A Bill to Repeal Criminal Drug Laws: Replacing Prohibition with Regulation

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A BILL TO REPEAL CRIMINAL DRUG LAWS: REPLACING PROHIBITION WITH REGULATION

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Conventional wisdom obliges elected officials to beat the narcodrums loudly and incessantly, and to demand increasingly harsh criminal penalties for the sale and use of illegal drugs. It is reasonable to wonder why I, a senator, would dare submit a bill to the New York State Legislature which would regulate all drugs currently proscribed as illegal in precisely the same manner as alcohol.

The short answer is that the use of the criminal law to control drug use has not, and never will, have anything more than a costly and marginal impact on drug consumption. Despite all the public hyperventilation, drug consumption remains a private, consensual

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1. See, e.g., OFFICE OF NAT'L DRUG CONTROL POL'Y, NATIONAL DRUG CONTROL STRATEGY (1989) [hereinafter BENNETT PLAN]. The Bennett Plan advocates long prison sentences for large scale dealers and the use of other forms of punishment for more casual users. Id. at 24-25. These measures include military style boot camps, halfway houses, house arrests and the imposition of fines. Id. at 25. Other penalties against first time and casual users include publication of violators' names in local newspapers, suspension of their driver's license, and notification of a violator's employer. Id. The stated goal of these sanctions is to deter drug use without putting a financial strain on the criminal justice system. Id. at 24-26.


3. For a brief description of the drugs covered by the bill, see infra text accompanying note 13. It is beyond the scope of this Article to speculate on the impact between New York's legalized drug laws and federal drug laws.

and voluntary act beyond the effective reach of policemen in a democratic society. The upshot of our 75-year obsession with the criminal law to restrict drug use is clear to all: uncontrolled illegal distribution of drugs of increased potency; artificial creation of criminals who have done nothing more misanthropic than buy and sell substances that millions of ordinary citizens voluntarily choose to use every day; under-investigation, under-prosecution and under-punishment of predatory assaultive and non-consensual offenses because we have devoted too much of our enforcement resources to consensual drug offenses; a concomitant disrespect for the law and cynicism about the efficacy and honesty of law enforcement and judicial personnel; and a distressing dilution of our civil liberties as increasingly desperate police seek increasingly invasive powers to accomplish their hopeless job of enforcing unenforceable laws.

Conventional political wisdom has thus produced an unconventionally unwise policy—a demonstrably futile and failed policy which has made daily life worse, not better, for my constituents. I would fail the hopes and expectations of my constituents if I did not seek and propose a new and better way of responding legislatively to their true concerns and interests. The plain and simple truth is that the drug laws do far more damage to my constituents' social fabric than the drugs. Martin Luther King once said segregation was on its
deathbed and the only thing left to decide was how expensive the funeral was going to be.\textsuperscript{12} King’s words are equally apt to describe the current state of drug prohibitionism.

Although the text of my bill is lengthy, its structure and key provisions are remarkably simple and straightforward. First, the bill repeals all provisions of current law which denominate specified substances as illegal—including all those substances widely consumed as recreational drugs, such as heroin, cocaine, marijuana—as well as their possession and sale.\textsuperscript{13}

Second, the bill allows the sale, without prescription,\textsuperscript{14} of the formerly illegal substances through specially licensed pharmacists and physicians.\textsuperscript{15} There are, of course, restrictions, and those restrictions parallel those that have long been in place with respect to the sale of alcohol: no licensed outlet may be located within a specified distance of schools\textsuperscript{16} or places of worship,\textsuperscript{17} and no sales would be allowed to persons younger than the current drinking-age threshold of twenty-one.\textsuperscript{18}

Third, the bill would establish the Controlled Substances Authority (CSA), a full-time, salaried five-person body appointed by the governor,\textsuperscript{19} whose functions would parallel almost precisely those of the State Liquor Authority (SLA).\textsuperscript{20} The SLA was created in 1934 to control the manufacture, distribution and sale of alcohol\textsuperscript{21} after the repeal of the 21st Amendment prohibiting alcoholic beverages, and took the market in alcohol out of the hands of a violent, greedy and tax-evading underworld.

The CSA, like its counterpart, the SLA, would promulgate rules and regulations\textsuperscript{22} dealing with such matters as (a) license ap-

\textsuperscript{12} See King, We Cannot Afford To Use Violence, N.Y. Times, Jan. 15, 1982, A23, col. 1.
\textsuperscript{13} S. 1918, \textit{supra} note 2, tits. 2, 3.
\textsuperscript{14} \textit{Id.} tit. 2, § 565.
\textsuperscript{15} \textit{Id.} tit. 2, § 568.
\textsuperscript{16} \textit{Id.} tit. 2, §§ 568(5), 571.
\textsuperscript{17} \textit{Id.} tit. 2, § 568(5).
\textsuperscript{18} \textit{Id.} tit. 1, §§ 569-70; see N.Y. \textit{Alco. Bev. Cont. Law} § 65-a (McKinney 1987) (originally enacted as 1934 N.Y. \textit{Laws} 478 establishing the minimum drinking age at 18; amended by 1982 N.Y. \textit{Laws} 159, § 2, raising the minimum age to 19 years; amended by 1985 N.Y. \textit{Laws} 274, § 2, raising the minimum age to 21 years).
\textsuperscript{19} S. 1918, \textit{supra} note 2, tit. 1, §§ 555-62.
\textsuperscript{20} N.Y. \textit{Exec. Law} §§ 270-274 (McKinney 1982).
\textsuperscript{22} S. 1918, \textit{supra} note 2, tit. 1, § 562(12).
lication and retention procedures;\(^2\) (b) record-keeping, security and personnel requirements designed to discourage diversions from the licensed distribution system;\(^2\) (c) limitations on hours of operation, advertising, and one-time sale quantities;\(^2\) (d) standards of quality control and the purity of the substances to be dispensed;\(^2\) (e) packaging and labelling requirements, including suitably prominent warnings and safe-use recommendations;\(^2\) and (f) pricing.\(^2\) These regulations would be analogous to the regulations for alcohol promulgated by the Alcohol Beverage Control Board.\(^2\)

All of these features are currently in place to control, and make as safe as possible, the sale and consumption of alcohol which, as we learned 60 years ago, the citizenry is going to continue using regardless of criminal laws prohibiting it. This country thus sensibly ac-

\(^{23}\) See id. § 562(1)(2)(7), tit. 2, §§ 568, 574, 575, tit. 3, §§ 585-90, tit. 4, §§ 600-03.


\(^{25}\) See id. tit. 1, § 562(12) (authorizing the promulgation of "such rules and regulations as shall be necessary to accomplish the purposes and powers authorized by this article.").

\(^{26}\) See id. tit. 1, §§ 562(4), 587(1)(d), tit. 3, § 591, tit. 4, § 601(2)(b),(3)(d).

\(^{27}\) See id. tit. 3, § 591.

\(^{28}\) See supra note 26.

\(^{29}\) Cf. N.Y. Comp. Codes R. & Regs. tit. 9, §§ 63.4, 63.5, 63.8 (1985) (regulating advertising by wholesale liquor licensees); id. §§ 99.1-99.8 (1977) (providing further regulation of advertising); id. § 63.6 (1985) (regulating hours); id. § 63.7 (1985) (regulating extension of credit); id. §§ 65.4, 65.5 (1980) (regulating prices to retailers and wholesalers); id. § 65.6 (1969) (regulating price paid by seller); id. § 66.1 (1978) (prohibiting certain sales based on prices); id. § 66.8 (1978) (regulating distribution of free samples); id. §§ 83.1-83.4 (1983) (regulating signs); id. § 84.1 (1984) (providing labelling requirements); id. §§ 84.2-84.4 (1977) (providing further labelling requirements); id. § 84.6 (1984) (prohibiting statements of the alcoholic content of beer); id. §§ 86.3-86.6 (1981) (regulating promotional activities).

The CSA should also promulgate requirements that specific warnings be included with every unit sold. For powdered cocaine, for example, the warning might be as follows:

**WARNING:** This drug has addictive qualities, and frequent use may lead to physical or psychological dependence. Pregnant women should avoid its use as this drug may cause serious birth defects in your child, including brain damage, low birth weight and addiction in your child. This drug may also cause seizures, convulsions, strokes, and even death.

The CSA should also issue standards for normal dosage units, to be developed after consultations with medical and other drug-use experts. One physician has already drafted a model legalization statute with recommended dosage units, which could serve as a useful starting point by the CSA. See Lord, *A Practical Model for Drug Regulation*, in Drug Policy 1989-1990: A Reformer's Catalogue 371, 391-95 (A. Trebach & K. Zeese eds. 1989).

The Lord model incorporates all these details regarding recommended dosages, as well as those dealing with advertising and warnings, into the legislative enactment itself. *Id. at 371-96.* My bill, on the other hand, leaves these refinements to the expertise of the CSA, which like most state regulatory agencies, will be better equipped than the legislature at large to calmly and efficiently study, discuss and promulgate such detailed rules. *See S. 1918, supra note 2, tit. 1, § 562(12).*
knowledged the inevitable, and took limited steps to eliminate unnecessary damage caused, not by alcohol consumption, but by the laws enacted to prohibit it. Today, no innocent pedestrian is caught in a shoot-out between alcohol bootleggers; no innocent family is executed by vengeful mobs trafficking in booze; no unwitting casual drinker dies from scotch adulterated with wood alcohol by unscrupulous underground distillers; no "revenuer" kicks down the front door of a citizen's house in search of a forbidden fifth of rye.

We still have, of course, a small segment of users who eventually abuse alcohol and jeopardize their own health and careers. However, we do not deal with alcoholics or with those who sold them alcohol as criminals suitable for draconian jail sentences. We have learned that penal sanctions and penalties will not coerce a fool out of his own self-destructive folly. And when an alcohol user abuses alcohol in a manner that carries with it harmful consequences beyond his own body, we respond by applying tort and criminal law sanctions—like drunk-driving and dram-shop laws which are limited to the specific and particular harmful consequence involved. We do not punish drinkers who ruin their own lives; instead, we titrate our application of coercive measures by limiting the sanctions to those who actually cause, or are on the immediate cusp of causing, concrete harm to others. This has worked sensibly and well, and not even the most teetotaling bible-belter has suggested that we return to the Volstead Act and criminalize the mere possession and sale of alcohol all over again.

My bill is premised on two key beliefs about current prohibitionist policies: (a) the futility of using the criminal law to lessen or stop drug use; and (b) the nasty, counterproductive and unintended consequences of trying to do so.

The plain fact of the matter is that, notwithstanding positions

30. The term "revenuer" refers to an officer or agent of the Internal Revenue Service, which was authorized to enforce the Volstead Act. See K. Kerr, ORGANIZED FOR PROHIBITION 223 (1985) (discussing the Volstead Act and revenuers).


32. N.Y. VEH. & TRAF. LAW § 1192 (McKinney Supp. 1989); see also N.Y. PENAL LAW § 125.12 (McKinney Supp. 1989) (causing the death of another through drunk driving is second-degree manslaughter).


