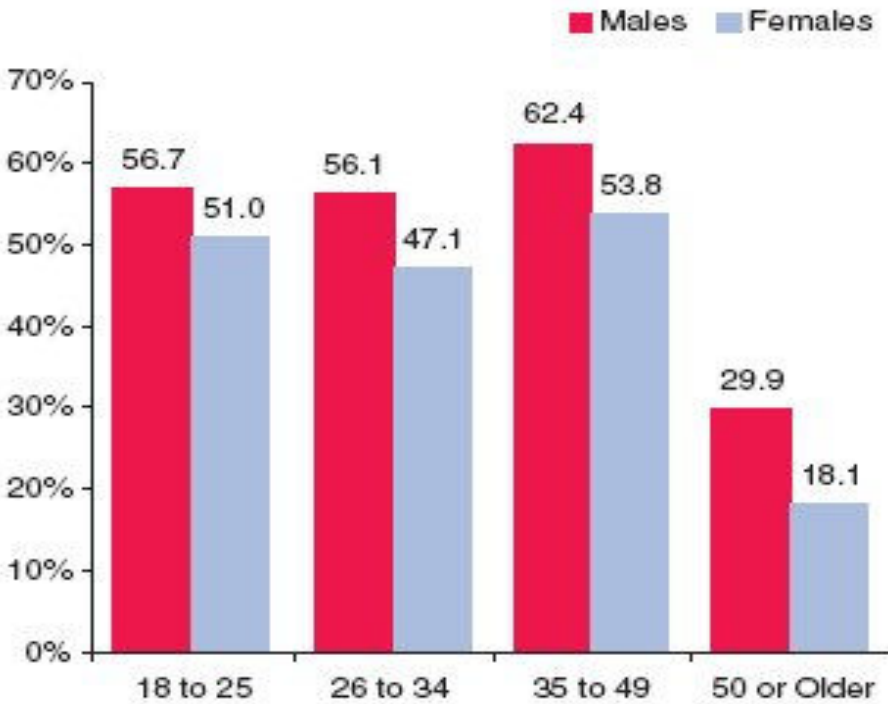
Article XVIII, A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts

Chairpersons Creedon and O’Flaherty, Honorable members of the committee:

Most marihuana users, except for their use of marihuana, are otherwise law-abiding, productive, responsible citizens. It is statistically likely that many of you tried marihuana in the past. We did. We are here representing those users and the people that love them and as you will see from our presentation we represent over sixty percent of the adult residents of the Commonwealth.

In fact, a majority of Americans between the ages of 18 and 50 have experienced marihuana in their lifetimes according to the National Survey on Drug Use and Health (Figure 1 below). In Massachusetts, the apparent U.S. leader in monthly marihuana use, the number of persons experienced with marihuana is even greater. See, Substance Abuse & Mental Health Services Administration’s website: <http://www.samhsa.gov>.

Figure 1. Percentages of Lifetime Marijuana Use among Adults Aged 18 or Older, by Gender and Age Group: 2002 and 2003



Source: SAMHSA, "National Household Survey 2002 and 2003"

The National Survey on Drug Use and Health does estimate, based on 1999, 2000 and 2001 data, that in Massachusetts 26.41 percent over the age of 18 and under 26 and 5.99 percent over the age of 25 used marijuana in the past month. (See Table 1, below).

Table 1. Marijuana Use in Past Month among Persons Aged 12 or Older, by Age Group and Substate Region: Percentages, Annual Averages Based on 1999, 2000, and 2001 NSDUHs

	AGE GROUP (Years)					
	12-17		18-25		26 or Older	
	Estimate	95% Prediction Interval	Estimate	95% Prediction Interval	Estimate	95% Prediction Interval
Massachusetts	12.37	(10.42 - 14.62)	26.41	(23.34 - 29.71)	5.99	(4.54 - 7.88)
Boston	11.66	(8.05 - 16.60)	*	(* - *)	8.41	(5.43 - 12.80)
Central	12.72	(9.05 - 17.58)	*	(* - *)	5.82	(3.64 - 9.18)
Metrowest	11.30	(8.21 - 15.35)	27.32	(21.98 - 33.40)	5.52	(3.59 - 8.41)
Northeast	12.48	(9.04 - 16.98)	*	(* - *)	5.22	(3.35 - 8.06)
Southeast	13.75	(10.33 - 18.07)	*	(* - *)	6.62	(4.37 - 9.91)
Western	12.10	(8.53 - 16.88)	*	(* - *)	5.14	(3.21 - 8.14)

*Low precision; no estimate reported.

