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M E M O R A N D U M

TO: District Court Judges, Clerk-Magistrates and Chief Probation Officers
FROM: Hon. Lynda M. Connolly, Chief Justice
DATE: December 23, 2008
SUBJECT: **Possession of marihuana after January 2, 2009**

As you know, on November 4, 2008, the voters approved Ballot Question 2, "An Act Establishing A Sensible State Marihuana Policy." The Governor and the Governor's Council certified that vote on December 3, 2008, which will cause it to go into effect thirty days later, on Friday, January 2, 2009, as St. 2008, c. 387.

The text of the new law is attached (with marginal headings supplied by this office). Also attached is the text of G.L. c. 40, § 21D (also with supplied marginal headings), which sets out the non-criminal citation procedure which, with a few modifications, the new law adopts by reference.

The text of Chapter 387 is also available on the internet at the Secretary of State's website at http://www.sec.state.ma.us/ele/ele08/ballot_questions_08/full_text.htm#2.

Detailed questions and answers to inform the public and law enforcement and municipal officials about the new law will shortly be available on the internet site of the Executive Office of Public Safety and Security (EOPSS) at http://www.mass.gov/?pageID=eopshomepage&L=1&L0=Home&sid=Eeops.

1. **Summary of provisions for all violators.** As of January 2, 2009, chapter 387 will decriminalize (but not legalize) possession of one ounce or less of marihuana (G.L. c. 94C, § 34) or tetrahydrocannabinol (THC). THC is the major active ingredient both of marihuana (a Class D substance) and hashish (a Class C substance). G.L. c. 94C, §§ 31, 32L & 34.

New G.L. c. 94C, §§ 32L–32N together provide for a $100 civil penalty for possession of one ounce or less of marihuana or THC, using the existing citation procedures found in G.L. c. 40, § 21D. Police may issue a civil citation to the violator, who within 21 days must then either (1) pay the $100 civil penalty to the city or town clerk or (2) send a request to the clerk-magistrate for a civil hearing before a magistrate or judge. The law also authorizes forfeiture of the contraband marihuana.

Chapter 387 directs that no such violator "shall be required to report to any probation officer, and no record of the case shall be entered in any probation records" or the Criminal Offender Record Information (CORI) system. It also includes a broad prohibition on collateral consequences:

> "Notwithstanding any general or special law to the contrary, possession of one ounce or less of marihuana shall only be a civil offense, subjecting an offender who is eighteen years of age or older to a civil penalty of one hundred dollars and forfeiture of the marihuana, but not to any other form of criminal or civil punishment or disqualification . . . .
>
> "Except as specifically provided in [St. 2008, c. 387], neither the Commonwealth nor any of its political subdivisions or their respective agencies, authorities or instrumentalities may impose any form of penalty, sanction or disqualification on an offender for possessing an ounce or less of marihuana. By way of illustration rather than limitation, possession of one ounce or less of marihuana shall not provide a basis to deny an offender student financial aid, public housing or any form of public financial assistance including unemployment benefits, to deny the right to operate a motor vehicle or to disqualify an offender from serving as a foster parent or adoptive parent." G.L. c. 94C, § 32L.

2. **Summary of additional provisions for violators under 18.** Chapter 387 includes several additional provisions that are applicable only to violators under age 18:

- ***Copy of citation to parent.*** A copy of the citation must be sent to the violator's custodial parent or guardian.

- ***Drug awareness program.*** In addition to paying the $100 civil penalty, violators under 18 must also attend a drug awareness program developed by the Department of Youth Services (DYS) and consisting of at least 4 hours of instruction or group discussion and 10 hours of community service, within one year of the offense.

  DYS is currently developing a referral mechanism to connect violators under 18 with such drug awareness programs. EOPSS is requesting police departments to include information about the program requirement and the DYS referral mechanism along with the additional copy of the citation that they are required to send to the violator's parent.

- ***Certificate of completion.*** If the violator's parent or guardian fails to file a certificate of completion of the drug awareness program with the court's clerk-magistrate within one year of the offense, the clerk-magistrate must send a notice to the violator, to his or her parent or guardian, and to the citing officer, to show cause why the $100 civil penalty should not be increased to $1000. The law limits the clerk-magistrate to consideration of three factors: "financial capacity to pay any increase, the offender's ability to participate in a compliant drug awareness program and the availability of a suitable drug awareness program." The violator and his or her parents are jointly and severally liable for the civil penalty if it is increased to $1000.