34. NATIONAL PROHIBITION ACT, ch. 85, 41 STAT. 305 (1919). The National Prohibition Act was popularly known as the Volstead Act because it had been rewritten by Andrew J. Volstead, the chairman of the Judiciary Committee. See K. Kerr, supra note 30, at 222-23.
taken by politicians, police, community leaders, educators, editorial writers, clergymen, and physicians, a very substantial portion of the adult public uses illegal drugs as a matter of routine. 35 Estimates vary of course, but it is certainly safe to say that, nationally, routine users number about 20 million. 36 In New York State, it has been estimated that there are a total of about 850,000 regular drug users. 37 If persons who almost never use drugs (under 14 years and over 45 years of age) are eliminated from the total population, the remaining population group which uses drugs is quite large. This post-pubescent, non-elderly population make the statement by their conduct, if not their words, that they find nothing particularly immoral about drug use. 38

This fact has lead to adverse consequences resulting from the use of the criminal law as a tool to curb drug use. It is axiomatic that the criminal law (if it is to be anything other than a toothless symbolic tiger) follows, not precedes, the moral consensus. There must be a pre-existing universal consensus that the behavior sought to be punished as a crime is immoral (evil and wicked), not just unwise or unhealthy. Otherwise, the crime seems more an affront either to some vague sense of social aesthetics or to the hubris of law enforcement operatives, rather than an offense against the common weal. 39

I am convinced that if all the convicted robbers now in jail were polled, each would agree that robbery was wrong—morally unacceptable conduct. They would all, no doubt, try to convince you that they are in jail unjustly, but not one of them would attempt to argue that robbery is generically a morally neutral event. All would agree

35. See supra note 8 (setting forth the most recent usage statistics).
37. THE GOVERNOR'S STATEWIDE ANTI-DRUG ABUSE COUNCIL, STATE OF NEW YORK ANTI-DRUG ABUSE STRATEGY REPORT 5 (1989) [hereinafter GOVERNOR'S REPORT]; see also Ostrowski, Thinking About Drug Legalization, 121 POL'Y ANALYSIS 24 (Cato Institute May 25, 1989) (noting that there are approximately 5 million routine cocaine users and 500,000 routine heroine users). Regular users are those “for example, who use cocaine at least four days a month, or marijuana at least ten days a month.” GOVERNOR'S REPORT, supra, at 5. In addition, it was estimated in 1989 that “[o]ver 2 million New Yorkers [had] used drugs within the past six months.” Id.
39. These ideas are more elegantly and extensively developed by Herbert Packer. See generally H. PACKER, THE LIMITS OF THE CRIMINAL SANCTION (1968) (discussing criminal sanctions as they relate to morals); id. at 332-42 (applying Packer's analysis to the drug control issue).
without dispute or cajoling that it is simply not right to rob. Ask any one of the millions of routine illegal drug users, including any of the tens of thousands now in jail for drug use offenses, and the results, I believe, would be quite different. Each will readily concede that drugs are unlawful and carry certain known risks to health. Not one, however, would deem the use of drugs any more immoral than alcohol. Indeed, considering the following, I believe that many non-drug users feel the same way. When one of my constituents witnesses an armed robbery, he or she instinctively rush to the aid of the fallen victim, calls an ambulance or the police, and may even pursue the culprit. The same citizen, however, will ignore an open street sale of drugs.

Drug offenses are so numerous and so ubiquitous that the Federal Bureau of Investigation does not even bother to attempt to count them—they are not included in the annual tabulations of felony offenses or in the calculations of crime rates. Similarly, no other conduct punishable as a serious felony needs the government to implore the populace to obey its command—"Just say no to drugs!" We'd all be vastly amused if the government launched a campaign of "just say no to burglary!" After all, a penal proscription that already enjoys a universal consensus needs no cheerleading. A penal proscription that enjoys a universal condemnation needs no cheerleading, and is readily obeyed by all except a statistically insignificant number of deviants, whom we rightly punish because their conduct reflects a disregard for a norm respected by virtually everyone else. This is just not the case with the drugs that have been declared illegal.

The prevalence of drug use in the United States tells us something about the public's true moral attitude toward criminalizing drugs. It is a remarkable state of affairs when we recall such use follows decades of unrelenting propaganda efforts to convince the citizenry that drug use is wrong. This is what I meant earlier when I asserted that a universal consensus of immorality must precede, not follow, a penal sanction if that sanction is to be effective and enforceable. In sum, though a simple condemning majority of the pop-

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41. See 1988 Sourcebook, supra note 40, at 489, table 4.5.
ulace can get drug laws enacted, a penal proscription premised on anything less than a universal consensus will always prove unenforceable.

Along much the same lines, criminal sanctions lose much of its compelling emotional force when it is sought to be applied to private consensual conduct.\textsuperscript{42} Consent is the great divide between criminal and non-criminal behavior. It is what distinguishes larceny from gift-giving, battery from masochism and kidnapping from a drive in the country.

Of greater significance is the plain historical truth that no government has ever been able to use the penal law to deal effectively with private consensual conduct whether it is drugs, gambling, pornography, alcohol, abortion or prostitution. If our experience with Prohibition is not convincing, consider that two years ago, the Soviets, hoping to eliminate excessive use of vodka, placed severe restrictions on its manufacture and sale.\textsuperscript{43} Within a few months, the Soviets found themselves suffering from a desperate shortage of sugar because so many citizens used it to distill vodka in their homes.\textsuperscript{44} Additionally, the Soviets found themselves facing large supplies of heroin smuggled in by soldiers returning from Afghanistan.\textsuperscript{45} The Soviet experience is instructive for, despite glasnost, the Soviet

\textsuperscript{42} This Article does not address the issue of whether government is vested with constitutional power to criminalize private adult consensual conduct. This is an area which has yielded seemingly disparate results from the United States Supreme Court. Compare Griswold v. Connecticut, 381 U.S. 479 (1965) (invalidating a Connecticut statute criminalizing use of contraceptives) with Bowers v. Hardwick, 478 U.S. 186 (1986) (upholding a Georgia statute criminalizing sodomy between consenting adults). This Article addresses the issue of whether legislation following such a policy is wise, not whether it is constitutionally permissible.

\textsuperscript{43} See Kirn, In Time of Change, U.S.S.R. Seeks to End Tradition of Extensive Alcohol Use by Majority of Citizens, 258 J. A.M.A. 883, 883-84 (1987) (discussing the measures taken, which included raising the drinking age to 21 years, curtailing the production of alcoholic beverages, and banning the sale of alcohol before 2 p.m.).

\textsuperscript{44} See id. at 884-85 (discussing the impact of the Soviet crackdown on alcohol). As a result of the effort to reduce the availability of legally produced vodka, production of illegal hard liquor, Samogon, increased by 40% between 1985 and 1987. See id.

In India, Ghandi, with a powerful anti-liquor lobby, included in its new post-independence constitution a provision decrying the use of alcohol and an intention to enforce its prohibition. Hazarika, A Billion Bottles a Year Defy India Liquor Ban, N.Y. Times, May 3, 1987, § 1, at 5. However, public demand for alcohol was too great. Id. India had to content itself with closely regulated manufacture and sale of alcohol. Id. Indeed, over the years, local governments and politicians pressed for less stringent controls. Id. In 1987, the nation was producing more than a billion bottles of alcoholic beverages annually. Id.

\textsuperscript{45} The Soviets have experienced a drug problem, mostly with hashish and various opiates, since the mid-1970's, long before their troops began returning from Afghanistan. See Shabad, Soviet Discloses 1977 Survey of Narcotics Use, N.Y. Times, Mar. 22, 1987, § 1, at 19.
Union remains essentially a police state, with no Bill of Rights to restrict the perogatives of law enforcement operatives to ferret out crime.

In sum, using the criminal law to deal with drugs is a futile waste for two core reasons: the kind of universal moral consensus that precedes such traditional penal proscriptions as robbery, homicide, arson and the other biblical offenses is utterly lacking for drugs; and the conduct criminalized is voluntarily consented to by its key purported victim.

One base of the public’s moral ambivalence about drugs derives from alcohol and cigarette sale and consumption. My constituents understand cigarettes and alcohol to be damaging and unhealthy substances, but they see these drugs sold to adults almost as freely as mouthwash. It is difficult to convince someone that using (or selling for a profit) one terribly damaging euphoric—alcohol—is a morally neutral event, yet using (or selling) another damaging euphoric—cocaine—is so immoral that we shall send the user to jail for a long time. By way of analogy, attempting or facilitating a suicide is a felony in almost every state of the union; but no one seriously suggests that facilitating suicide by the use of arsenic should be a punishable felony, but that facilitating suicide by the use of cyanide is morally neutral, and should not be treated as a criminal offense. Either facilitating suicide is immoral, or it is not; the moral quotient of the act cannot logically be made to turn upon the particular substance used.

By the same logic, what reasonable person would legislate a system which imposes life sentences on those who sell arsenic, but which licenses and taxes the sale of cyanide? No one could explain such an absurd disparity in the law but this, in essence, is the hopeless task faced by every nervous parent when attempting to explain the law's irrationally disparate treatment of alcohol and illegal drugs. It is a small wonder that teenagers remain unconvinced.

Our fetish with drug use suggests a stunning lack of perspective. We have singled out drugs—whose use and, often, sale takes place behind closed doors, and which is all but unstoppable—as the only type of potentially self-destructive behavior worthy of the most draconian features of our criminal laws. The hypocrisy of imposing severe penalties on one form of potentially self-destructive personal behavior while all but ignoring criminal sanction for other forms of the same conduct is not easily justified to those who believe that reason and consistency should be the hallmark of public policy and criminal laws. My bill eliminates this corrosive and confusing moral hypocrisy by equating currently illegal drugs with alcohol, an equation which more accurately reflects my constituents' true moral judgments, and, in so doing, makes those judgments enforceable.

Quite apart from the futility of trying to enforce a penal law which attacks private consensual conduct morally indistinguishable from alcohol and cigarette sale and use, drug prohibitionism has made life worse for my constituents in several ways.

Drug law enforcement has a negative impact on the enforcement of other criminal laws. New York City devotes 2,100 of its policemen to undercover drug enforcement assignments. That is 2,100 fewer uniformed police to make their visible presence felt on standard street patrol to deter other more frightening crime, such as assaults, robberies, burglaries, purse-snatchings, and car thefts. Urban criminal courts give generous sentence bargains to street thugs and swindlers because our police, judges, prosecutors and jailhouses are inundated with euphorics salesmen and users who have sold or bought the products that battalions of citizens from all walks of life have

47. Driving a car without using a seatbelt or riding a motorcycle without wearing a helmet has greater potential for self-destruction than using drugs; yet we would be horrified if lengthy jail sentences were imposed on those who choose to run those obvious but avoidable risks. Instead, New York imposes only a $50 fine to enforce the seatbelt law. See N.Y. VEH. & TRAF. LAW §1229-c (McKinney 1988-89).

48. See Esposito, Fewer Officers Will Walk the Beat, N.Y. Newsday, Feb. 16, 1989, at 27, col. 2-3 (reporting that 2,100 officers will be assigned to the narcotics division by the end of 1989).
choose to use. Fifty-two percent of all felony indictments in New York City in the first quarter of 1987 were for drug related offenses; and more than one third of all life sentences now being served in New York prisons have been imposed not on killers, rapists, or arsonists, but on euphoric-drug salesmen.

In other words, assaultive predatory non-consensual offenses are under-investigated, under-prosecuted and under-punished because we have committed such a high percentage of our limited penal resources to discover and punish private consensual conduct. Apart from the failure of criminalization to make a palpable dent in drug usage, enforcement of drug laws has the drastic consequence of undermining the public’s faith in the efficacy of law enforcement generally.

In the effort to improve the enforcement of an unenforceable law, we have sanctioned wholesale invasions of privacy by government (and even the private sector) that would have been unthinkable only a decade ago. Wiretaps and bugs are now routinely used in the name of better enforcement. It is not only the conversations of drug suspects that get monitored—drug agents listen to weeks of conversations, most of them dealing with wholly private and personal matters of people having nothing to do with drugs, just to net one chat by a suspect useful as evidence. Agents are now authorized to sift through even discarded household trash to find evidence. All of us have lost any semblance of privacy in such traditionally intimate data as phone records, bank statements and cancelled checks—all of them are subject to subpoena at the whim of any federal narcotic


50. This is a conservative estimate extrapolated from statistics reflecting inmates sentenced to life imprisonment in New York as of December 31, 1982. See Letter from Frank Tracy, Director of Program Planning, Research and Evaluation, New York State Department of Correctional Services to Stan Neustadter (Apr. 27, 1983) (on file at the Hofstra Law Review).


54. See, e.g., T. Szasz, Law, Liberty and Psychiatry 160 (1989) (discussing the view of various Supreme Court Justices that wiretapping is an oppressive and intrusive means of surveillance).

agent, without us even finding out about it. Suburban backyards, patios and gardens are fair game to agents, who are allowed to use low-flying helicopters to snoop for illicit marijuana plants. Agents may ignore no trespassing signs to invade rural fields in their search for contraband plants. One need not be a civil libertarian to find in these developments a saddening, even alarming, distortion of traditional American values limiting the power of government, even when the enforcement of criminal laws is involved. My constituents, who have a healthy mix of respect and suspicion of police, recall that police work is easy only in a police state.