Source: SAMHSA, Office of Applied Studies, National Survey on Drug Use and Health, 1999, 2000, and 2001.

The number of monthly marijuana users is greater than the number of Blacks or African Americans and greater than Latinos or Hispanics residing in our state.

Because your constituents are experienced, they rationally perceive that occasional marihuana use does not present a great risk to their health (See Table 2, below).

Table 2 Marijuana Use in Past Month and Perceptions of Great Risk of Smoking Marijuana Once a Month in Massachusetts among Persons Aged 12 or Older, by Substate Region: Percentages, Annual Averages Based on 1999, 2000, and 2001 NSDUHs

	Marijuana Use in Past Month	Perceptions of Great Risk of Smoking Marijuana Once a Month
Region	% Estimate	% Estimate
Massachusetts	9.14	33.79
Boston	12.16	34.16
Central	9.00	35.88
Metrowest	8.52	31.40
Northeast	7.97	33.83
Southeast	9.53	34.08
Western	8.77	35.29

Source: SAMHSA “Substate Estimates from the 1999-2001 National Surveys on Drug Use and Health”, June 2005

SAMHSA estimates 33.79 % of the Massachusetts’ electorate perceives great risk in smoking marijuana once a month. This minority opinion is reflected in the results of Public Policy Questions on the ballot in 25 House and 3 Senate Districts at the polls since 2000.

Last November, in two Senate Districts in the Northeast Region of the than one-third of the voters disapproved of instructing their state senators to: “introduce and vote for legislation making possession of marihuana a civil violation, like a traffic ticket instead of a criminal offense, and requiring police to hold a person under 18 cited for possession until the person is released to a parent or legal guardian or brought before a judge.”

In the Second Essex District, 45,956 of the voters in Majority Leader Berry’s district, including Mr. Berry ([Salem News](#), 06 Nov 2004, “Changes To Marijuana Law Gain Momentum”) expressed their approval for such reform, while only 26,612 of the 80,066 voters in the district said no. In the Third Essex & Middlesex District, the yeas exceeded the nays by 16,753 votes. Senator McGee is a sponsor of S 998, legislation taking the medical marijuana user out of the black market and criminal justice system, but at this writing his view on decriminalization is not known.

Table 4, 2004 Public Policy Question Results “No Weight Limit Expressed” (Source: P.D. 43 2004)

	Yes	No	Blank
10 th Norfolk House	11,568	7,625	1,260
Second Essex Senate	45,956	26,612	7,498
Third Essex & Middlesex Senate	36,505	19,752	8,275
Totals	94,029	53,989	17,033

In three representative districts voters approved of “legislation that would make possession of less than one ounce of marihuana a civil violation, subject to a maximum fine of \$100 and not subject to any criminal penalties.”

Table 5, 2004 Public Policy Question Results Less Than An Ounce (Source: P.D. 43 2004)

	Yes	No	Blank
3rd Plymouth	15,215	6,956	2,087
6th Worcester	10,005	5,829	1,816
12th Worcester	12,618	6,008	2,081
Totals	37,838	18,793	5,984

Since November 2000, voters in Essex, Middlesex, Norfolk, Plymouth, Suffolk and Worcester counties have all said the same thing! In 2002 in 19 House districts the yeas unanimously exceeded the nays. See, “Massachusetts Elections Statistics 2002”, Public Document No. 43, Secretary of the Commonwealth, Elections Division, 488 – 491. After the 2000 election in which the late Sen. Shannon’s district instructed him, he became a sponsor of the reform, testifying to his personal regret in arresting young people over his decades in law enforcement. Two other house districts voted favorably in 2000, as did the Town of Amherst at its town election that year. See, “Massachusetts Elections Statistics 2000”, Public Document No. 43, Secretary of the Commonwealth, Elections Division, 582, 584 – 585.