- ***Delinquency proceedings.*** The law does not authorize delinquency proceedings for possession of one ounce or less of marihuana, no matter how young the violator. Regardless of age, all violators who request a civil hearing on a citation will receive that hearing in the District Court. However, if the violator is a juvenile (i.e., under the age of 17) at the time of the offense, his or her failure to complete the required drug awareness program "may be a basis for delinquency proceedings" in the Juvenile Court.

3. **Possession offenses prior to January 2, 2009.** Possession of an ounce or less of marihuana *prior to January 2, 2009* is not affected by Chapter 387. It remains a criminal offense and may be prosecuted as such even after the new law goes into effect. See G.L. c. 4, § 6, Second ("The repeal of a statute shall not affect any punishment, penalty or forfeiture incurred before the repeal takes effect, or any . . . prosecution . . . pending at the time of the repeal for an offence committed, or for the recovery of a penalty . . . incurred, under the statute repealed"). Different prosecutors' offices may follow different policies with respect to terminating such prosecutions. That is the prerogative of the Executive Branch, and the case law does not permit judges to dismiss such charges on policy grounds over prosecution objection. However, such offenses are eligible for decriminalized disposition pursuant to G.L. c. 277, § 70C unless the prosecution objects in writing.

4. **Other related criminal offenses unaffected.** The new law does not affect existing criminal statutes, ordinances or by-laws that prohibit the operation of a motor vehicle or boat under the influence of marihuana. Nor does it affect prosecutions for possessing more than one ounce of marihuana (G.L. c. 94C, § 34), distributing marihuana in any amount or possessing marihuana in any amount with intent to distribute (§ 32C), or trafficking in 50 lbs. or more of marihuana (§ 32E[a]). Such violations remain punishable as criminal offenses.

The MassCourts offense description and charging language for the criminal offense of marihuana possession have been amended for offenses committed on and after January 2, 2009, to reflect the added element that more than an ounce was possessed. The amended offenses will read as follows:

> 94C/34/L **MARIHUANA +1 OZ, POSSESS** c94C §34 (Effective 1/2/09)
> on **[DATE OF OFFENSE:]**, not being authorized by law, did knowingly or intentionally possess more than one ounce of marihuana, as defined in Class D of G.L. c.94C, §31, in violation of G.L. c.94C, §34. (PENALTY if no prior conviction under c. 94C or prior law relating to narcotic or harmful drugs: probation if defendant consents, unless judge files memorandum stating reasons for not so doing; upon successful completion, case to be dismissed. PENALTY otherwise: imprisonment not more than 6 months; or $500; or both.)
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> 94C/34/M **MARIHUANA +1 OZ, POSSESS, SUBSQ. OFF.** c94C §34 (Effective 1/2/09)
> on **[DATE OF OFFENSE:]**, not being authorized by law, did knowingly or intentionally possess more than one ounce of marihuana, as defined in Class D of G.L. c.94C, §31, the defendant having previously been convicted of violating the provisions of G.L. c.94C, §34, or of a felony under another provision of G.L. c.94C, or of a corresponding provision of prior law relative to the sale or manufacture of a narcotic drug, in violation of G.L. c.94C, §34. (PENALTY: imprisonment not more than 2 years; or not more than $2000; or both.)

After January 2, 2009, any application for a criminal complaint for possession of more than an ounce of marihuana must include an indication that the amount possessed was more than one ounce, since Mass. R. Crim. P. 3(g) requires that the factual basis for the magistrate's probable cause finding must be documented.

5. **No effect on possession of Class E drugs.** Marihuana is a Class D drug and hashish a Class C drug. In G.L. c. 94C, § 34, the penalty provisions for marihuana possession appear in the same sentence as the penalties for possession of Class E drugs (compounds containing small amounts of opium, codeine or two other opioids, plus prescription drugs not in any other Class). Chapter 387 amends that sentence of § 34 to read as follows (added language is <u>underscored</u>):

> "Any person who violates this section by possession of more than one ounce of marihuana 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." G.L. c. 94C, § 34, fourth sentence.