Another unwanted, harmful by-product of drug prohibitionism is something that we learned during alcohol prohibitionism: criminalizing a substance that will be widely used, regardless of coercive measures to suppress it, results in many people being needlessly hurt by adulterated contraband whose true potency and diluents are usually unknown even to the seller. The 1920's saw countless wood alcohol deaths, which disappeared after Repeal when we replaced risky underground manufacture with regulated factories and truth-in-packaging. Analogously, deaths from coat-hanger abortions ended abruptly when we lifted that prohibition.

We have similar problems with cocaine and marijuana occasionally laced with adulterants that cause more problems than the pure contraband itself. Indeed, most of the hospital admissions for acute drug symptoms are attributable either to adulterants or to an ill-

56. 21 U.S.C. § 876; 878(2) (1982); see also United States v. Harrington, 761 F.2d 1482, 1485 (11th Cir. 1985) (holding that the DEA may issue limitless subpoenas during an ongoing investigation, as long as they do not run against third parties and not the individual indicted); United States v. Hossbach, 518 F. Supp. 759, 765-67 (E.D. Pa. 1980) (describing how subpoenas were obtained without the defendant's knowledge).
59. E. Brecher & Editors of Consumer Reports, Licit & Illicit Drugs 101-14 (1972) [hereinafter E. Brecher].
63. E. Brecher, supra note 59, at 524. One adulterant that has been named as possibly causing fatal reactions in heroin users is quinine mixed in the heroin to disguise purity. Id. at 110. Also, the process of shooting barbiturates and then heroin has been reported to cause death, often inaccurately as an overdose of heroin. Id. at 111.
informed user mixing two or more different drugs in the same dosage episode. My bill brings the manufacture and distribution of drugs into the open—just like alcohol and cigarettes. Clear warnings and information on the package will eliminate these kinds of wholly avoidable accidental consequences.

Still another unintended consequence of drug prohibitionism is what is sometimes called its "iron law." There is a direct correlation between the intensity of law enforcement efforts and the potency of illegal drugs that reach the user. As law enforcement and penalties intensify, traffickers, who wish to maintain their profits, are induced to minimize their risk of apprehension by shipping smaller quantities of more potent substances. Thus, the marijuana entrepreneurs who were willing to risk 1970's marijuana sentences and shipped large quantities of commercial product (i.e., low THC content) have since switched to less bulky, harder to detect shipments of high potency exotic strains. Today, the user finds it far easier to find expensive high-THC marijuana than the cheaper low-potency product he might have preferred. Many foreign traffickers abandoned marijuana entirely in favor of cocaine because, measured on a per-volume basis, the profit/risk quotient is much more favorable.

This, in turn, led to the boom in domestic production of marijuana,

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64. See National Institute of Drug Abuse, Data from the Drug Abuse Warning Network: Annual Data (1986); Office of Nat'l Drug Control Pol'y, National Drug Control Strategy 34 (January 1990) (estimating that 13% of drug related emergency room cases in 1987 were due to heroine/morphine mixtures, and that 7% were due to PCP combinations); Ostrowski, supra note 37, at 42-46 (discussing the acute effects of illegal drug use caused by black market factors).
66. The phrase was coined and explained by Richard C. Cowan. See Cowan, A War Against Ourselves: How the Narcs Created Crack, Nat'L REV., Dec. 5, 1986, at 26-28 (describing the iron law as the relation between increased drug enforcement resulting in increased drug potency).
68. See Schmoke, supra note 6, at 517-18.
69. See R. Warner, supra note 36, at 63 (discussing the techniques of drug traffickers to avoid U.S. government detection); Nadelmann, supra note 67, at 8 (noting that drug enforcement efforts concentrate on detecting bulky overseas shipments).
70. See M. Kleiman, Marijuana 72-73, 85 (1989) (discussing the substitution of higher potency marijuana and the deleterious effect on the users).
71. See id. at 51-52, 55-56 (discussing the risk/price analysis of increased law enforcement); Nadelmann, supra note 67, at 8 (noting that "a growing number of marijuana dealers . . . are switching to cocaine dealing, motivated both by the promise of greater profits and by government drug-enforcement efforts that place a premium on minimizing the bulk of the illicit product.

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most of it high potency marijuana.\textsuperscript{72} The ultimate result is that stronger dope is available closer to home,\textsuperscript{72} including my district.

The irresistible dynamic of the iron law also wreaked its damage in the cocaine market, and is one of the reasons why my constituents contend with crack cocaine, rather than with the relatively benign cocaine powders that prevailed in the market four years ago.\textsuperscript{74} Thus, drug prohibitionism has not only failed to keep drugs out of circulation, but has guaranteed that increasingly potent and more profitable drugs appear in the market. This effect should be greatly reduced by outright legalization as provided by my bill.

Finally, criminalization of possession and sale of drugs has fostered—indeed, even required—not enlightenment, but enforced public ignorance of the true nature of the perils of drug use. One of the more conspicuous accoutrements of our futile coercive tactics is what has been euphemistically labelled drug "education." There is nothing remotely educational about the hyperbole publicly expounded about drugs, which is little other than a medieval attempt to suppress, not reveal, knowledge. It is no more educational than Victorian efforts were to educate young males about masturbation. The metaphors have merely changed from impotence, blindness, and hairy palms to fried brains. The design is the same: terror and fright replace information. Our drug educators act as shrill propagandists instead of cultivators of inquisitive minds.\textsuperscript{75}

The sponsors of these educational campaigns believe they are advancing a noble cause. However, their campaigns have become a joke to teenagers in my district. Most kids, by the time they are 15 or 16 years old, if they have not used drugs themselves, have seen others use them. Whatever pieties they may dutifully recite in the classroom or to pollsters, my constituents' teenagers know what millions of drug-using adults have known for decades: there are well known ways of using most drugs safely; very few people lose control of their habits; almost anyone can stop cold when they want to or

\textsuperscript{72} Increased drug enforcement, causing a shortage of imported marijuana, has led to the consumption of the high priced, high potency, domestically grown marijuana which usually escapes detection. See M. KLEIMAN, supra note 70, at 71-73, 85, 98-99.

\textsuperscript{73} See id. at 71-72; Cowan, supra note 66, at 27; Nadelmann, supra note 67, at 9.

\textsuperscript{74} See Cowan, supra note 66, at 27 (arguing that drug enforcement efforts lead to increased crack sales because the "[t]iny pieces of crack are easier to carry than cocaine powder").

\textsuperscript{75} Even those who enthusiastically support the continued criminalization of drugs have little flattering to say about these kinds of programs. See, e.g., M. FALCO, WINNING THE DRUG WAR: A NATIONAL STRATEGY 42-43 (1989).
have to; and that for all but a few, the worst consequence of drug use is an arrest. They know that there are tried-and-true safe use measures—the kind of information routinely offered to the public for safe use of automobiles, alcohol, chain saws, and condoms. They know that their educators are deliberately withholding the whole truth about drug use. They know that the case portrayed is only an exaggerated worst-case scenario falsely represented as the norm.

While this kind of repressive nonsense may be thematically consistent with our currently repressive “crime” model, it has no place in a system which, like mine, brings drugs out into the open. My bill expresses, as one central operative assumption, that a fully and accurately informed populace can make its own choices about which substances to consume, and that the role of government is limited to ensuring that the public receives accurate and complete information and that no adulterated drugs be dispensed. The bill provides that absurd scare tactics be replaced with requirements for accurate warning labels, safe-use information pamphlets, and first-aid tips.

America has never been, and never will be, a drug free society and neither has any other place.

My bill does not directly address two areas which will eventually have to be dealt with under a legalization system—pricing and taxation. One of the central benefits of legalization will be the elimination of the criminal cash economy in addition to eliminating violence and adulterated products. It is thus vital that the retail cost of the drugs be set at a level high enough to discourage unnecessarily profligate drug use, but low enough to eliminate profitable sales outside the licensed distribution network. It will be a difficult task to assess the true cost of the drugs at the source, the farm in a newly created free-market drug economy.

In its initial phases, legalization will probably witness considerable fluctuations of source-costs. Within a year or so, with drugs treated as any other agricultural commodity, source-costs will be-

76. See S. 1918, supra note 2, tit. 1, §§ 562(4), 591.
77. See id. § 591.
78. See generally D. Musto, supra note 6 (providing a comprehensive history of drug control in the United States).
79. This particular mystery may quickly become moot. If domestic manufacturers enter the business, particularly by synthesizing cocaine in laboratories, the vagaries of commodities markets will not be a factor in pricing. Indeed, this seems quite possible because the supplies of cocaine currently used for licensed medical purposes are all made in laboratories, and the cost, in 1986, was $30 per ounce, or slightly more than $1 per gram. What is Our Drug Problem, HARPER'S MAG., Dec., 1985, at 46 (comments of Lester Grinspoon).
come regularized and predictable, and the state's distribution system, as directed by the CSA, will be able to set sensible and reliable retail prices.

These retail prices should include a special drug sales tax, again, in amounts set to avoid over-pricing the product and inviting a profit-making underground market. There are a number of possible models for a sales tax system, ranging from a single flat percentage on all substances (favored for its ease of administration) to a tax which would escalate according to the potency and harm/abuse potential of each substance. Both the base-pricing of the product and the appropriate tax system would be determined by the CSA, after consultation with economics, agricultural and tax experts. The tax itself would require separate legislation.

I assume the tax revenues would be earmarked for research and rehabilitation designed to lessen the negative consequences to those few who end up abusing drugs. It seems proper and fitting that the costs of drug use ought to be borne by drug-users rather than by the public at large from general tax revenues. Earmarking of special tax revenues is nothing new: the federal highway system is financed largely by fuel taxes\(^\text{80}\) collected from those who travel the roads.\(^\text{81}\)

While legalization would not be an unadorned blessing, its op-

\(^{80}\) See HIGHWAY TRUST FUND, I.R.C. § 9503 (1986).

\(^{81}\) A second item I have omitted from my bill, but which will require additional legislation, involves persons currently incarcerated for drug offenses. A substantial proportion of inmates in state and local prisons are serving sentences for violations of current drug laws. See Letwin, Report from the Front Line: The Bennett Plan, Street-Level Drug Enforcement in New York City and the Legalization Debate, 18 HOFSTRA L. REV. 795, 808 n.79 (1990). One of the benefits of legalization would be the reallocation of resources, including correctional resources, to deal with predatory, non-consensual crime and criminals who are now relegated to a secondary concern to the overwhelming burden of dealing with crimes related to drugs. If drugs are legalized, a question arises about what should be done with inmates after the behavior for which they have been incarcerated has been declared legal.

There are a number of options. The easiest would be to enact a simple and immediate legislative commutation of all drug law sentences. Or, a commutation might be combined with some form of parole supervision. Or, still another variation would be to stagger the degree of commutation and parole supervision according to the severity of the old law offense. Of course, this feature of legalization would apply only to true drug offenses. Sentences imposed for homicides, assaults and other non-drug offenses would remain wholly intact and unaffected.

Specific legislation is necessary because the repeal of a criminal statute, unlike the repeal of eighteenth amendment, might not necessarily result in freeing current prisoners or terminating prosecutions pending under the current law. See United States v. Chambers, 291 U.S. 217, 223 (1934); Note, The Status of Liquor Crimes and Forfeitures Following Repeal, 2 GEO. WASH. L. REV. 395 (1934) (authored by Charles Whitney West); Annotation, Withdrawal by Constitutional Amendment or Legislative Act of Power Under Which Political Body Acted in Punishing Act as Crime, as Affecting Prior Offenses, 89 A.L.R. 1514 (1935).
ponents take an overly gloomy view, one approaching hysteria, of the consequences if drugs were made as legal as alcohol. They seem to believe that great throngs of people who would never have touched drugs while they were penally forbidden would suddenly rush out, buy drugs, and become hapless addicts. This belief is premised on key factual assumptions that have been proven false.

First, there is the assumption that the criminal sanction prevents people from gaining access to drugs. Although drug warriors are fond of boasting that greater tonnages of contraband are interdicted each year, even greater tonnages make it to the streets each year. That is the truer measure of penal efficiency. Even the most devoted drug agent concedes that drugs are available to virtually everyone in any town or village anywhere in the country, despite nearly a century of escalating law enforcement efforts to terrorize people out of selling or using drugs. Cocaine interdiction is particularly fruitless; a 1988 RAND Corporation study revealed what the DEA has known for years: all the cocaine that American users consume in the course of an entire year can fit into the hold of a single, full-loaded C-5A cargo plane.