The 2004 poll of actual voters confirms what results in 2000 and 2002 established: **marihuana law reform is not a third-rail issue in Massachusetts!**

**House Bill 862 before this committee,
Senate Bill 1151 recently reported out by the
Committee on Mental Health and Substance Abuse and
Senate Docket # 2132 sent to the Senate Rules Committee
all seek to implement marihuana policy reforms the voters clearly favor.**

None of these bills propose a radical change in how most marihuana possession cases are [already being] handled by the police and the courts in Massachusetts.

H 862, before this Committee proposes:

- ✓ elimination of the authority of the police to take custody of a person over 18 for possessing less than an ounce of marihuana;
- ✓ punishing possession of less than an ounce of marihuana by a civil fine of \$100; and,
- ✓ punishing possession of an ounce or more by a civil fine of not more than \$500.

S. 1151, as amended by the Committee on Mental Health and Substance Abuse, is now different from H 862 as to the amount of the fine, the Committee having increased it to \$250.

Senate Docket # 2132 eliminates the authority of the police to take custody of a person over 18 solely on a charge of possessing marihuana no matter the amount. It requires an appearance in Court or retention of counsel and authorizes a greater fine for subsequent offenders. S.D. 2132 would also split the fine collected between the state and the municipality in which the offense occurs as is required for fines for speeding by G.L. c. 280, s. 2.

None of the proposed changes in law will prevent police from making arrests:

- where they have probable cause, from arresting and charging juveniles or adults with knowingly or intentionally manufacturing, distributing, dispensing or cultivating marihuana, or possession of it with intent to manufacture, distribute, dispense or cultivate, nor trafficking in marihuana; nor,
- where they have probable cause, from arresting and charging juveniles or adults with operating a motor vehicle while under the influence of marihuana

The proposed changes also do not prevent parents or police from filing petitions seeking a determination that a child under the age of seventeen is in need of services.

Repealing the current statutory authority of police to arrest for possession, currently a misdemeanor, is a return to the common law of arrest.

Eliminating the power to arrest for simple possession of marihuana will improve police time on the street by freeing officers from the paperwork and court time now required when they make the decision to arrest. According to Professor Jeffrey Miron of BU, the manpower savings should total \$24 million statewide. (Miron, Jeffrey A., "The Effect of Marijuana Decriminalization on the Budgets of Massachusetts Governments, With a Discussion of Decriminalization's Effect on Marijuana Use," on the CD we have provided and on the web at:

http://www.dpfma.org/pdf/miron_report_03.pdf.

By making the offense, no matter the weight, as proposed in SD 2132, a civil violation, as we did with speeding in the last century, this proposal:

1. ends the arbitrariness inherent in the current law which permits, but does not require, the police to make a custodial arrest. Some officers currently choose to arrest, others to summons, and others merely seize the marihuana and let the offender go with a verbal warning;
2. maximizes the budgetary savings of law enforcement as noted by Professor Miron;
3. maximizes further savings by freeing probation personnel from supervising thousands of persons currently under Court order for possessing marihuana;
4. frees assistant district attorneys to focus their efforts on crimes against persons and property;

5. lessens the time spent by the Courts on approximately 10,000 marijuana possession cases now commenced each year;
6. eliminates the cost of public counsel to represent indigent defendants charged with possession;
7. reduces the loss of productivity and absences from school of persons criminally charged that results from their losing time from work;
8. ends the racial injustice endemic to a system that focuses on urban arrests; and,
9. brings Massachusetts law into line with 12 states, in which almost half the population of the United States reside, that “decriminalize” possession of marijuana.¹

Assuming 10,000 such citations a year, the minimum amount of revenue that would be raised by a fine of \$250 is two and one-half million dollars. S.D. 2132 would raise two or three times as much.

