

- OPERATING A VEHICLE OR DANGEROUS INSTRUMENT WHILE UNDER THE INFLUENCE OF MARIHUANA WOULD BE A MISDEMEANOR PUNISHABLE BY UP TO ONE YEAR IN JAIL, A FINE OF UP TO \$1,000, OR BOTH, AND SUSPENSION OF A PERMIT TO OPERATE SUCH A VEHICLE OR INSTRUMENT FOR UP TO 180 DAYS.
- A PLEA OF MARIHUANA INTOXICATION SHALL NOT BE A DEFENSE TO ANY CRIMINAL ACT COMMITTED UNDER ITS INFLUENCE NOR SHALL PROOF OF SUCH INTOXICATION CONSTITUTE A NEGATION OF SPECIFIC INTENT.
- A PERSON WOULD BE ABSOLUTELY LIABLE IN CIVIL COURT FOR ANY DAMAGE TO PERSON OR PROPERTY WHICH HE CAUSED WHILE UNDER THE INFLUENCE OF THE DRUG.

DISCUSSION OF FEDERAL RECOMMENDATIONS

The recommended federal approach is really a restatement of existing federal policy. From official testimony and record evaluation, we know that the federal law enforcement authorities, principally the Federal Bureau of Narcotics and Dangerous Drugs and the Bureau of Customs, do not concentrate their efforts on personal possession cases. The avowed purpose of both Bureaus is to eliminate major traffickers and sources of supply. For the most part, the federal

(1) The totally donative transfer is not subject to criminal penalty, regardless of where it takes place.

(2) The transfer of *small* amounts for *insignificant* remuneration *not involving a profit* is not subject to criminal penalty (except if it is accomplished in public, in which case it is subject to criminal sanction), but

(3) The transfer of "*large* amounts" for "*significant*" remuneration not involving a profit is subject to criminal penalty.

Footnote 4 on page 158 of the Report, the Commission refers to a Report of The Senate Judiciary Committee on the Comprehensive Drug Abuse Prevention and Control Act of 1970. In substance, it implies that within the meaning of the Act, transfers of more than one or two marihuana cigarettes in return for 50 cents or one dollar to cover cost are not intended to be covered as casual transfers, but rather are to be treated as unlawful sales.

Commissioners Hughes and Javits feel that the Commission has failed to set forth a clear standard which will adequately inform the public of their obligations under the law. The recommendation and its discussion in the Report are confusing and fail to provide the individual with sufficient guidance to allow him to act without having to dodge in and out of illegality. It also undermines a basic, stated objective of the Commission i.e., to concentrate the weight of the criminal sanction upon significant supply and distribution activities, rather than upon casual consumption.

Moreover, proscribing even the most casual not-for-profit transfers when they occur in public is, in their opinion, wrong. Such transfers are necessarily inci-



National Commission on Marihuana and Drug Abuse

801 19th Street N.W.
Washington, D.C. 20008

March 22, 1973

To The President and Congress of the United States:

As Chairman of the National Commission on Marihuana and Drug Abuse, I am pleased to submit to you our second and final Report in conformance with the mandate contained in Section 601 of the Public Law 91-513, The Comprehensive Drug Abuse Prevention and Control Act of 1970.

Our final Report, "Drug Use in America: Problem in Perspective," is an effort to examine the roots of the drug problem in the United States, to analyze the assumptions upon which present policy is based, and to recommend policy directions for both the public and private sectors. We on the Commission believe that policy should be focused on the behavioral concomitants of drug use rather than on the drugs themselves. By so doing, policy makers can refine national objectives and devise more effective strategies for reducing the social costs of drug misuse.

This Report describes the phenomena of drug use, drug-induced behavior and drug dependence and establishes a process for assessing their social impact. We have also submitted concrete recommendations for the present and have speculated about the policies which may prove useful in the future. We sincerely hope that our Report will enhance the efforts of the American people to understand and respond effectively to this most troublesome social concern.

By Direction of the Commission

Raymond P. Shafer

Raymond P. Shafer
Chairman

The President
The President of the Senate
The Speaker of the House

INDEX OF FIRST YEAR RECOMMENDATIONS

Marihuana: A Signal of Misunderstanding

(First Report of the National Commission on Marihuana and Drug Abuse¹)

PRINCIPAL RECOMMENDATIONS

Federal

1. Possession of marihuana for personal use would no longer be an offense, but marihuana possessed in public would remain contraband subject to summary seizure and forfeiture.
2. Casual distribution of small amounts of marihuana for no re-

¹ The 13 Commissioners are in basic agreement with the Report and its recommendations. However, several Commissioners differ with specific recommendations and their opinions are presented in a footnote on pages 151-156 of the First Report. A brief summary of this footnote follows:

Commissioners Rogers and Carter agree with the discouragement policy and the decriminalization aspects of the recommendations, but feel that the contraband concept is not a sufficiently strong expression of societal disapproval of the use of marihuana. They would recommend, in addition, a civil fine for possession of any amount of marihuana in private or in public. This civil fine would not be reflected in a police record.

Commissioner Ware agrees completely with the statements of Congressmen Rogers and Carter but wishes to reemphasize that the social policy and legal scheme adopted is applicable only to marihuana and should not be construed to embrace other psychoactive drugs. He advocates some penalty short of criminalizing the users, such as a civil fine or some type of extensive drug education. Further, he is opposed to the use of *any* drug, including alcohol, for the express purpose of becoming intoxicated.