82. See M. Falco, supra note 75, at 55-56; Bennett Plan, supra, note 1, at 6.
85. P. Reuter, G. Crawford & J. Cave, Sealing the Borders: The Effects of Increased Military Participation in Drug Interdiction 123 (RAND Corporation/National Defense Research Institute 1988). This study persuasively demonstrates in detail precisely why air, land, and sea interdiction efforts, even if drastically increased with the aggressive assistance of the military, can have virtually no effect upon the quantity or cost of cocaine and heroin available to users on our streets. A very recent government study showed the same results with respect to interdiction of private aircraft. Government Accounting Office, Drug Smuggling: Capabilities for Interdicting Private Aircraft Are Limited and Costly (1989). The upshot of these studies is clear: interdiction and domestic drug law enforcement will never have a meaningful impact upon drug use.

Since neither supply route interdiction nor domestic drug law enforcement can stop the flow to the streets, the only remaining alternative is getting rid of the coca crops at their source. Neither Bolivia nor Peru is likely to take serious steps to eradicate coca crops any more than the governor of North Carolina is likely to eradicate tobacco crops. In each case, the crop is a fundamental feature of the local culture whose cultivation and export provide an indispensable source of wealth to a traditionally disaffected constituency. In Bolivia, for example, 500,000 of the workforce of 1.7 million (30%) are employed in the cocaine trade, and for good reason—no other crop can fetch such monetary rewards as coca. Peru and Bolivia earn much more foreign exchange through drug exports, by a multiple of at least 10, than from American
True, the penal sanction adds a crime tariff to the base cost of drugs which increases the street price, but there is an abundance of studies demonstrating that drug demand is essentially inelastic, i.e., it is not truly responsive to price fluctuations. It is also true that, except in certain neighborhoods, criminalization has made drug purchases more laborious, and that a prospective purchaser must exert some, though not much, effort to obtain drugs; i.e., buying illegal drugs is not quite as casually simple as buying a pack of gum. Most purchasers minimize the shopping discomfort rather easily; they buy in quantities sufficient to last for awhile. The single purchasing effort is amortized over a large number of individual dosages and secures the buyer a quantity discount as well.

In sum, although politicians and law enforcement functionaries have for years been preaching that the coercive penal machinery of the state is all that stands between our children and a drug-addled future, their gospel has proven false. If drug laws have made a dif-

aid which is limited almost exclusively to funding local drug enforcement operations. The threatened sanctions simply have no teeth.

The futility of sanctions as a means to control source-country production and trafficking has not gone unnoticed. Some have considered the idea of sending American armed forces to patrol the drug-growing and trafficking regions of Mexico, Columbia, Bolivia, and Peru. See Shenon, U.S. Said to Weigh International Drug Force, N.Y. Times, Apr. 7, 1988, at A5, col. 1. Even assuming we were invited to send our troops, certain issues must be addressed including: the length of time our troops would have to remain, the number of troops to be sent, and the scope of their authority, and the effect on our other military needs. These are not idle questions when it is recalled that 500,000 American troops were inadequate to subdue Vietnam, an area of 67,000 square miles, and that the four major drug countries south of our border, with similarly inhospitable terrain, occupies a territory 30 times larger than Vietnam.

Moreover, our armed presence, whatever its size and duration, would certainly catalyze nascent guerilla activity which would inevitably end up as a war—not against drugs and traffickers—but a broad-scale occupation of hostile territory opposed by indigenous populations whose freedom and finances are being directly affected. The invariable result would be casualties to our troops. Predictably, the resultant destabilization of the region would be catastrophic. These observations and predictions illustrate the quality of thinking that government coercion, whether applied here or abroad, can be effective in stopping the flow of drugs to those who want to use them.

Even if our troops were 100 percent successful in eradicating all present drug cultivation, re-cultivation would commence immediately upon our departure. Cocaine plants grow in poor soil, mature in a few months, and yield up to six harvests annually for 30 years. See E. Morales, Cocado, White Gold Rush in Peru 54-57 (1989) (discussing the coca plant cultivation). The economics that induced farmers to grow cocaine in the first place would remain unchanged. An armed American presence would have to be perpetual to remain effective. Even if we completely eradicated cocaine cultivation, current demand for cocaine would be supplied by cocaine easily synthesized in laboratories from abundant legal chemicals.

86. Though not for cocaine, whose price has fallen dramatically in the past seven years.

87. See generally P. Reuter, G. Crawford, J. Cave, supra note 85, at 23 (stating that short-run price elasticity for cocaine is probably small).
ference in blocking access to drugs, it is a difference not readily discernible, and certainly not worth the social and economic distortions the laws have wrought.

Furthermore, even assuming for purposes of argument that legalization would lead to increased experimentation by hitherto drug virgins, it cannot be casually assumed that every new experimenter would find drugs pleasurable. There are millions who have tried drugs, but who have found their effects undesirable, never to touch them again. Nor can it be forgotten that there are many others who could be initially attracted to drugs primarily because they are a forbidden fruit, an allure which legalization would eliminate.

It also bears noting that only a fraction of drug users ever develop into uncontrollable users, addicts whose lives, careers, or families are disrupted. Fewer users are ruined by their habits. The media, of course, highlights the horror stories, but a more accurate and revealing headline would read: "Last Saturday night, as on countless past Saturday nights, 6 million people snorted cocaine with little or no discernible present or future ill effects."

Lastly, the removal of the criminal sanction would leave intact all the other less formal non-penal mechanisms of social disapproba-

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88. See Ostrowski, supra note 38, at 611-15, 673-75.
89. It is beyond the scope of this Article to rebut the countless canards and half-truths routinely pandered by drug warriors, but it is worth mentioning a couple. At the height of the initial crack "crisis" in 1987 and 1988, government surveys found that only 6% of high school seniors had ever tried crack, let alone abused it or became addicted to it. L. Johnston, P. O'Malley, & J. Bachman, Drug Use, Drinking, and Smoking: National Survey Results From High School, College, and Young Adult Populations 1975-1988, at 53-55, 63 (1989). In 1985, there was a total of only eight cocaine related, as distinguished from cocaine caused, deaths of people aged 18 and under. A. Trebach, The Great Drug War 11 (1987). Folklore has it that crack's pharmacological effects generate homicides. This is true, but it is not the whole truth. A recent detailed study of 414 homicides in representative New York City police precincts (including precincts near my district) reports that only 31 (7.5%) homicides were attributable to the chemical effects of drugs. However, 162 (40%) homicides were directly attributable to black-market trafficking. Goldstein, supra note 39. The drug warriors would typically issue a press release citing the 31 who died at the hands of drug-crazed killers, but conceal the 162 who died as a result of the illicit trafficking that prohibition guarantees. See generally C. Reinerman & H. Levine, The Crack Attack: Politics and Media in America's Latest Drug Scare, in Images of Issues (J. Best, ed. 1989) (discussing the effect on drug use that media attention brings).
tion that we have developed over the years toward drug use — mechanisms which have far greater dampening effect than penal ones. Opponents of legalization assume that when the penal sanction disappears, all other forms of social sanctions would disappear as well. This assumption is unwarranted and without basis. The consumption of alcohol and cigarette smoking has greatly declined as a result of social pressures without resorting to criminalization. More to the point, recent studies have shown that in Oregon and Alaska, where personal use and possession of marijuana have been legal for years, no discernible increase in use has been found.

All things considered, then, rather than the Cassandra forecast the bill's opponents will offer, the more likely upshot of legalization would be as follows: a short-term increase in experimentation by drug virgins, which would then drop off, with the overall consumption ultimately settling at a level only slightly higher than the current level, but with less potent drugs. This would be a small price to pay for freeing my constituents from the burdensome, unwanted and counterproductive by-products of a fruitless prohibitionism.

My bill and the depressing analysis of current policies may be controversial, but they warrant discussion, not panic and personalized hostility. As an elected official who is also black, I must contend with a special criticism. Several black leaders have labelled legalization a racist and genocidal proposal, presumably in the belief that whatever marginal increase in drug use might come with legalization would have a disproportionate impact in black communities.

A more sober analysis of the facts reveals that this criticism is ill-informed and, particularly when voiced by blacks, is staggeringly ironic. If measured by disproportionate impact upon blacks and Hispanics, no drug policy could possibly be more racist or genocidal than our current penal policies. The wild shootouts between traffickers do not occur on Fifth Avenue, but on Lenox Avenue in New York.
York City. The dead are more than 90% black and hispanic.\textsuperscript{94} It is the schools in black neighborhoods, not white neighborhoods, which witness the greatest frequency of violence and weaponry, almost all of it associated with drug trafficking. It is the black, not the white, neighborhoods whose hard-working, taxpaying families are most demoralized by the sight of 20 year-old traffickers flaunting their ill-gotten and tax-free gains, cruising about in Mercedes, lavishing their women with furs and gold. Our prisons are filled with young drug offenders serving hopelessly interminable sentences; the inmate population is disproportionately black and hispanic, not white.\textsuperscript{95}

All of this has taken a horrendous toll on the esprit of my district, and all of it is attributable directly, not to the chemical effects of the drugs themselves, but to the big-money trafficking which inevitably comes with the criminalization of drugs and its alter-ego: the lucrative black market. This will disappear with legalization and my district can then begin to regain its equilibrium and sense of future.

The racist-genocidal label smeared on legalization is not merely misguided; it ignores history as well. Criminal drug laws have been blighted by open and unconcealed racism from their inception at the turn of the century. The first drug law targeted opium and was fueled by the absurd fear of, and resentment towards, the Chinese.\textsuperscript{96} Later cocaine became the drug warriors' target when primarily southern legislators feared that cocaine emboldened blacks would rape white women, supposedly enable blacks to withstand bullets, and help them challenge the oppressive racial subjugation of the era.\textsuperscript{97} The impetus to extend the drug laws to marijuana can be traced to the 1930's, when Chicanos first became a conspicuous segment of the unemployed, mostly in the southwest, during the Depression.\textsuperscript{98}

Though many of the sponsors of the original criminal drug laws were honorable and well-intentioned souls, their policies were often

\textsuperscript{94} See P. Goldstein, supra note 89, at 6.
\textsuperscript{95} See, e.g., 1988 SOURCEBOOK, supra note 40, at 599, table 6.13 (estimating that of the persons less than 18 years old in juvenile institutions, 4.2% are white drug offenders, 7.4% are black drug offenders, and 14.3% are hispanic drug offenders).
\textsuperscript{96} The Chinese had expended their usefulness as cheap labor in railway construction, and at that time came to be viewed as economic and cultural threats. There were lurid claims that orientals were drugging and kidnapping young white women. The opium laws helped keep these aliens in their place. See E. BRECHER, supra note 59, at 42-43; Schmoke, supra note 6, at 507-10.
\textsuperscript{97} See D. MUSTO, supra note 6, at 5-8.
\textsuperscript{98} The sordid origins of our drug laws are discussed extensively in D. MUSTO, supra note 6.
promoted and popularized through the use of overt racial fear-mongering and hostility to distinctive minorities. Even today, increasing segments of the population view drugs as primarily a black, hispanic, or inner-city problem. If there is a drug policy that ought to defend itself against charges of racism or genocide, it is not legalization. Drug warriors who make those accusations might do well to pause a moment, look in the mirror, and then read their own history.

The government has been fighting a drug war for 75 years, and for 75 years the media, on a daily basis, has shown us the proud results of this coercive enterprise: beaming drug agents posing with captured contraband and manacled prisoners of war. Despite the application of increased cunning, technology, manpower, and jail sentences, drug warriors are exasperated to see that the enemy thrives and that more and more drugs are available everywhere. Yet they purport to see a light at the end of the tunnel, and ask for still more men, equipment and power to search destroy, and imprison those who disobey drug laws. They promise that by turning up the pressure one more penological notch, they will be able to bring the drug enemy to heel.

Over time, though, it has become clear that tens of millions of those whom the war was meant to rescue do not give a hoot about it, and, indeed, support the enemy. Ordinary working people and the middle classes see many of their own—otherwise fully functional, law-abiding, productive citizens—trotted off to jail for consensual drug offenses. They notice the increased street crime, police corruption, wholesale invasions of civil liberties, tremendously expensive and over-burdened police, judicial, prosecutorial and correctional systems and budgets, caused by prohibitionism and ask whether this penological drug war is worth the effort. As the hopelessness and counterproductiveness of the war slowly reveals itself, the drug warriors resort to hectoring us, not about the good sense of and ability to win the war, but about “sending the wrong signal,” “surrender,” “a loss of nerve” and “yielding to frustration.” The drug warriors predict the decline of the republic if we abandon the enterprise, no matter how fruitless it has become. Hubris thus replaces good sense as the touchstone of policy-making.