The proposed changes in law will send the message to juveniles and adults that possessing and using marijuana is not without stigma and cost. Unlike the messages that prohibition sends, which work in reverse, driving up usage among minors, this message gets listened to: all the decrim states have usage rates lower than Massachusetts. (Figure 2 below). Prohibition is the real “gateway drug.”

The benefits of the proposed changes before this Committee are substantial. By adopting the proposed changes, we move closer to the ideals of John Adams and the people of Massachusetts expressed in the Great Charter of 1780, which proclaimed:

The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquility their natural rights, and the blessings of life...among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness

¹ The twelve states are:

[Alaska](#) makes less than 4 oz in residence legal

[California](#) does not authorize arrest or imprisonment for less than 28.5 grams

[Colorado](#) does not authorize arrest or imprisonment for less than 28.4 grams

[Maine](#) makes less than 1.25 ounces is a civil violation

[Minnesota](#) makes less than 42.5 grams a fine of up to \$200 and possible drug education.

[Mississippi](#) makes 30 grams or less is punishable by a fine of \$100 - \$250 for the first offense

[Nebraska](#) makes one ounce or less of marijuana a civil infraction

[Nevada](#) treats possession of marijuana by persons 21 years of age or older as punishable by a fine of \$600 or possible drug treatment.

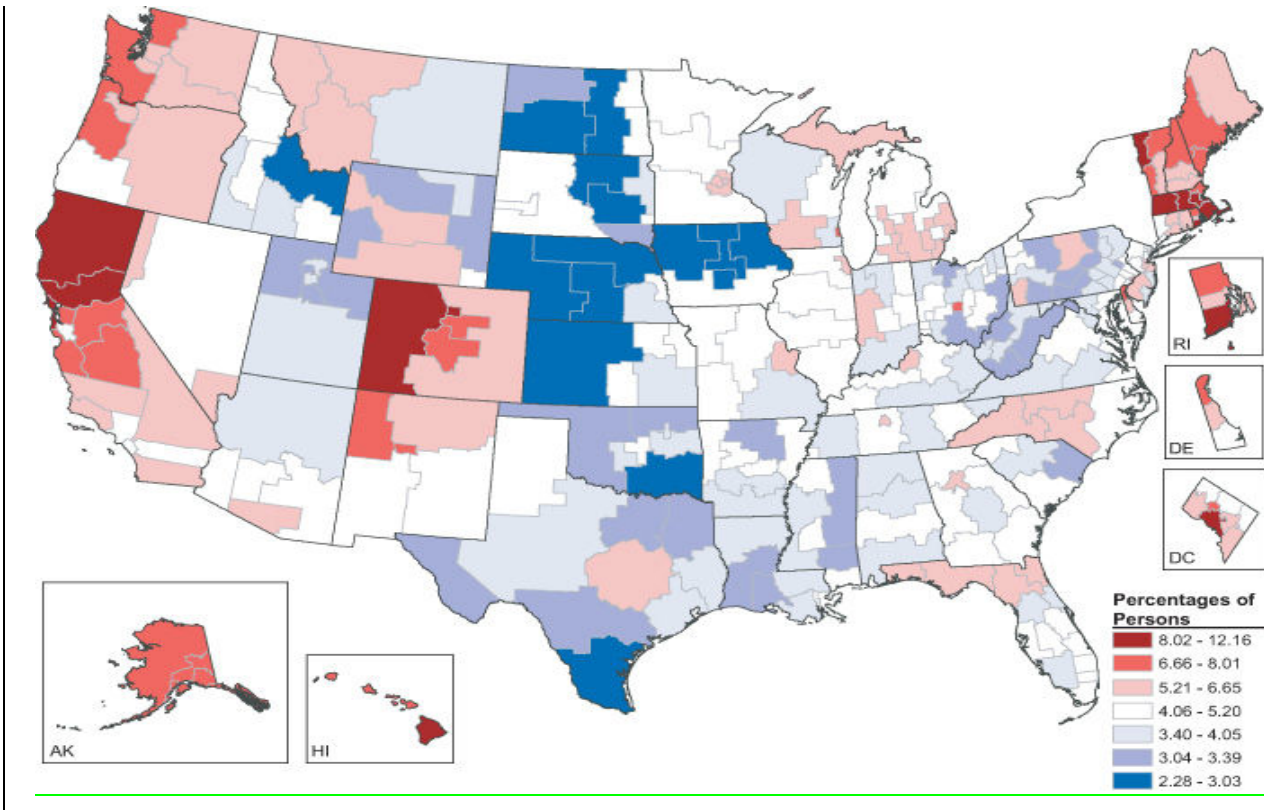
[New York](#) makes 25 grams or less of marijuana is civil violation