The amendment raises the question whether the newly-added phrase "more than one ounce of" limits only the word "marihuana" or also the phrase "or a controlled substance in Class E." The sentence structure and absence of a comma after the word "marihuana" might suggest that it modifies both. However, that reading would result in doubling the current criminal penalty for possessing an ounce or less of a Class E drug, which would then fall under the general penalty provision found earlier in § 34:

> "Except as provided in Section 32L of this Chapter or as hereinafter provided, any person who violates this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or by both such fine and imprisonment." G.L. c. 94C, § 34, second sentence.

Since there is no suggestion in Chapter 387 that this result was intended, it is probable that the added phrase "more than one ounce of" was intended to apply only to marihuana and not to Class E drugs.

6. **Municipalities may adopt ordinances and by-laws prohibiting public use.** The new law specifically allows cities and towns the option of adopting:

> "ordinances or bylaws regulating or prohibiting the consumption of marihuana . . . in public places and providing for additional penalties for the public use of marihuana . . . ."

The Attorney General's Office has developed a model by-law for municipalities that wish to do so, which is available on the EOPSS internet website. Such ordinances or by-laws may provide either for a criminal fine of not more than $300 (see G.L. c. 40, § 21) or for non-criminal disposition under G.L. c. 40, § 21D.

7. **Marihuana possession when a criminal charge or CMVI is also involved.** A civil charge of marihuana possession cannot "piggyback" on an accompanying criminal case. Unlike the CMVI statute (G.L. c. 90C, § 3[C]), the new law does not permit a civil charge of possessing an ounce or less of marihuana to be included as a count in a criminal complaint for any accompanying criminal charges. Accordingly, the marihuana possession charge must be cited and proceed on a separate track under the § 21D non-criminal procedure.

A civil charge of marihuana possession may be joined in a single § 21D citation with municipal ordinance or by-laws violations that are civilly citable under § 21D. A civil charge of marihuana possession may *not* be cited in a G.L. c. 90C motor vehicle citation, with or without an accompanying CMVI or criminal motor vehicle offense.

8. **The § 21D citation process.** Many district courts are already familiar with the non-criminal citation procedure in G.L. c. 40, § 21D because one or more of their cities and towns have already adopted the § 21D procedure for municipal ordinance or by-law violations. Municipalities that are

unfamiliar with § 21D procedures may find detailed guidance in "A Guide for Using Non-Criminal Disposition for By-Law Enforcement," published in 1991 by the former Executive Office of Communities and Development" and available on the EOPSS internet site.

Courts may encounter some of the following issues in implementing the § 21D citation process.

- ***Local adoption of § 21D not required.*** Usually a city or town must adopt an enabling ordinance or by-law in order to use the § 21D procedure. However, the Attorney General's Office has indicated that a municipality need not formally adopt § 21D to use its procedures for possession of an ounce or less of marihuana, since G.L. c. 94C, § 32L itself authorizes municipalities to enforce the new law "in a manner consistent with the non-criminal disposition provision of" § 21D.

  A municipality *is* required to formally adopt § 21D before using § 21D procedures to enforce any local ordinance or by-law, including any ordinance or by-law prohibiting public use of marihuana.

- ***§ 21D citation forms.*** Section 21D and G.L. c. 94C, § 32N make each city or town responsible for printing its own § 21D citation books, after the citation form has been approved by the Chief Justice of the District Court (and for Boston, the Chief Justice of the Boston Municipal Court). Any municipality which is using § 21D procedures for the first time may either adopt the District Court's model citation form (which is reproduced on the EOPSS website) or may request approval of a locally-developed citation form.

  State Police troopers are being issued books of § 21D citation forms designed to be used anywhere in the Commonwealth, with space for the citing officer to fill in the addresses of the appropriate municipal clerk and court clerk-magistrate.

- ***Magistrate hearings.*** As with all civil infractions, in any § 21D hearing before a magistrate, the standard of proof is preponderance of the evidence and strict rules of evidence need not be applied. However, unlike CMVI hearings, § 21D does not provide that the citation itself is prima facie evidence, or for any de novo appeal to a judge. Nor does it specify any appellate route. (It appears that a certiorari action in Superior Court may be the only available review mechanism.)

  At any civil hearing, the prosecution must prove by a preponderance of evidence that the violator possessed what was in fact an ounce or less of marihuana or THC. The preponderance standard (more likely than not) is higher than the probable cause standard but less than proof beyond a reasonable doubt. There is at this time no appellate guidance on this issue, and magistrates may differ on the ways in which this standard may be met.