Government acts honorably when it recognizes, however painfully, that a cherished policy simply has not and cannot work, and indeed has brought a host of unwanted consequences as uncontrolla-

99. See supra note 6 (citing the Harrison Narcotics Act).
The only disgrace is to remain frozen in a policy that has availed us nothing for three-quarters of a century. If the nations of eastern Europe can repudiate their treasured, but demonstrably failed, Marxist policies and replace them with a brand new endeavor, surely we can be no less bold with our pointless criminal drug laws.

Drug prohibitionism is a failed policy, as bankrupting as it is dispiriting and hypocritical. It is an albatross that will darken our skies until legislators muster the courage and wisdom to reckon a way to its banishment like we did with Repeal in 1933. This bill, by functionally equating all euphoric drugs is a clear-eyed step toward an inevitable future.
State of New York

1918

1989-1990 Regular Sessions

In Senate

February 6, 1989

Introduced by Sen. GALIBER -- read twice and ordered printed, and when printed to be committed to the Committee on Alcoholism and Drug Abuse

AN ACT to amend the executive law, in relation to establishing a controlled substances authority and to repeal articles two hundred twenty-one and two hundred twenty-one of the penal law, relating to controlled substances offenses and offenses involving marihuana and article thirty-three of the public health law, relating to controlled substances

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The executive law is amended by adding a new article twenty-one to read as follows:

ARTICLE 21

CONTROLLED SUBSTANCES

TITLE 1

DIVISION OF CONTROLLED SUBSTANCES

Section 555. Policy of state and purpose of article.

§ 556. Division of controlled substances; state controlled substances authority.

§ 557. Salaries; expenses.

§ 558. Removal.

§ 559. Vacancies; quorum.

§ 560. Officers; employees; offices.

§ 561. Disqualification of members and employees of authority.

§ 562. Powers of the authority.

§ 563. Oath of office.

§ 564. Definitions of terms of general use in this article.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets { } is old law to be omitted.

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the manufacture, sale and distribution within the state of controlled substances for the purpose of fostering and promoting temperance in their consumption and respect for and obedience to law. It is hereby declared that such policy will best be carried out by empowering the controlled substances authority of the state to determine the manner and means of dispensing such controlled substances in order to promote the welfare and safety of the public. It is the purpose of this article to carry out that policy in the public interest. The restrictions, regulations and provisions contained in this article are enacted by the legislature for the protection, health, welfare and safety of the people of the state.

§ 556. Division of controlled substances; state controlled substances authority. The head of the division of controlled substances shall be the state controlled substances authority which shall consist of five members, who shall be known as commissioners and shall be appointed by the advice and consent of the senate, and of whom shall be designated as chairman by the governor. Not more than three members of the state controlled substances authority shall belong to the same political party. All of said members shall be citizens and residents of the state. Such members shall be appointed to serve for a term of five years each and until their successors have been appointed and qualified. The term "controlled substances authority," wherever occurring in any of the provisions of this article or of any other law, or in any official books, records, instruments, rules or papers, shall hereafter mean and refer to the state controlled substances authority provided for in this section.

§ 557. Salaries; expenses. The chairman and the other members of the authority shall receive a salary to be fixed by the governor within the amounts appropriated therefor. Each member of the authority shall also be entitled to his expenses actually and necessarily incurred by him in the performance of his duties.

§ 558. Removal. Any member of the authority may be removed by the governor for cause after an opportunity to be heard. A statement of the cause of his removal shall be filed by the governor in the office of the secretary of state.

§ 559. Vacancies; quorum. In the event of a vacancy caused by death, resignation, removal or disability of any member, the vacancy shall be filled by and with the advice and consent of the senate for the unexpired term. Three members of the authority shall constitute a quorum for the purpose of conducting the business thereof; but a majority vote of all the members in office shall be necessary for action.

§ 560. Officers; employees; offices. The authority shall appoint a counsel, a secretary, a chief executive officer and three assistant chief executive officers and fix their compensation within the budgetary appropriation therefor. The chief executive officer and the assistant chief executive officers shall be deputy commissioners and, together with the secretary to the authority and attorneys attached to the legal staff, shall, subject to the supervision and control of the authority, exercise any of the functions, powers and duties conferred upon the authority by law which the authority may delegate to them. Each commissioner, in addition to the powers and duties conferred upon the authority by law which the authority may delegate to them, may appoint a confidential secretary. The authority shall also have power to engage necessary deputies, assistants, inspectors, and other employees within the limits provided by appropriation. Inspectors so employed by the authority shall be peace officers for the purpose of enforcing the provisions of this
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1 article or judgments or orders obtained for violation thereof, with all
2 the powers set forth in section 2.20 of the criminal procedure law. The
3 counsel, secretary, chief executive officer, assistant chief executive
4 officers, confidential secretaries to commissioners and deputies shall
5 be in the exempt class of the civil service. The other assistants, in-
6 spectors and employees of the authority shall all be in the competitive
7 class of the civil service. The authority shall have its principal office
8 in the city of Albany and may maintain a branch office in the
9 cities of New York and Buffalo and such other places as it may deem
10 necessary.

§ 561. Disqualification of members and employees of authority. No mem-
ber of the authority or any officer, deputy, assistant, inspector or em-
ployee thereof shall have any interest, direct or indirect, either pro-
prietary or by means of any loan, mortgage or lien, or in any other man-
ner, in or on any premises where controlled substances are manufactured
or sold; nor shall he have any interest, direct or indirect, in any
business wholly or partially devoted to the manufacture, sale, transpor-
tation or storage of controlled substances, or own any stock in any cor-
poration which has any interest, proprietary or otherwise, direct or in-
direct, in any premises where controlled substances are manufactured or
sold, or in any business wholly or partially devoted to the manufacture,
sale, transportation or storage of controlled substances, or receive any
commission or profit whatsoever, direct or indirect, from any person ap-
plying for or receiving any license or permit provided for in this arti-
cle, or hold any other public office in the state or in any political
subdivision except upon the written permission of the controlled sub-
stances authority, such member of the authority or officer, deputy, as-
assistant, inspector or employee thereof may hold the public office of
notary public or member of a community board of education in the city
school district of the city of New York. Any one who violates any of
the provisions of this section shall be removed.

§ 562. Powers of the authority. The authority shall have the following
functions, powers and duties:
1. To issue or refuse to issue any license provided for in this
article.
2. To revoke, cancel or suspend for cause any license issued under
this article.
3. To remove any employee of the authority for cause after giving
such member or employee a copy of the charges against him in writing,
and an opportunity to be heard thereon. Any action taken under this
subdivision shall be subject to and in accordance with the civil service
law.
4. To fix by rule the standards of manufacture and processing in or-
der to insure the use of proper chemical and other component substances
in the manufacture of controlled substances to be sold or
consumed in the state including quality control, specifications, labe-
ling and quantitative limits on sale.
5. To keep records in such form as may be prescribed by the authority
of all licenses issued and revoked within the state; such records shall
be so kept as to provide ready information as to the identity of all
licenses including the names of the officers and directors of corporate
licensees and the location of all licensed premises. The authority may,
in its discretion, with the approval of the commissioner of taxation and
finance contract with the highest responsible bidder to furnish copies
of the records of licenses of each class and type issued within the
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1. State or any political subdivision thereof, for any license year or term of years not exceeding five years.

2. To inspect or provide for the inspection of any premises where controlled substances are manufactured or sold.

3. To prescribe forms of applications for licenses under this article and of all reports which it deems necessary to be made by any licensee.

4. To make an annual report to the governor and the legislature of its activities for the preceding year.

5. To hold hearings, subpoena witnesses, compel their attendance, administer oaths, examine any person under oath and in connection therewith to require the production of any books or papers relative to the inquiry; to take proof and testimony concerning all matters within its jurisdiction. A subpoena issued under this section shall be regulated by the civil practice law and rules.

6. To prohibit, at any time of public emergency, without previous notice or advertisement, the sale of any or all controlled substances for and during the period of such emergency.

7. The powers provided in this section may be delegated by the authority to any member, chief executive officer, assistant chief executive officers, deputy commissioners, secretary to the authority and attorneys attached to the legal staff.

8. To promulgate such rules and regulations as shall be necessary to accomplish the purposes and powers authorized by this article.

9. Oath of office. Each member of the authority shall, before entering upon his duties, take and file an oath of office as prescribed by section ten of the public officers law.

10. Definitions of terms of general use in this article. Except where different meanings are expressly specified in subsequent provisions of this article, the following terms have the following meanings:

1. "Bureau" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, or its successor agency.

2. "Concentrated Cannabis" means

(a) the separated resin, whether crude or purified, obtained from a plant of the genus Cannabis; or

(b) a material, preparation, mixture, compound or other substance which contains more than two and one-half percent by weight of delta-9 tetrahydrocannabinol, or its isomer, delta-8 dibenzopyran numbering system, or delta-1 tetrahydrocannabinol or its isomer, delta 1 (6)-mepentene numbering system.

3. "Controlled substance" means a substance or substances listed in section five hundred sixty-six of this article.

4. "Dispense" means to deliver a controlled substance to an ultimate user or research subject by lawful means and includes the packaging, labeling, or compounding necessary to prepare the substance for such delivery.

5. "Institutional dispenser" means a hospital, veterinary hospital, clinic, dispensary, maternity home, nursing home, mental hospital or similar facility approved and certified by the authority as authorized to obtain controlled substances by distribution and to dispense and administer such substances pursuant to the order of a practitioner.

6. "Distribute" means to deliver a controlled substance other than by administering or dispensing.

7. "Distributor" means a person who distributes a controlled substance.
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8. "Diversion" means manufacture, possession, delivery or use of a controlled substance by a person or in a manner not specifically authorized by law.

9. "Drug" means
(a) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
(b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; and
(c) substances (other than food) intended to affect the structure or function of the body of man or animal. It does not include devices or their components, parts, or accessories.


11. "License" means a written authorization issued by the authority permitting persons to engage in a specified activity with respect to controlled substances.

12. "Manufacture" means the production, preparation, propagation, compounding, cultivation, conversion or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging or labeling of a controlled substance:
(a) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or
(b) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or
(c) by a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice.

13. "Marihuana" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

14. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
(a) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a) of this subdivision, but not including the isouquinoline alkaloids of opium;
(c) opium poppy and poppy straw.
15. "Opiate" means any substance having an addiction-forming or
addiction-sustaining liability similar to morphine or being capable of
conversion into a drug having addiction-forming or addiction-sustaining
liability. It does not include, unless specifically designated as con-
trolled under section five hundred sixty-six of this article, the dex-
trorotatory isomer of 3-methoxy-n-methylmophinan and its salts
(dextromethorphan). It does include its racemic and levorotatory forms.
16. "Opium poppy" means the plant of the species Papaver somniferum
L., except its seeds.
17. "Person" means individual, institution, corporation, government or
governmental subdivision or agency, business trust, estate, trust, part-
nership or association, or any other legal entity.
18. "Poppy straw" means all parts, except the seeds, of the opium
poppy, after mowing.
19. "Pharmacy" means any place registered as such by the New York
state board of pharmacy and registered with the Bureau pursuant to the
federal controlled substances act.
20. "Pharmacist" means any person licensed by the state department of
education to practice pharmacy.
21. "Practitioner" means a physician, dentist, podiatrist, veteri-
arian, scientific investigator, or other person licensed, or otherwise
permitted to dispense, administer or conduct research with respect to a
controlled substance in the course of a licensed professional practice
or research licensed pursuant to this article. Such person shall be
deemed a "practitioner" only as to such substances, or conduct relating
to such substances, as is permitted by his license, permit or otherwise
permitted by law.
22. "Registration number" means such number assigned
by the Bureau to
any person authorized to manufacture, distribute, sell, dispense or ad-
minister controlled substances.
23. "Sell" means to sell, exchange, give or dispose of to another, or
offer or agree to do the same.
24. "Ultimate user" means a person who lawfully obtains and possesses
a controlled substance for his own use or the use by a member of his
household or for an animal owned by him or in his custody.