Commissioners Hughes and Javits, while agreeing with the Commission's recommendation that the private use of marihuana be taken out of the criminal justice system, disagree with three specific recommendations relating to the implementation of the discouragement policy.

First, they would eliminate the contraband provision from the partial prohibition scheme adopted by the Commission. Second, believing the Commission has not set forth a clear standard as to what constitutes the casual not-for-profit sale, they recommend that all not-for-profit sales be excluded from criminal sanction. Third, they feel there is no need to retain criminal sanction on public possession of more than one ounce of marihuana and would permit public possession of "some reasonable amount" for personal use.

muneration, or insignificant remuneration not involving profit, would no longer be an offense.

3. A plea of marihuana intoxication shall not be a defense to any criminal act committed under its influence, nor shall proof of such intoxication constitute a negation of specific intent.

State

1. Cultivation, sale or distribution for profit and possession with intent to sell would remain felonies (although we do recommend uniform penalties).

2. Possession in private of marihuana for personal use would no longer be an offense.

3. Distribution in private of small amounts of marihuana for no remuneration, or insignificant remuneration not involving a profit, would no longer be an offense.

4. Possession in public of one ounce or under of marihuana would not be an offense, but the marihuana would be contraband subject to summary seizure and forfeiture.

5. Possession in public of more than one ounce of marihuana would be a criminal offense punishable by a fine of \$100.

6. Distribution in public of small amounts of marihuana for no remuneration or insignificant remuneration not involving a profit would be a criminal offense punishable by a fine of \$100.

7. Public use of marihuana would be a criminal offense punishable by a fine of \$100.

8. Disorderly conduct associated with public use of or intoxication by marihuana would be a misdemeanor punishable by up to 60 days in jail, a fine of \$100, or both.

9. Operating a vehicle or dangerous instrument while under the influence of marihuana would be a misdemeanor punishable by up to one year in jail, a fine of up to \$1,000, or both, and suspension of a permit to operate such a vehicle or instrument for up to 180 days.

10. A plea of marihuana intoxication shall not be a defense to any criminal act committed under its influence nor shall proof of such intoxication constitute a negation of specific intent.

11. A person would be absolutely liable in civil court for any damage to person or property which he caused while under the influence of the drug.

ANCILLARY RECOMMENDATIONS

In addition to these legal recommendations for federal and state action, the Commission believes certain other ancillary recommendations should be presented for action.

Legal and Law Enforcement Recommendations

Federal

1. Federal law enforcement agencies, especially the Bureau of Narcotics and Dangerous Drugs and the Bureau of Customs, should improve their statistical reporting systems so that policies may be planned and resources allocated on the basis of accurate and comprehensive information.

2. The Federal Bureau of Narcotics and Dangerous Drugs should increase its training programs of state and local police with special emphasis on the training in the detection of trafficking cases.

3. Increased border surveillance, a tightening of border procedures, and a realistic eradication program to diminish the supply of drugs coming into the country, coupled with a more effective program for diminishing the domestic production and distribution of marihuana, are required.

State

1. All states should adopt the Uniform Controlled Substances Act to achieve uniformity with regard to marihuana and other drug laws, with the exception that the legal response to possession for one's own use be uniformly adopted in accordance with our recommendation in Chapter V of this report.

2. Each state should establish a centralized compulsory reporting and record-keeping authority so that adequate and accurate statistics of arrests, sentences and convictions on a statewide basis are available.

3. Those states requiring physicians to report drug users seeking medical assistance should change such requirements to insure the confidentiality of the drug user's identity, so that persons needing medical help will feel free to seek it.

International

If the United States should become a signatory of the proposed Psychotropic Convention, we recommend that cannabis be removed from the existing Single Convention and consideration be given to listing it in the proposed Psychotropic Convention among drugs which have similar effects.

Medical Recommendations

1. Fuller coordination of the marihuana research conducted by governmental and private agencies is needed to reduce the duplication of effort, assure a diversity of new approaches and new objectives, and

to provide efficient integration of findings into the available body of knowledge.

2. Research efforts to develop an inexpensive, easy method for detecting and quantifying the presence of marihuana in the blood, breath or urine of a person suspected of being intoxicated should be accelerated.

3. An accelerated program for funding foreign research should be undertaken immediately.

4. Increased support of studies which evaluate the efficacy of marihuana in the treatment of physical impairments and disease is recommended.

5. Community-based treatment facilities should be promoted in caring for problem drug users utilizing existing health centers when possible and appropriate.

6. Public health courses on the social aspects of drug use should be included in the curricula of the schools of the health professions.

Other Recommendations

1. The Commission recognizes that several state legislatures have improperly classified marihuana as a narcotic, and recommends that they now redefine marihuana according to the standards of the recently adopted Uniform Controlled Substances Act.

2. A single federal agency source should disseminate information and materials relating to marihuana and other drugs. The National Clearinghouse for Drug Abuse Information should be charged with this responsibility.

3. The Special Action Office for Drug Abuse Prevention in the White House should be responsible for the coordination, development and content review of all federally-supported drug educational materials and should issue a report as soon as possible, evaluating existing drug education materials.

4. The Commission notes the significant role played by the voluntary sector of the American community in influencing the social, religious and moral attitudes of our nation's citizens and recommends that the voluntary sector be encouraged to take an active role in support of our recommended policy of discouraging the use of marihuana.