[North Carolina](#) makes one half ounce or less is a thirty day suspended sentence.

[Ohio](#) makes less than 100 grams of marijuana a civil violation

[Oregon](#) punishes less than one ounce of marijuana by a fine of \$500 - \$1,000

Figure 2 Marijuana Use in Past Month among Persons Aged 12 or Older, by Substate Region: Percentages, Annual Averages Based on 1999, 2000, and 2001 NSDUH Data



It is our sincere hope that this committee will substitute SD 2132 for H 862 and report the same favorably to the House and Senate for further action.

Respectfully submitted,
 The officers and directors of the
 Massachusetts Cannabis Reform Coalition

S 1151
(as Amended by the Joint Committee on Mental Health and Substance Abuse)
AN ACT TO IMPOSE A CIVIL FINE FOR THE POSSESSION OF MARIJUANA

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

SECTION 1.

The first paragraph of section 34 of chapter 94C of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking the fourth and fifth sentences and inserting in place thereof the following:

Any person who violates this section by possession of less than an ounce of marihuana shall pay a civil assessment of two hundred dollars. Any person who violates this section by possession of an ounce or more of marijuana or a controlled substance in Class E of section thirty-one shall be punished by imprisonment in a house of correction for not more than six months or a fine of five hundred dollars, or both. Except for an offense involving less than an ounce of marihuana or a controlled substance in Class E of section thirty-one, whoever violates the provisions of this section after one or more convictions of a violation of this section or of a felony under any other provisions of this chapter, or of a corresponding provision of earlier law relating to the sale or manufacture of a narcotic drug as defined in said earlier law, shall be punished by imprisonment in a house of correction for not more than two years or by a fine of not more than two thousand dollars, or both.

SECTION 2. Said section 34, as so appearing, is hereby further amended by inserting after the last paragraph thereof the following: -

A violation of this section by possession of marihuana shall, the first clause of section seventy C of chapter two hundred and seventy-seven notwithstanding, be treated as a civil infraction and disposed of in accordance with the provisions of section seventy C of chapter two hundred and seventy-seven. An adjudication of responsibility shall neither be used as the basis for denial or revocation of any license granted by the Commonwealth of Massachusetts, nor be deemed a conviction for purposes of any disqualification or for any other purpose. A police officer who observes the occurrence of the civil infraction of possessing marihuana shall cite the violator for the civil infraction. If the violator is under the age of seventeen the citation shall be delivered to one of the parents or the legal guardian of said person, or to the clerk of the district court having jurisdiction. The citation shall be in the form provided for by General Laws chapter 90C, section 1. The procedures as set forth in the fifth paragraph of section 2 of chapter 90C for the delivery of a citation alleging one or more criminal automobile law violations to the clerk-magistrate of the district court where the violation occurred shall be followed. Except as provided herein the provision for the processing of citations set forth in chapter ninety C, sections 3(B)(2) and 3(C) shall apply.

No person cited only for the civil infraction of possessing less than an ounce of marihuana shall be required to report to any probation officer, and no record of the case shall be entered in any probation records. Unless additional criminal offenses are set forth on the citation the violator may confess the civil violation of possessing less than an ounce of marihuana either personally or through a duly authorized agent or by mailing to the clerk of the district court having jurisdiction thereof the sum assessed either with the citation instead of requesting a hearing. The receipt by the district court clerk of such payment shall operate as a final disposition of the case. Any person cited to appear before the clerk of a district court who fails to pay the civil assessment provided hereunder within the time specified or, having requested a hearing fails to appear, or who after a hearing and finding as provided herein fails to pay the civil assessment or perform community service within thirty days, shall not have the matter treated as a civil violation as provided in this paragraph and shall be punished as if originally complained of for possessing an ounce or more of marihuana.