TITLE II
ADMINISTRATION

Section 565. Prescriptions not necessary for controlled substances.

566. Schedules of controlled substances.
567. Exception from schedules.
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of twenty-one years.
571. Criminal sale of a controlled substance in or near school
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fraudulent means.
573. Violation of article a class E felony.
574. License fees.
575. License fees, duration of licenses: fee for part of year.
576. Revocation of licenses.
577. Revocation and suspension of license procedure.
578. Formal hearings procedure.
§ 565. Prescriptions not necessary for controlled substances. Any other law, rule or regulation but the Federal Food, Drug and Cosmetic Act to the contrary notwithstanding, no prescription shall be required for the dispensing or use of a controlled substance, listed in section five hundred sixty-six of this title.

§ 566. Schedules of controlled substances. There are hereby established five schedules of controlled substances, to be known as schedules I, II, III, IV and V respectively. Such schedules shall consist of the following substances by whatever name or chemical designation known:

Schedule I. (a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, others and salts is possible within the specific chemical designation:

1. Acetylmethadol.
2. Allylprodine.
3. Alphacetvlmethadol.
5. Alpha-methylfentanyl (N-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl) propionanilide; l-(l-methyl-2-phenylethyl)
   -l-(N-propanilido) piperidine).
7. Betacetvlmethadol.
8. Betameprodine.
11. Clonitazene.
12. Dextromoramide.
15. Difenoaxol.
17. Dimethylnbutene.
18. Dipipanone.
20. Etonaltzene.
22. Furethidine.
24. Kethomidone.
25. Levormoramide.
26. Levopethidine.
27. Noracymethadol.
29. Norpipanone.
30. Phenadoxone.
1. Phenampromide.
2. Phenomorphan.
3. Phenoperidine.
4. Piritramide.
5. Proheptazine.
6. Properidine.
7. Propiram.
8. Racemoramide.
9. Tilidine.
10. Trimeperidine.

(c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Acetorphine.
2. Acetyldihydrocodeine.
6. Cyrenorphine.
7. Desomorphine.
8. Dihydromorphine.
10. Etorphine (except hydrochloride salt).
11. Heroin.
15. Morphine methylbromide.
18. Myrophine.
22. Pholcodine.
23. Thebacon.

(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

1. 4-bromo-2, 5-dimethoxy-amphetamine Some trade or other names: 4-bromo-2, 5-dimethoxy-methyphenethylamine; 4-bromo-2, 5-DMA.
2. 2, 5-dimethoxyamphetamine Some trade or other names: 2, 5-dimethoxy-; -methylphenethylamine; "DOM"; and "STP".
3. 4-methoxyamphetamine Some trade or other names: 4-methoxy-; -methylphenethylamine; paramethoxyamphetamine, PMA.
4. 5-methoxy-3, 4-methylenedioxy - amphetamine.
5. 4-methyl-2, 5-dimethoxy-amphetamine Some trade and other names: 4-methyl-2, 5-dimethoxy-; -methylphenethylamine; "DOM"; and "STP".
6. 3, 4-methylenedioxyamphetamine.
Some trade and other names:

3-(u-dimethylaminoethyl)-5-hydroxyindole: 3-(2-dimethylaminoethyl)-5-hydroxy-N,N-dimethylserotonin; 3-(2-methoxy-N,N-dimethyltryptamine; mappine.

Diethyltryptamine. Some trade and other names: N,N-diethyltryptamine; DET.

Dimethyltryptamine. Some trade or other names: DMT.

Ibogane. Some trade and other names: 7-ethyl-6,6c,7,8,9,10,10,12,13-octahydro-2-methoxy-6,9-methano-5h-pyrindol 1',2',1,2 aze-
pine, 5,4-b indole: tabernanthe iboga.

Lysergic acid diethylamide.

Marijuana.

N,N-diethyltryptamine: DET.

Parahexyl. Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran.

Peyote. Meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts.

N-ethyl-3-piperidyl benzilate.

N-methyl-3-piperidyl benzilate.

Psilocybin.

Psilocyn.

Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

cis or trans tetrahydrocannabinol, and their optical isomers

cis or trans tetrahydrocannabinol, and their optical isomers (since nomenclature of these substances is not internationally standar-
dized, compounds of these structures, regardless of numerical designa-
tion of atomic positions covered).

Ethylamine analog of phencyclidine. Some trade or other names:

H-ethyl-1-phenylcyclohexy lamine, (1-phenylcyclohexyl) amylethylamine, N-(1-
phenylcyclohexyl) ethylamine cyclohexamine. PCE.

Pyrrolidine analog of phencyclidine. Some trade or other names:

1-(1-phenylcyclohexyl)-pyrrolidine: PCPy, PHP.

Thiophene analog of phencyclidine. Some trade or other names:

1-(1-(2-thienyl)-cyclohexyl)-piperidine, 2-thienylanalog of phencyclid-
ine, TCP, TCP.

e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

Mecloqualone.

Methaqualone.

Phencyclidine.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant ef-
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1. Affect on the central nervous system, including its salts, isomers, and salts of isomers:
   (1) Fenethylline.
   (2) N-ethylamphetamine.

2. Schedule II. (a) Schedule II shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
   (b) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
   (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:
      1. Raw opium.
      2. Opium extracts.
      3. Opium fluid extracts.
      4. Powdered opium.
      5. Granulated opium.
      6. Tincture of opium.
      7. Codeine.
      8. Ethylmorphine.
      11. Hydromorphone.
      12. Metopon.
      14. Oxycodone.
      15. Oxymorphone.
      16. Thebaine.
   (2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in this section, except that these substances shall not include the isoquinoline alkaloids of opium.
   (3) Opium poppy and poppy straw.
   (4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances including cocaine and ecgonine, their salts, isomers, and salts of isomers, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.
   (5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

3. Opiates. Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levoropropoxyphene excepted:
   (1) Alfentanil.
   (2) Alphaprodine.
   (3) Anileridine.
(4) Bezitramide.
(5) Bulk dextropropoxyphene (non-dosage forms).
(6) Dihydrocodeine.
(7) Diphenoxylate.
(8) Pentanyline.
(9) Isometadone.
(10) Levomethorphan.
(11) Levorphanol.
(12) Metazocine.
(13) Methadone.
(14) Methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenylbutane.
(15) Noramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
(16) Pethidine (meperidine).
(17) Pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
(18) Pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
(19) Pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
(20) Phenazocine.
(21) Piminodine.
(22) Racemethorphan.
(23) Racemorphan.
(24) Sufentanil.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.
(2) Methamphetamine, its salts, isomers, and salts of its isomers.
(3) Phenmetrazine and its salts.
(4) Methylphenidate.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital.
(2) Glutethimide.
(3) Pentobarbital.
(4) Secobarbital.

(f) Hallucinogenic substances. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product.

(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:
(1) Phenylacetone Some trade or other names: phenyl-2-propanone: P2P; benzyl methyl ketone: methyl benzyl ketone.
(2) Immediate precursors to phencyclidine (PCP):
(1) 1-phenylcyclohexylamine.
(1) 1-piperidino cyclohexanecarbonitrile (PCC).
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Schedule III. (a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations were listed on August twenty-five, nineteen hundred seventy-one, as excepted compounds under title twenty-one, section 308.32 of the code of federal regulations and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

(2) Benzphetamine.

(3) Chlorphentermine.

(4) Clortermine.

(5) Phendimetrazine.

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture or preparation containing:

(i) Amobarbital:

(ii) Secobarbital:

(iii) Pentobarbital:

or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:

(i) Amobarbital:

(ii) Secobarbital:

(iii) Pentobarbital:

or any salt of any of these drugs and approved by the federal food and drug administration for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof.

(4) Chlorhexadol.

(5) Lysergic acid.

(6) Lysergic acid amide.

(7) Methyprylon.

(8) Sulfonfertylemethane.

(9) Sulfomethylmethane.

(10) Sulfomethane.

(d) Nalorphine.

(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1.8 grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.
(2) Not more than \(1.8\) grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than three hundred milligrams of dihydrocodeine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than three hundred milligrams of dihydrocodeine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than \(1.3\) grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

Schedule IV. (a) Schedule IV shall consist of the drugs and other substances, by whatever official name common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

1. Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.
2. Dextropropoxyphene (alpha-\(+\)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Alprazolam.
2. Barbital.
5. Chloral betaine.
6. Chloral hydrate.
7. Clorazepate.
8. Clonazepam.
10. Clofazoline.
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1. Diazepam.
2. Estazolam.
3. Ethchlorvynol.
4. Ethinamate.
5. Ethyl Loflazepate.
6. Fludiazepam.
7. Flunitrazepam.
8. Flurazepam.
10. Flurazepam.
11. Loprazolam.
13. Lorazepam.
14. Lorazepam.
15. Lormetazepam.
17. Medazepam.
18. Methohexital.
19. Methylphenobarbital (nemobarbital).
22. Nordiazepam.
23. Oxazepam.
25. Oxazepam.
27. Oxazepam.
29. Nordiazepam.
30. Oxazepam.
31. Oxazepam.
32. Paraldehyde.
33. Pentazocine.
34. Phenobarbital.
35. Pinazepam.
36. Prazepam.
37. Temazepam.
38. Tetrazepam.
39. Triazolam.
40. Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers and salts of such isomers is possible:
41. Fenfluramine.
42. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of such isomers:
43. Diethylpropion.
44. Mazindol.
45. Pemoline (including organometallic complexes and chelates thereof).
46. Phentermine.
47. Pipradrol.
48. SPA (-)-l-dimethylamino-1, 2-diphenylethane).
49. Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:
50. Pentazocine.
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Schedule V. (a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(1) Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams.

(2) Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams.

(3) Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(5) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams.

(6) Not more than 0.5 milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(c) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material compound, mixture or preparation containing any of the following narcotic drugs and their salts, as set forth below:

(1) Butorphanol.

§ 567. Exception from schedules. 1. The authority may, by regulation, except any compound, mixture, or preparation containing any depressant substance in paragraph (a) of schedule III or in schedule IV from the application of all or any part of this article if (1) the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and (2) such ingredients are included therein in such combinations, quantity, proportion or concentration as to vitiate the potential for abuse of the substances which do have a depressant effect on the central nervous system.

2. The authority may, by regulation, reclassify as a schedule III substance, any compound, mixture or preparation containing any stimulant substance listed in paragraph (c) of schedule II, if

(a) the compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant effect on the central nervous system; and

(b) such ingredients are included therein in such combinations, quantity, proportion or concentration as to vitiate the potential for abuse of the substances which do have a stimulant effect on the central nervous system.

3. The authority may, by regulation, except any compound, mixture or preparation containing a narcotic antagonist substance from the application of all or any part of this article if (1) such compound, mixture or preparation has no potential for abuse, and (2) such compound, mixture or preparation has been excepted or exempted from control under the Federal Controlled Substances Act.
§ 568. Controlled substances license. 1. No person shall dispense, sell or traffic in a controlled substance in this state without first having obtained a license to do so from the authority.

2. Any person currently licensed to dispense controlled substances in the course of a licensed professional practice licensed or permitted pursuant to the education law or a licensed pharmacist who is not under indictment for or convicted of a felony or of selling controlled substances to a person under twenty-one years of age in any jurisdiction may apply to the controlled substances authority for a license to sell controlled substances. Such application shall be in writing and verified and shall contain such information as the controlled substances authority shall require. Such application shall be accompanied by a certified check, bank officers' check or draft, or money order for the amount required by this article for such license. If the controlled substances authority shall grant the application it shall issue a license in such form as shall be determined by its rules. Such license shall contain a description of the licensed premises, except in the case of doctors licensed to practice their profession and dispense medications pursuant to the education law, and in form and in substance shall be a license for a period of three years to the person therein specifically designated to sell controlled substances in the premises therein specifically licensed.

3. Not more than one license shall be granted to any person under this section.

4. Notwithstanding any other provision of this article, upon receipt of an application for a license or renewal thereof under this section, the applicant shall promptly notify the clerk of the village, town or city, as the case may be, by certified mail, return receipt requested, wherein the prospective licensed premises is to be located or, in the case of an application for renewal, where it is presently located or, in the case of a doctor, both wherein his residence and office are located.