  Section 21D provides that a violator who is found responsible at a civil hearing must then pay the civil penalty "as aforesaid," apparently referring to the previous paragraph which indicates that payment may be made "either personally or through a duly authorized agent or

by mailing to the city or town clerk" the amount of the civil penalty. In addition, G.L. c. 94C, § 34N provides that all revenues under the new law inure to the city or town where the violation occurred, regardless of which police department issued the citation. Since these are municipal revenues, it seems reasonable to conclude that after a hearing at which the violator is found responsible he or she should be directed to pay the $100 civil penalty to the city or town clerk rather than to the court.

As G.L. c. 94C, § 32L provides, the results of any civil hearing should not be entered in the probation department's CARI system or reported on an abstract to the Registry of Motor Vehicles.

- ***Coordination with municipal officials.*** Twenty-one days after their issuance, all citations for marihuana possession will fall into one of four categories: (1) citations issued to violators age 18 or over which were paid to the town clerk and require no further action; (2) citations issued to violators under age 18 which were paid to the town clerk but still require a drug awareness program completion certificate to be filed with the clerk-magistrate within one year; (3) citations as to which the violator has requested a civil hearing from the clerk-magistrate; and (4) citations that were ignored by the violator.

  Clerk-magistrates should cooperate with local police liaisons and municipal clerks' offices as necessary to assist them to triage which citations fall into each of these four categories. Together the police and the municipal clerk should have the information necessary to determine which citations are in each category, except for the list of violators under age 18 who have filed the required certificate of program completion with the clerk-magistrate. For that reason, it appears that the simplest arrangement is for clerk-magistrates to provide each police liaison at least monthly with copies of all program completion certificates which have been filed with the clerk-magistrate. Police liaisons or municipal clerks will then be able to identify which citations require further enforcement action.

  The clerk-magistrate should retain a copy of all such program completion certificates. If a violator under age 18 fails to file the required certificate, G.L. c. 94C, § 34N requires the clerk-magistrate to schedule and notify the offender, a parent or guardian and the citing police department of a show cause hearing to determine whether the civil penalty should be increased to $1000.

- ***Consequences of default.*** It is not clear from the new law what options are available to the citing police department when a violator neither pays the citation nor requests a hearing, or when a violator under 18 (or his or her parent or guardian) fails to file the program completion certificate or, if required, to pay the $1000 increased civil penalty. The existing enforcement provision of § 21D provides that, upon default, "the enforcing person who issued the original notice . . . shall determine whether to apply for the issuance of a [criminal] complaint for the violation of the appropriate ordinance, by-law, rule or regulation." However, possession of an ounce or less of marihuana or THC is not a violation of a municipal "ordinance, by-law, rule or regulation" but of the General Laws.

More significantly, the criminal offense of marihuana possession has now been statutorily redefined and limited to "possession of more than one ounce of marihuana." G.L. c. 94C, § 34. Possession of an ounce or less "shall only be a civil offense" and may not subject the violator "to any other form of criminal or civil punishment or disqualification" apart from the $100 civil penalty (and, for an offender under 18, the required drug awareness program). G.L. c. 94C, § 32L. The new law expressly forbids "the Commonwealth [and] any of its political subdivisions or their respective agencies, authorities or instrumentalities [to] impose any form of penalty, sanction or disqualification on an offender for possessing an ounce or less of marihuana." *Id.* The word "penalty"is the traditional term for a criminal sentence. See Black's Law Dictionary 1290 (Rev. 4th ed. 1968) ("a punishment imposed by statute as a consequence of the commission of an offense").

It is also doubtful whether the statutory language would permit such a default to be treated as a *criminal contempt*, which is "exclusively punitive" rather than coercive in purpose. *Furtado v. Furtado*, 380 Mass. 137, 141, 402 N.E.2d 1024, 1030 (1980).