SECTION 3. Section 41 of chapter 94C of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting at the end of clause (a) the following: ,

except for violation of the provisions of section thirty-four involving less than an ounce of marihuana by a person seventeen years of age or older;.

SECTION 4. Said section 41, as so appearing, is hereby further amended by inserting in clause (c) after the words, "thirty-four" the following:

,except for violation involving less than an ounce of marihuana by a person seventeen years of age or older,.

**AN ACT TO IMPOSE A CIVIL FINE FOR THE POSSESSION OF MARIHUANA AND
FOR DISPOSITION OF FINES COLLECTED.**

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

SECTION 1. The fourth sentence of the first paragraph of section thirty-four of chapter ninety-four C of the General Laws as appearing in the 2002 Official Edition, is hereby amended by striking the words:— marihuana or.

SECTION 2. The first paragraph of section thirty-four of chapter ninety-four C of the General Laws as appearing in the 2002 Official Edition, is hereby further amended inserting after the third sentence thereof the following:—

A violation of this section by possession of marihuana shall, the first clause of section seventy C of chapter two hundred and seventy-seven notwithstanding, be treated as a civil infraction and disposed of in accordance with the provisions of said section and the court shall impose a civil fine of not less than \$100 nor more than \$500 for the first such violation and of not less than \$200 nor more than \$1,000 for a second or subsequent violation. In lieu of paying the civil fine a person complained of for violation of this section by means of possession of marihuana may be ordered to perform community service. An adjudication of responsibility shall neither be used as the basis for denial or revocation of any license granted by the Commonwealth of Massachusetts, nor deemed a conviction for purposes of any disqualification or for any other purpose, nor used in the calculation of second and subsequent offense except that of possessing marihuana.

SECTION 3. Section thirty-four of chapter ninety-four C of the General Laws as appearing in the 2002 Official Edition, is hereby further amended inserting after the second paragraph thereof the following:—

A complaint of possession of marijuana shall be commenced by the issuance of a citation in the form provided for by section one of chapter ninety-C. If the violator is under the age of eighteen the citation shall be delivered to a parent or the legal guardian of said person, or to the clerk of the district court having jurisdiction who shall see to its delivery at the time the person is brought before a judge due to the unavailability of a parent or legal guardian. The procedures as set forth in the fifth paragraph of section two of chapter 90C for the delivery of a citation alleging one or more criminal automobile law violations to the clerk-magistrate of the district court where the violation occurred shall be followed. Except as provided herein the provision for the processing of citations set forth in sections three(B)(2) and three(C) of chapter ninety C, shall apply. Notwithstanding the provisions of section thirty-five A of chapter two hundred and eighteen a person complained of for a violation of this section by means of possession of marihuana shall not be given an opportunity to be heard personally or by counsel in opposition to the issuance of any process based on such complaint. If a defendant has retained counsel and wishes to be excused from appearing in court on the return day, counsel shall, prior to the scheduled return day, enter an appearance on behalf of the defendant and counsel may enter a plea of responsible on behalf of the client and the Court may impose a civil fine in the absence of the client, who may thereafter pay the imposed assessment by mail within thirty days.

SECTION 4. Section forty-one of chapter ninety-four C of the General Laws as appearing in the 2002 Official Edition, is hereby amended by adding at the end of clause (a) the following:—

, except for violation of the provisions of section thirty-four involving marihuana by a person eighteen years of age or older;.

SECTION 5. Section forty-one of chapter ninety-four C of the General Laws as appearing in the 2002 Official Edition, is hereby further amended by inserting in clause (c) after the words, “thirty-four” the following:—

, except for violation involving marihuana by a person eighteen years of age or older.