For the purposes of the preceding sentence notification need only be given to the clerk of a village when such premises, residence or office location is to be located within the boundaries of the village. In the city of New York, the community board established pursuant to section twenty-eight hundred of the New York city charter with jurisdiction over the area in which such licensed premises is to be located shall be considered the appropriate public body to which notification shall be given. Such municipality or community board, as the case may be, may express an opinion for or against the granting of such license. Any such opinion shall be deemed part of the record upon which the liquor board makes its determination to grant or deny such license.

5. No controlled substances license shall be granted for any premises which shall be on the same street or avenue and within two hundred feet of a building occupied exclusively as a school, church, synagogue or other place of worship: the measurements to be taken in a straight line from the center of the nearest entrance of such school, church, synagogue or other place of worship to the center of the nearest entrance of the premises to be licensed.

Within the context of this subdivision, the word "entrance" shall mean a door of a school, of a house of worship, or of the premises sought to be licensed, regularly used to give ingress to students of the school, to the general public attending the place of worship, and to patrons of the premises proposed to be licensed, except that where a school or house of worship is set back from a public thoroughfare, the walkway or stairs leading to any such door shall be deemed an entrance; and the
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measurement shall be taken to the center of the walkway or stairs at the point where it meets the building line or public thoroughfare. A door which has no exterior hardware, or which is used solely as an emergency or fire exit, or for maintenance purposes, or which leads directly to a part of a building not regularly used by the general public or patrons, is not deemed an "entrance".

6. Such license shall in form and in substance be a license to the person specifically licensed to sell controlled substances on the premises specifically licensed except in the case of licensed doctors.

§ 569. Prohibited sales. 1. No person shall sell, deliver or give away or cause or permit or procure to be sold, delivered or given away any controlled substances to any person, actually or apparently, under the age of twenty-one years.

2. Neither such person so refusing to sell or deliver under this section nor his employer shall be liable in any civil or criminal action or for any fine or penalty based upon such refusal, except that such sale or delivery shall not be refused, withheld from or denied to any person on account of race, creed, color or national origin. In any proceeding pursuant to subdivision one of this section, it shall be an affirmative defense that such person had produced a photographic identification card apparently issued by a governmental entity or institution of higher education and that the controlled substance had been sold, delivered or given to such person in reasonable reliance upon such identification.

§ 570. Procuring controlled substances for persons under the age of twenty-one years. Any person who misrepresents the age of a person under the age of twenty-one years for the purpose of inducing the sale of any controlled substance, as defined in this article to such person, is guilty of an offense and upon conviction thereof shall be punished by a fine of not more than two hundred dollars, or by imprisonment for not more than five days, or by both such fine and imprisonment.

§ 571. Criminal sale of a controlled substance in or near school grounds. A person is guilty of criminal sale of a controlled substance in or near school grounds when he knowingly and unlawfully sells a controlled substance to a person less than nineteen years of age, when such sale takes place upon school grounds; criminal sale of a controlled substance in or near school grounds is a class B felony.

§ 572. Offense for one under age of twenty-one years to purchase or attempt to purchase a controlled substance through fraudulent means. 1. Any person under the age of twenty-one years who presents or offers to any licensee under this article, or to the agent or employee of such licensee, any written evidence of age which is false, fraudulent or not actually his own, for the purpose of purchasing or attempting to purchase any controlled substance, may be arrested or summoned and be examined by a magistrate having jurisdiction on a charge of illegally purchasing, attempting to illegally purchase a controlled substance. If a determination is made sustaining such charge the court or magistrate shall release such person on probation for a period of not exceeding one year, and may in addition impose a fine not exceeding one hundred dollars.

2. No such determination shall operate as a disqualification of any such person subsequently to hold public office, public employment, or as a forfeiture of any right or privilege or to receive any license granted by public authority; and no such person shall be denominated a criminal by reason of such determination, nor shall such determination be deemed a conviction.
§ 573. Violation of article a class E felony. The violation of any provision of this article, other than such which may have been otherwise specifically provided therefor herein, shall be a class E felony.

§ 574. License fees. The annual fee for a license to sell controlled substances shall be ten hundred sixty-seven dollars in the counties of New York, Kings, Bronx and Queens; six hundred sixty-seven dollars in the county of Richmond and in cities having a population of more than one hundred thousand and less than one million; and elsewhere the sum of four hundred dollars; provided, however, that the fee for persons licensed to dispense controlled substances in the course of a licensed professional practice shall be the sum of two hundred fifty dollars unless controlled substances are dispensed by him other than in the course of such a professional practice, in which case the annual fee shall be as otherwise provided in this section.

§ 575. License fees, duration of licenses; fee for part of year. Licenses issued pursuant to section five hundred sixty-eight of this title shall be effective for three years at three times that annual fee except that, in implementing the purposes of this section, the authority shall schedule the commencement dates, duration and expiration dates thereof to provide for an equal cycle of license renewals issued under such section through the course of the fiscal year. For licenses issued for less than the three-year licensing period, the license fee shall be levied on a pro-rated basis. The license fee shall be due and payable at the time of application. The authority may make such rules as shall be appropriate to carry out the purpose of this section.

§ 576. Revocation of licenses. Any license granted pursuant to this article may be revoked by the authority in whole or in part upon a finding that the licensee has: 1. falsified any application, report, or record required by this article; 2. willfully failed to furnish the authority with timely reports or information required to be filed with the authority; 3. been convicted of an offense in any jurisdiction relating to any substance listed in this article as a controlled substance; 4. willfully or negligently failed to comply with any of the provisions of the Federal Controlled Substances Act, this article, or the regulations promulgated thereunder; 5. failed to maintain effective control against diversion of controlled substances; or 6. willfully and unreasonably refused to permit an inspection authorized by this article.

§ 577. Revocation and suspension of license procedure. 1. A proceeding to revoke a license shall be commenced by a notice served personally or by registered or certified mail upon the licensee directing him to show cause why his license should not be revoked. Such notice shall set forth in detail the grounds for the proposed revocation and shall fix a date for hearing not less than fifteen nor more than thirty days from the date of such notice. 2. Simultaneous with the commencement of a proceeding to revoke a license or during the course of such proceeding, the authority may, in the case of a clear and imminent danger to the public health or safety forthwith suspend without prior notice any license theretofore issued. 3. If the authority suspends or revokes a license, all controlled substances owned or possessed by the licensee in the state of New York at the time of the suspension or the effective date of the revocation shall be...
§ 578. Formal hearings procedure. 1. The authority or any person designated by it for this purpose, shall have the power to administer oaths, compel the attendance of witnesses and the production of books, records and documents and to take proof and testimony concerning all matters within its jurisdiction.

2. Notice of hearing shall be served at least fifteen days prior to the date of the hearing provided, however, that, whenever the authority has made a preliminary order suspending a license or directing the cessation of any activity pending the hearing, the authority shall provide the person affected thereby with an opportunity to be heard within five days.

3. At a hearing any person who is a party thereto may appear personally, shall have the right of counsel, may cross-examine witnesses and produce evidence and witnesses in his own behalf.

4. Following a hearing, the authority shall make appropriate findings of fact and determinations and shall issue an order in accordance therewith.

5. The person conducting the hearing shall not be bound by the rules of evidence but a determination must be founded upon sufficient legal evidence to sustain it.

6. The authority may adopt such rules and regulations governing the procedures to be followed with respect to the hearings as may be consistent with the fair and effective administration of this article.

7. Any notice, application, order or other paper required to be served upon any party to a proceeding hereunder may be served in person, by registered mail or by certified mail upon either the party or an attorney who has appeared on his behalf.

§ 579. Judicial review. 1. All orders or determinations hereunder shall be subject to judicial review as provided in article seventy-eight of the civil practice law and rules. In any such proceeding findings of fact made by the authority, if supported by substantial evidence, shall be conclusive.

2. Application for such review must be made within sixty days after service of the order or determination upon the person whose license, certificate, right or privilege is affected thereby or upon the attorney of record for such person.

3. An order, or the enforcement of an order revoking or suspending a license or revoking or cancelling official forms issued by the authority, if accompanied by a finding of a clear and imminent danger to the public health or safety, may not be temporarily stayed or restrained prior to a determination on the merits of the application for judicial review.

§ 580. Violations: penalties. 1. In any civil, criminal or administrative action or proceeding brought for the enforcement of any provision of this article, it shall not be necessary to negate or disprove any exception, excuse, proviso or exemption contained in this article, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the person claiming its benefit.
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2. Violation of any provision of this article for which a penalty is specifically provided herein shall be punishable as provided herein. Violation of any provision of this article for which no penalty is provided herein shall be punishable as provided in the penal law.

3. No person shall be prosecuted for a violation of any provision of this article if such person has been acquitted or convicted under the federal controlled substances act, of the same act or omission which it is alleged, constitutes a violation of this article.

4. Upon the conviction of any person for violating any provision of this article, a copy of the judgment and sentence, and of the opinion of the court or judge, if any opinion be filed, shall be sent by the clerk of the court, or by the judge, to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession, or to carry on his business.

5. Upon the imposition of any penalty, warning, reprimand or other sanction against any person for violating any provision of this article, a copy of the order, finding or opinion, if any is made or rendered, shall be sent by the person authorized by law to make such determination, to the board or officer by whom the respondent is licensed or registered to practice a profession or to carry on a business.

TITLE III
MANUFACTURE AND DISTRIBUTION OF CONTROLLED SUBSTANCES

Section 585. Licenses for manufacture or distribution of controlled substances.

1. No person shall manufacture or distribute a controlled substance in this state without first having obtained a license to do so from the authority.

2. A license issued under this section shall be valid for two years from the date of issue, except that in order to facilitate the renewals of such licenses, the authority may, upon the initial application for a license, issue some licenses which may remain valid for a period of time greater than two years but not exceeding an additional eleven months.

3. The fee for a license under this section shall be six hundred dollars: provided however, if the license is issued for a period greater than two years the fee shall be increased, pro rata, for each additional month of validity.

4. Licenses issued under this section shall be effective only for and shall specify:
   (a) the name and address of the licensee;
   (b) the nature of the controlled substances, either by name or schedule, or both, which may be manufactured or distributed;
   (c) whether manufacture or distribution of both such activities are permitted by the license.
Upon application of a licensee, a license may be amended to allow the licensee to relocate within the state or to add a manufacturing or distributing activity or to add further substances or schedules to the manufacturing or distribution activity permitted thereunder. The fee for such amendment shall be one hundred twenty-five dollars.

S 586. Authority to issue initial licenses, amended licenses, and to renew licenses. 1. Subject to the provisions of this article the authority is authorized to issue licenses authorizing the manufacture or distribution of controlled substances.

2. An application for a license, amendment of a license, or renewal of a license which, if granted, would authorize the manufacture or distribution of a controlled substance which the applicant is not then authorized to manufacture or distribute shall, with respect to any such additional authorization, be treated as an application for an initial license.

3. An application for a license which, if granted, would authorize a licensee to continue to manufacture or distribute a controlled substance shall, with respect to such continued manufacture or distribution only, be treated as an application for renewal of a license.

4. A late-filed application for the renewal of a license may, in the discretion of the authority, be treated as an application for an initial license.

S 587. Application for initial license. 1. An applicant for an initial license to manufacture or distribute controlled substances shall furnish to the authority such information as it shall require and evidence that the applicant:

(a) and its managing officers are of good moral character;
(b) possesses sufficient land, buildings and equipment to properly carry on the activity described in the application;
(c) is able to maintain effective control against diversion of the controlled substances for which the license is sought;
(d) is able to comply with all applicable state and federal laws and regulations relating to the manufacture or distribution of the controlled substances for which the license is sought.

2. The application shall include the name, residence address and title of each of the officers and directors and the name and residence address of any person having a ten per centum or greater proprietary, beneficial, equitable or credit interest in the applicant. Each such person, if an individual, or lawful representative if a legal entity, shall submit an affidavit with the application setting forth:

(a) any position of management or ownership during the preceding ten years of a ten per centum or greater interest in any other business, located in or outside this State, manufacturing or distributing drugs; and
(b) whether such person or any such business has been convicted, fined, censured or had a license suspended or revoked in any administrative or judicial proceeding relating to or arising out of the manufacture or distribution of drugs; and
(c) such other information as the authority may require.