Civil contempt proceedings may be available, since they are intended to enforce compliance rather than punish, but in practice the mechanics of pleadings, filing fees and service of a civil contempt summons (and potentially a civil capias) may prove daunting. See Mass. R. Civ. P. 65.3 (civil contempt proceedings do not require a filing fee when the contempt arises out of an existing civil action; summons and complaint must be served in accordance with Mass. R. Civ. P. 4 "unless the court orders some other method of service or notice"). See also G.L. c. 22C, § 10 (state police officers have "all the powers of constables, except the service of civil process"); G.L. c. 41, § 98 (municipal police have "all the powers and duties of constables except serving and executing civil process"); G.L. c. 262, §§ 2 & 4C (Commonwealth but not municipalities are exempt from filing fee and surcharge for entry of civil "complaint, . . . petition or other action").

9. **Probation violations.** Does the new law permit a judge to revoke probation based solely on use or possession of an ounce or less of marihuana? (Note that the new law, in decriminalizing "possession," expands the traditional definition of that term to include having metabolized marihuana or THC in one's bloodstream.)

As we know, conditions of probation can prohibit behavior that is otherwise legal (e.g., drinking alcohol). When such conditions are violated, probation may be revoked and the original sentence imposed; the court is not punishing the probationer with any additional criminal "penalty" for the probation violation but simply implementing the original sentence for the underlying offense.

However, it is less certain whether revoking probation solely for use or possession of an ounce or less of marihuana would run afoul of the new prohibition in G.L. c. 94C, § 32L against imposing "any form of . . . sanction . . . on an offender for possessing an ounce or less of marihuana."

If a sentencing judge decides that prohibiting such marihuana use or possession is permissible as a condition of probation, I suggest that the judge do so expressly as a special condition of probation.

The general condition to "obey all local, state and federal laws" might eventually prove insufficient to provide adequate notice that such use or possession is prohibited as a condition of probation.

10. **Denial of a firearms license.** EOPSS has advised police chiefs that a civil violation of possessing an ounce or less of marihuana after January 2, 2009, may not be used to disqualify an applicant for a firearms license, since G.L. c. 94C, § 32L prohibits any "disqualification" based on such violations. Prior criminal convictions for marihuana possession may still be considered, and EOPSS suggests that police departments still "may be able to reject an applicant on the ground that he or she . . . has a substance abuse problem, or is suspected to be linked to drug dealing."

AN ACT ESTABLISHING A SENSIBLE STATE MARIHUANA POLICY

St. 2008, c. 387 (effective January 2, 2009)

BE IT ENACTED BY THE PEOPLE, AND BY THEIR AUTHORITY AS FOLLOWS:

- *Title*

SECTION 1. This Act consists of five sections which together shall be known as "An Act Establishing A Sensible State Marihuana Policy."

SECTION 2. Chapter 94C of the General Laws is hereby amended by inserting therein a new Section 32L, making the possession of one ounce or less of marihuana punishable only by civil penalties and forfeiture. That new section shall read as follows:

G.L. c. 94C, § 32L

- *Possession of 1 oz. or less of marihuana only a civil offense*
- *Subject to $100 civil penalty and no other "criminal or civil punishment or disqualification"*
- *If offender under 18:*
  - *parent to be sent copy of citation (§32N)*
  - *must also complete drug awareness program and community service within 1 year, or civil penalty may be increased to $1000, for which parents are jointly and severally liable (§32M & 32N)*
- *Commonwealth and municipalities may not impose any other "penalty, sanction or disqualification"*
- *May not be recorded in CORI system*

Section 32L. Notwithstanding any general or special law to the contrary, possession of one ounce or less of marihuana shall only be a civil offense, subjecting an offender who is eighteen years of age or older to a civil penalty of one hundred dollars and forfeiture of the marihuana, but not to any other form of criminal or civil punishment or disqualification. An offender under the age of eighteen shall be subject to the same forfeiture and civil penalty provisions, provided he or she completes a drug awareness program which meets the criteria set forth in Section 32M of this Chapter. The parents or legal guardian of any offender under the age of eighteen shall be notified in accordance with Section 32N of this Chapter of the offense and the availability of a drug awareness program and community service option. If an offender under the age of eighteen fails within one year of the offense to complete both a drug awareness program and the required community service, the civil penalty may be increased pursuant to Section 32N of this Chapter to one thousand dollars and the offender and his or her parents shall be jointly and severally liable to pay that amount.