SECTION 6. Section two of chapter two hundred and eighty C of the General Laws as appearing in the 2002 Official Edition, is hereby amended by inserting at the end of the second paragraph the following:—

Fifty percent of the fines imposed under the provisions of section thirty -four of chapter ninety-four C, for the violation of said section by means of possession of marihuana shall be paid over to the treasury of the city or town wherein the offense was committed and the remaining fifty per cent shall be paid over to the state treasurer.

House 862

AN ACT TO IMPOSE A CIVIL FINE FOR THE 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:

SECTION 1. The first paragraph of section thirty-four of chapter ninety-four C of the General Laws as appearing in the 1998 Official Edition, is hereby amended by striking the fourth and fifth sentences thereof and inserting the following:—

Any person who violates this section by possession of less than an ounce of marihuana shall pay a civil assessment of one hundred dollars. Any person who violates this section by possession of an ounce or more of marijuana or a controlled substance in Class E of section thirty-one shall be punished by imprisonment in a house of correction for not more than six months or a fine of five hundred dollars, or both. Except for an offense involving less than an ounce of marihuana or a controlled substance in Class E of section thirty-one, whoever violates the provisions of this section after one or more convictions of a violation of this section or of a felony under any other provisions of this chapter, or of a corresponding provision of earlier law relating to the sale or manufacture of a narcotic drug as defined in said earlier law, shall be punished by imprisonment in a house of correction for not more than two years or by a fine of not more than two thousand dollars, or both.

SECTION 2. Section thirty-four of chapter ninety-four C of the General Laws as appearing in the 1998 Official Edition, is hereby amended by inserting after the last paragraph thereof the following:—

A violation of this section by possession of marihuana shall, the first clause of section seventy C of chapter two hundred and seventy-seven notwithstanding, be treated as a civil infraction and disposed of in accordance with the provisions of section seventy C of chapter two hundred and seventy-seven. An adjudication of responsibility shall neither be used as the basis for denial or revocation of any license granted by the Commonwealth of Massachusetts, nor be deemed a conviction for purposes of any disqualification or for any other purpose. A police officer who observes the occurrence of the civil infraction of possessing marihuana shall cite the violator for the civil infraction. If the violator is under the age of seventeen the citation shall be delivered to one of the parents or the legal guardian of said person, or to the clerk of the district court having jurisdiction. The citation shall be in the form provided for by General Laws chapter 90C, section 1. The procedures as set forth in the fifth paragraph of section 2 of chapter 90C for the delivery of a citation alleging one or more criminal automobile law violations to the clerk-magistrate of the district court where the violation occurred shall be followed. Except as provided herein the provision for the processing of citations set forth in chapter ninety C, sections 3(B)(2) and 3(C) shall apply. No person cited only for the civil infraction of possessing less than an ounce of marihuana shall be required to report to any probation officer, and no record of the case shall be entered in any probation records. Unless additional criminal offenses are set forth on the citation the violator may confess the civil violation of possessing less than an ounce of marihuana either personally or through a duly authorized agent or by mailing to the clerk of the district court having jurisdiction thereof the sum assessed either with the citation instead of requesting a hearing. The receipt by the district court clerk of such payment shall operate as a final disposition of the case. Any person cited to appear before the clerk of a district court who fails to pay the civil assessment provided hereunder within the time specified or, having requested a hearing fails to appear, or who after a hearing and finding as provided herein fails to pay the civil assessment or perform community service within thirty days, shall not have the matter treated as a civil violation as provided in this paragraph and shall be punished as if originally complained of for possessing an ounce or more of marihuana.

SECTION 3. Section forty-one of chapter ninety-four C of the General Laws as appearing in the 1998 Official Edition, is hereby amended by adding at the end of clause (a) the following:— , except for violation of the provisions of section thirty-four involving less than an ounce of marihuana by a person seventeen years of age or older;.

SECTION 4. Section forty-one of chapter ninety-four C of the General Laws as appearing in the 1998 Official Edition, is hereby further amended by inserting in clause (c) after the words, “thirty-four” the following:— , except for violation involving less than an ounce of marihuana by a person eighteen years of age or older,.