3. The applicant shall be under a continuing duty to report to the authority any change in facts or circumstances reflected in the application on any newly discovered or occurring fact or circumstance which is required to be included in the application.

§ 588. Granting of initial license. 1. The authority shall grant an initial license or amendment to a license as to one or more of the sub-
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1. Instances or activities enumerated in the application if it is satisfied
2. that:
   (a) the applicant will be able to maintain effective control against
3. diversion of controlled substances;
   (b) the applicant will be able to comply with all applicable state
4. and federal laws;
   (c) the applicant and its officers are ready, willing and able to
5. properly carry on the manufacturing or distributing activity for which a
6. license is sought;
   (d) the applicant possesses sufficient land, buildings and equipment
7. to properly carry on the activity described in the application;
   (e) it is in the public interest that such license be granted; and
8. (f) the applicant and its managing officers are of good moral
9. character.

2. If the authority is not satisfied that the applicant should be is-
10. sued an initial license, it shall notify the applicant in writing of
11. those factors upon which further evidence is required. Within thirty
12. days of the receipt of such notification, the applicant may submit addi-
13. tional material to the authority or demand a hearing or both.

§ 589. Applications for renewal of licenses to manufacture or dis-
14. tribute controlled substances. 1. An application for the renewal of any
15. license issued pursuant to this title shall be filed with the authority
16. not more than six months nor less than four months prior to the expira-
17. tion thereof.
2. The application for renewal shall include such information pre-
18. pared in such manner and detail as the authority may require, including
19. but not limited to:
   (a) any material change in the circumstances or factors listed in
20. section five hundred eighty-seven of this title;
   (b) every known charge or investigation, pending or concluded during
21. the period of the license, by any governmental agency with respect to:
      (i) each incident or alleged incident involving the theft, loss, or
22. possible diversion of controlled substances manufactured or distributed
23. by the applicant: and
      (ii) compliance by the applicant with the requirements of the federal
24. controlled substances act, or the laws of any state with respect to any
25. substance listed in section five hundred sixty-six of this article.
3. An applicant for renewal shall be under a continuing duty to
26. report to the authority any change in facts or circumstances reflected
27. in the application or any newly discovered or occurring fact or circum-
28. stance which is required to be included in the application.
4. If the authority is not satisfied that the applicant is entitled
29. to a renewal of such license, it shall within forty-five days after the
30. filing of the application serve upon the applicant or his attorney of
31. record in person or by registered or certified mail an order directing
32. the applicant to show cause why his application for renewal should not
33. be denied. Such order shall specify in detail the respects in which the
34. applicant has not satisfied the authority that the license should be
35. renewed.
5. Within thirty days of service of such order, the applicant may
36. either submit additional material to the authority or demand a hearing
37. or both. If a hearing is demanded the authority shall fix a date for
38. hearing not sooner than fifteen days nor later than thirty days after
39. receipt of the demand, unless such time limitation is waived by the
40. applicant.
§ 590. Granting of renewal of licenses. 1. The authority shall renew a license, unless it determines and finds that the applicant:
   (a) is unlikely to maintain or be able to maintain effective control against diversion; or
   (b) is unlikely to comply with all federal and state laws applicable to the manufacture or distribution of the controlled substance or substances for which the license is sought.

2. For purposes of this section, proof that a licensee, during the period of his license, has failed to maintain effective control against diversion or has knowingly or negligently failed to comply with applicable federal or state laws relating to the manufacture or distribution of controlled substances, shall constitute substantial evidence that the applicant will be unlikely to maintain effective control against diversion or be unlikely to comply with the applicable federal or state statutes during the period of proposed renewal.

§ 591. Identification of controlled substances. 1. No controlled substance may be manufactured or delivered within this state in solid or capsule form unless it has clearly marked or imprinted upon each such capsule or solid:
   (a) an individual symbol or number assigned to the person who manufactured the controlled substance in such form, and
   (b) a code number or symbol assigned by the authority identifying such substance or combination of substances.

2. No controlled substance contained within a bottle, vial, carton or other container, or in any way affixed or appended to or enclosed within a package of any kind, and designed or intended for delivery in such container or package to an ultimate consumer, shall be manufactured or distributed within this state unless such container or package has clearly and permanently marked or imprinted upon it:
   (a) an individual symbol or number assigned to the person who packaged the controlled substance in such form; and
   (b) a code number or symbol assigned by the authority identifying such substance or combination of substances.

3. The authority shall assign a code number or symbol to each controlled substance, and in its discretion for combinations of substances, so as to provide ready identification of such substance. Upon application by a manufacturer of controlled substances, the authority shall assign to such manufacturer an identifying number or symbol. Wherever possible and practical, the authority shall assign code numbers which conform to the national drug code system.

§ 592. Distribution of free samples. It shall be unlawful to distribute free samples of controlled substances, except to persons licensed pursuant to title IV of this article.

§ 593. Authorized distribution. 1. Controlled substances may be lawfully distributed within this state only to licensed distributors or manufacturers, practitioners, pharmacists, pharmacies, institutional dispensers, and laboratory, research or instructional facilities authorized by law to possess the particular substance distributed;

2. A person authorized to obtain a controlled substance by distribution may lawfully receive such substance only from a distributor licensed pursuant to this article.

§ 594. Exempt distribution. 1. The authority by regulation or ruling may exempt from the licensing requirements of this title:
   (a) the return of controlled substances to a manufacturer or distributor by a practitioner or pharmacy;
(b) the sale of controlled substances by a pharmacy or practitioner to a pharmacy or practitioner for the immediate needs of the pharmacy or practitioner receiving such substances; and
(c) the disposition of controlled substances by a person in lawful possession thereof who, not in the ordinary course of business, wishes to discontinue such possession.

2. Records of such transactions shall be prepared and maintained and reports filed in such manner as the authority shall require.

§ 595. Reports and records. 1. Persons licensed under this title shall maintain records of all controlled substances manufactured, received, disposed of or distributed by them. The record shall show the date of receipt or delivery, the name and address, and registration number of the person from whom received or to whom distributed, the kind and quantity of substance received and distributed, the kind and quantity of substance produced or removed from the process of manufacture and the date thereof.

2. Any person licensed under this title shall prepare and maintain a biennial report setting forth the current inventory of controlled substances, the quantities of controlled substances manufactured or distributed within the state during the period covered by the report and such other information as the authority shall by regulation prescribe. Maintaining for inspection a biennial inventory of controlled substances prepared and maintained in compliance with federal statutes and regulations shall be deemed in compliance with this section.

3. Any person licensed under this title shall forthwith notify the authority of any incident involving the theft, loss or possible diversion of controlled substances manufactured or distributed by the licensee.

4. The records and reports required by this section shall be prepared, preserved, or filed in such manner and detail as the authority shall by regulation prescribe.

TITLE IV
RESEARCH, INSTRUCTIONAL ACTIVITIES, AND CHEMICAL ANALYSIS RELATING TO CONTROLLED SUBSTANCES

Section 600. Licenses to engage in research, instructional activities, and chemical analysis relating to controlled substances. 1. No person within this state shall manufacture, obtain, possess, administer or dispense a controlled substance for purposes of scientific research, instruction or chemical analysis without having first obtained a license to do so from the authority.

2. A license issued under this title shall be valid for two years from the date of issue.

3. The fee for a license under this title shall be twenty dollars.

4. Licenses issued under this title shall be effective only for and shall specify:
(a) the name and address of the licensee;
(b) the nature of the project or projects permitted by the license;
(c) the nature of the controlled substance or substances to be used in the project, by name if in schedule I of section five hundred sixty-
6. six of this article, and by name or schedule or both if in any other
schedule in this article;

(d) whether dispensing to human subjects is permitted by the license.

§ 601. Authority to issue licenses; applications. 1. Subject to the
provisions of this title, the authority is authorized to license a per-
son to manufacture, obtain and possess, dispense, and administer con-
trolled substances for purposes of scientific research, chemical
analysis or instruction.

2. A license or amendment of a license shall be issued by the
authority unless the applicant therefor has failed to furnish a satisfac-
tory protocol pursuant to subdivision three of this section, or a
satisfactory statement pursuant to section six hundred two of this
title, and proof that the applicant:

(a) and its managing officers are of good moral character;

(b) possesses or is capable of acquiring facilities, staff and equip-
ment sufficient to carry on properly the proposed project detailed in
the protocol or statement accompanying the application;

(c) is able to maintain effective control against diversion of the
controlled substances for which the license is sought;

(d) is able to comply with all applicable state and federal laws and
regulations relating to the controlled substances for which the license
is sought.

3. An application for a license or for an amendment to a license
shall be accompanied by a detailed protocol setting forth:

(a) the nature of the proposed project;

(b) the proposed quantity or quantities of each controlled substance
involved;

(c) the qualifications and competence of the applicant to engage in
such project;

(d) specific provisions for the safe administration or dispensing of
controlled substances to humans, if such is contemplated, and the
proposed method of selecting humans;

(e) such other additional information as the authority may require.

4. The application for a license pursuant to this title shall include
copies of all papers filed with the Bureau, the Federal Food and Drug
Administration and any other governmental agency, whether state or fed-
eral, in connection with the applicant's proposed project.

§ 602. Institutional research licenses. 1. Subject to the provisions
of this title, the authority is authorized to license an institution,
which regularly engages in research, to approve specific projects con-
ducted under its immediate auspices.

2. An institution seeking a license pursuant to this section shall
make application in the same manner as an applicant for a license pur-
suant to section six hundred one of this title. However, such institu-
tion shall submit, in lieu of a detailed protocol of a specific project,
a statement including:

(a) the qualifications and such other data as the authority may
require regarding each member of the committee within the institution
which will approve specific projects;

(b) a description of the system within the institution for approving,
supervising and evaluating such projects.
Upon approval of each specific project, such institution shall forward to the authority a description of the project, the names and qualifications of the individuals working thereon and of those individuals designated to supervise the project. If administration or dispensing to human subjects is contemplated, there shall also be included a description of the provisions for safe administration or dispensing.

Such institution shall forward to the authority periodic progress reports and evaluations of, as well as amendments to, each project, in such manner and in such detail as the authority may prescribe.

§ 603. Procedure. 1. A license or amendment to a license shall be issued or refused by the authority within ninety days from the date of filing of a completed application.

2. Within thirty days of notification of such refusal, the applicant may either submit additional material to the authority or demand a hearing or both. If a hearing is demanded the authority shall fix a date for hearing not sooner than fifteen days nor later than thirty days after receipt of the demand, unless such time limitation is waived by the applicant.

§ 604. Exemptions from title. The following persons engaging in the following activities shall be exempt from the provisions of this title:

1. A practitioner lawfully administering, dispensing or prescribing a controlled substance in the course of his professional practice to an ultimate user for a recognized medical purpose;

2. A licensed manufacturer engaged in research upon non-human subjects or chemical analysis conducted on the premises specified in the manufacturer's license;

3. A licensed distributor engaged in quality control analysis at the premises specified in his license;

4. A practitioner or patient participating in a clinical research program on the therapeutic use of marihuana or tetrahydrocannabinols.

(a) Each such clinical research program shall have received protocol approval from the United States Food and Drug Administration, shall possess an effective investigational new drug application and shall have been registered by the Drug Enforcement Administration, United States Department of Justice.

(b) Each such clinical research program authorized under the provisions of article thirty-three-A of the public health law.

§ 605. Reports and records. 1. Persons licensed under this title shall keep records showing the receipt, administration, dispensing or destruction of all controlled substances and maintain the records in such manner and detail as the authority, by regulation, shall require.

2. Persons licensed under this title shall submit reports to the authority summarizing the activity conducted under the license. Included in such report shall be a detailed inventory of controlled substances, and an accounting for all such substances received or disposed of during the period covered by the report and such other information as the authority shall, by regulation, require. Such reports shall be filed with the authority at such times as the authority may require.

§ 2. Articles two hundred twenty and two hundred twenty-one of the penal law are REPEALED.

§ 4. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law; provided, however, that the provisions of title one of article twenty-one of the executive law, as added by section one of this act shall take effect immediately and provided further, that effective immediately, the addition, amend-
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1. ment and/or repeal of any rules or regulations necessary for the implement-
2. ation of the foregoing sections of this act on their effective date
3. are authorized and directed to be made and completed on or before such
4. effective date.