Except as specifically provided in "An Act Establishing A Sensible State Marihuana Policy," neither the Commonwealth nor any of its political subdivisions or their respective agencies, authorities or instrumentalities may impose any form of penalty, sanction or disqualification on an offender for possessing an ounce or less of marihuana. By way of illustration rather than limitation, possession of one ounce or less of marihuana shall not provide a basis to deny an offender student financial aid, public housing or any form of public financial assistance including unemployment benefits, to deny the right to operate a motor vehicle or to disqualify an offender from serving as a foster parent or adoptive parent. Information concerning the offense of possession of one ounce or less of marihuana shall not be deemed "criminal offender record information," "evaluative information," or "intelligence information" as those terms are defined in Section 167 of Chapter 6 of the General Laws and shall not be recorded in the Criminal Offender Record Information system.

- *"Marihuana" includes THC*
- *"Possession" includes having in bloodstream*

As used herein, "possession of one ounce or less of marihuana" includes possession of one ounce or less of marihuana or tetrahydrocannabinol and having cannabinoids or cannibinoid metabolites in the urine, blood, saliva, sweat, hair,

- *Existing criminal laws on OUI-marihuana, possession of +1 oz., distribution of and trafficking in marihuana remain valid*

- *Local ordinances or bylaws penalizing public use permissible*

fingernails, toe nails or other tissue or fluid of the human body. Nothing contained herein shall be construed to repeal or modify existing laws, ordinances or bylaws, regulations, personnel practices or policies concerning the operation of motor vehicles or other actions taken while under the influence of marihuana or tetrahydrocannabinol, laws concerning the unlawful possession of prescription forms of marihuana or tetrahydrocannabinol such as Marinol, possession of more than one ounce of marihuana or tetrahydrocannabinol, or selling, manufacturing or trafficking in marihuana or tetrahydrocannabinol. Nothing contained herein shall prohibit a political subdivision of the Commonwealth from enacting ordinances or bylaws regulating or prohibiting the consumption of marihuana or tetrahydrocannabinol in public places and providing for additional penalties for the public use of marihuana or tetrahydrocannabinol.

SECTION 3. Chapter 94C of the General Laws is further amended by inserting a new Section 32M emphasizing education concerning the effects of drug usage for youthful offenders. That new section shall read as follows:

G.L. c. 94C, § 32M

- *Offenders under 18 must also within 1 year complete a drug awareness program with a minimum 4 classroom hours and 10 community service hours*
- *Juveniles under 17 who fail to do so may also be subject to delinquency proceedings*
- *DYS to develop drug awareness programs*

Section 32M. An offender under the age of eighteen is required to complete a drug awareness program within one year of the offense for possession of one ounce or less of marihuana. In addition to the civil penalties authorized by Section 32L and 32N of this Chapter, the failure of such an offender to complete such a program may be a basis for delinquency proceedings for persons under the age of seventeen at the time of their offense. The drug awareness program must provide at least four hours of classroom instruction or group discussion and ten hours of community service. In addition to the programs and curricula it must establish and maintain pursuant to Section 7 of Chapter 18A of the General Laws, the bureau of educational services within the department of youth services or any successor to said bureau shall develop the drug awareness programs. The subject matter of such drug awareness programs shall be specific to the use and abuse of marihuana and other controlled substances with particular emphasis on early detection and prevention of abuse of substances.

SECTION 4. Chapter 94C is further amended by inserting a new Section 32N providing for enforcement of the sensible marihuana policy at the local level, utilizing the non-criminal disposition procedures specified in Section 21D of Chapter 40 of the General Laws, so far as apt.

That new section shall read as follows:

G.L. c. 94C, § 32N

- *Police to enforce "consistent with" G.L. c.40, §21D disposition provisions, as modified*

Section 32N. The police department serving each political subdivision of the Commonwealth shall enforce Section 32L in a manner consistent with the non-criminal disposition provisions of Section 21D of Chapter 40 of the General Laws, as modified in this Section.

The person in charge of each such department shall direct the department's public safety officer or another appropriate member of the department to function as a liaison between the department and persons providing drug awareness

- *Police liaison to programs & clerk-magistrate*
- *Police dept. to issue non-criminal citation books*

programs pursuant to Section 32M of this Chapter and the Clerk-Magistrate's office of the District Court serving the political subdivision. The person in charge shall also issue books of non-criminal citation forms to the department's officers which conform with the provisions of this Section and Section 21D of Chapter 40 of the General Laws.

- *If offender under 18:*
  - *parent to be sent copy of citation*
  - *if program completion certificate not filed within 1 year, clerk-magistrate must issue order to show cause on increase to $1000.*
  - *Clerk-magistrate may consider financial ability to pay $1000, ability to participate, and program availability*
- *Revenues from civil penalties inure to municipality*

In addition to the notice requirements set forth in Section 21D of Chapter 40 of the General Laws, a second copy of the notice delivered to an offender under the age of eighteen shall be mailed or delivered to at least one of that offender's parents having custody of the offender, or, where there is no such person, to that offender's legal guardian at said parent or legal guardian's last known address. If an offender under the age of eighteen, a parent or legal guardian fails to file with the Clerk of the appropriate Court a certificate that the offender has completed a drug awareness program in accordance with Section 32M within one year of the relevant offense, the Clerk shall notify the offender, parent or guardian and the enforcing person who issued the original notice to the offender of a hearing to show cause why the civil penalty should not be increased to one thousand dollars. Factors to be considered in weighing cause shall be limited to financial capacity to pay any increase, the offender's ability to participate in a compliant drug awareness program and the availability of a suitable drug awareness program. Any civil penalties imposed under the provisions of "An Act Establishing A Sensible State Marihuana Policy" shall inure to the city or town where the offense occurred.

G.L. c. 94C, § 34

- *Possession of 1 oz. or less of marihuana decriminalized*

SECTION 5. Chapter 94C is further amended by amending its pre-existing penalty provision to conform to the sensible marihuana policy established by this Act. Section 34 of Chapter 94C as appearing in the 2006 official edition is amended by inserting after the word "Except" appearing in line 5 the words "as provided in Section 32L of this Chapter or" and by inserting the words "more than one ounce of" before the word "marihuana" appearing in line 16.

- *G.L. c. 94C, § 34 ¶ 1 as amended (with changes bold & underscored)*

[As amended, the first paragraph of G.L. c. 94C, § 34 now reads:]

[Section 34. No person knowingly or intentionally shall possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the provisions of this chapter. Except **as provided in Section 32L of this Chapter or** as hereinafter provided, any person who violates this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or by both such fine and imprisonment. Any person who violates this section by possessing heroin shall for the first offense 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, and for a second or subsequent offense shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than five years or by a fine of not more than five thousand dollars and imprisonment in a jail or house of correction for not more than two and one-half years. Any person who violates this section by possession of **more than one ounce of** marihuana 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 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.]

G.L. c. 40, § 21D

Noncriminal disposition of ordinance, by-law, rule or regulation violations

- *Municipalities may adopt ordinances or by-laws authorizing or requiring use of the § 21D citation procedure for noncriminal disposition of specified ordinance, by-law or rules violations*

Section 21D. Any city or town may by ordinance or by-law not inconsistent with this section provide for non-criminal disposition of violations of any ordinance or by-law or any rule or regulation of any municipal officer, board or department the violation of which is subject to a specific penalty.

- *Citations returnable within 21 days*

Any such ordinance or by-law shall provide that any person taking cognizance of a violation of a specific ordinance, by-law, rule or regulation which he is empowered to enforce, hereinafter referred to as the enforcing person, as an alternative to initiating criminal proceedings shall, or, if so provided in such ordinance or by-law, may, give to the offender a written notice to appear before the clerk of the district court having jurisdiction thereof at any time during office hours, not later than twenty-one days after the date of such notice. Such notice shall be in triplicate and shall contain the name and address, if known, of the offender, the specific offense charged, and the time and place for his required appearance. Such notice shall be signed by the enforcing person, and shall be signed by the offender whenever practicable in acknowledgment that such notice has been received.

- *Delivery of citation to offender*

The enforcing person shall, if possible, deliver to the offender a copy of said notice at the time and place of the violation. If it is not possible to deliver a copy of said notice to the offender at the time and place of the violation, said copy shall be mailed or delivered by the enforcing person, or by his commanding officer or the head of his department or by any person authorized by such commanding officer, department or head to the offender's last known address, within fifteen days after said violation. Such notice as so mailed shall be deemed a sufficient notice, and a certificate of the person so mailing such notice that it has been mailed in accordance with this section shall be prima facie evidence thereof.

- *Police to send one copy of all citations to clerk-magistrate*

At or before the completion of each tour of duty, or at the beginning of the first subsequent tour of duty, the enforcing person shall give to his commanding officer or department head those copies of each notice of such a violation he has taken cognizance of during such tour which have not already been delivered or mailed by him as aforesaid. Said commanding officer or department head shall retain and safely preserve one copy and shall, at a time not later than the next court day after such delivery or mailing, deliver the other copy to the clerk of the court before which the offender has been notified to appear. The clerk of each district court and of the Boston municipal court shall maintain a separate docket of such notices to appear.

- *Violator's options within 21 days:*

  – *Pay citation to city or town clerk, who notifies clerk-magistrate.*

    Violation not to be entered in probation records.

Any person notified to appear before the clerk of a district court as hereinbefore provided may so appear and confess the offense charged, either personally or through a duly authorized agent or by mailing to the city or town clerk of the municipality within which the violation occurred together with the notice such specific sum of money not exceeding three hundred dollars as the town shall fix as penalty for violation of the ordinance, by-law, rule or regulation. Such payment shall if mailed be made only by postal note, money order or check. Upon receipt of such notice, the city or town clerk shall forthwith notify the district court clerk of such payment and the receipt by the district court clerk of such notification shall operate as a final disposition of the case. An appearance under this paragraph shall not be deemed to be a criminal proceeding. No person so notified to appear before the clerk of a district court shall be required to report to any probation officer, and no record of the case shall be entered in any probation records.

  – *Send request to clerk-magistrate for hearing before a magistrate or judge.*

    Violation not to be entered in probation records.

If any person so notified to appear desires to contest the violation alleged in the notice to appear and also to avail himself of the procedure established pursuant to this section, he may, within twenty-one days after the date of the notice, request a hearing in writing. Such hearing shall be held before a district court judge, clerk, or assistant clerk, as the court shall direct, and if the judge, clerk, or assistant clerk shall, after hearing, find that the violation occurred and that it was committed by the person so notified to appear, the person so notified shall be permitted to dispose of the case by paying the specific sum of money fixed as a penalty as aforesaid, or such lesser amount as the judge, clerk or assistant clerk shall order, which payment shall operate as a final disposition of the case. If the judge, clerk, or assistant clerk shall, after hearing, find that violation alleged did not occur or was not committed by the person notified to appear, that finding shall be entered in the docket, which shall operate as a final disposition of the case. Proceedings held pursuant to this paragraph shall not be deemed to be criminal proceedings. No person disposing of a case by payment of such a penalty shall be required to report to any probation office as a result of such violation, nor shall any record of the case be entered in the probation records.

  – *If violator fails to do either, officer is to determine whether to apply for criminal complaint for original violation*

If any person so notified to appear before the clerk of a district court fails to pay the fine provided hereunder within the time specified or, having appeared, does not confess the offense before the clerk or pay the sum of money fixed as a penalty after a hearing and finding as provided in the preceding paragraph, the clerk shall notify the enforcing person who issued the original notice, who shall determine whether to apply for the issuance of a complaint for the violation of the appropriate ordinance, by-law, rule or regulation.

- *§ 21D procedure available in BMC, District and Housing Cts.*

As used in this section the term "district court" shall include, within the limits of their jurisdiction, the municipal court of the city of Boston and the divisions of the housing court department of the trial court.

- *Citation forms to be approved by Chief Justices of District Ct. and/or BMC*
- *§21D citation forms may also be used for bicycle, jaywalking, dog and trash disposal civil infractions*
- *§21D revenues inure to municipality*
- *§21D not available for traffic infractions*

The notice to appear provided for herein shall be printed in such form as the chief justice of the municipal court of the city of Boston shall prescribe for said court, and as the chief justice of the district courts shall prescribe for the district courts. Said notice may also include notice of violations pursuant to section eleven C of chapter eighty-five [bicycle infractions], section eighteen A of chapter ninety [jaywalking infractions], section one hundred and seventy-three A of chapter one hundred and forty [dog ordinance infractions], and section sixteen A of chapter two hundred and seventy [trash disposal infractions]. Any fines imposed under the provisions of this section shall enure to the city or town for such use as said city or town may direct. This procedure shall not be used for the enforcement of municipal traffic rules and regulations. Chapter ninety C shall be the exclusive method of enforcement of municipal traffic rules and regulations.