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February 12, 2018

Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

Representative Taylor Barras
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

**RE: SENATE CONCURRENT RESOLUTION NO. 16 OF THE 2015 REGULAR
SESSION**

Dear Mr. President and Mr. Speaker:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature relative to marijuana laws.

Sincerely,


William E. Crawford
Director

WEC/puc

Enclosure

cc: Senator Fred H. Mills, Jr.

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.us
Secretary of State, Mr. Tom Schedler
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
CRIMINAL CODE AND CODE OF CRIMINAL
PROCEDURE COMMITTEE**

**REPORT TO THE LEGISLATURE
IN RESPONSE TO SCR NO. 16 OF THE 2015 REGULAR SESSION**

Relative to marijuana laws

Prepared for the
Louisiana Legislature on
February 12, 2018

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE
CRIMINAL CODE AND CODE OF CRIMINAL
PROCEDURE COMMITTEE**

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SENATE CONCURRENT RESOLUTION NO. 16

BY SENATOR MILLS

A CONCURRENT RESOLUTION

To direct the Louisiana State Law Institute to establish a working group to study current law relative to marijuana and to make recommendations to protect public safety, hold marijuana offenders accountable, and control costs to the criminal justice system arising out of the prosecution of marijuana offenses.

WHEREAS, members of the criminal justice community have found that the volume of marijuana offenses being prosecuted are placing a burden on lower courts, forcing state and local governments to spend tax dollars to prosecute and defend many lesser offenses, thus creating a financial burden on these communities; and

WHEREAS, members of the criminal justice community have found that the increase in arrests, convictions, and sentencing for marijuana offenses has placed a burden on local jails and state prisons, and contributes significantly to Louisiana's costly incarceration rates; and

WHEREAS, the current state and federal funding climate gives the legislature and other officials cause to evaluate the need for reforms of the state's criminal justice system to promote public safety more effectively and efficiently, hold offenders accountable, and control spending; and

WHEREAS, it is incumbent upon the legislature and other officials to develop and implement changes necessary to optimize public safety resources and make strategic investments across our public safety system; and

WHEREAS, members of the criminal justice community have identified reform of marijuana sentencing laws and related habitual offender laws as a means to reduce incarceration rates and reduce costs to the criminal justice system without negatively impacting public safety; and

WHEREAS, in recent years, numerous legislative instruments aimed at marijuana sentencing reform have been introduced in both the House of Representatives and the Senate

but have not reached consensus in committee or been enacted into law; and

WHEREAS, the provisions of current law regarding marijuana offenses should be reviewed and thoroughly examined with the goal of building consensus among stakeholders and consolidating efforts toward legislative reform; and

WHEREAS, a concerted effort should be made to establish laws that yield a more effective criminal justice system, while holding public safety paramount and considering the issues that impact diverse stakeholders in the criminal justice system; and

WHEREAS, the legislature has the power to authorize and direct the Louisiana State Law Institute to study and make recommendations for the revision of laws regarding marijuana offenses, in particular sentencing for marijuana offenses, habitual offender laws, and related statutes; and

WHEREAS, on June 5, 2014, the Louisiana State Bar Association's House of Delegates adopted a resolution in support of legislation reducing sentences for simple possession of marijuana; and

WHEREAS, on January 17, 2015, the Louisiana State Bar Association's House of Delegates adopted a resolution in support of the study of marijuana laws and related habitual offender laws, and recommendations for reform.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby authorize and direct the Louisiana State Law Institute to establish a working group to study and make recommendations for the revision of marijuana laws and related habitual offender laws in an effort to identify reforms that will ensure the most effective and efficient administration of justice in the state of Louisiana.

BE IT FURTHER RESOLVED that the Legislature of Louisiana hereby directs the Louisiana State Law Institute to work in conjunction with the Louisiana District Attorneys Association, the Louisiana Public Defender Board, the Louisiana Sheriffs' Association, the Louisiana State Police, the Louisiana Commission on Law Enforcement and Administration of Criminal Justice, the Louisiana Clerks of Court Association, and any other agencies or associations deemed appropriate by the working group regarding this study.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall report its findings and recommendations to the legislature on or before March 1, 2016.

SCR NO. 16

ENROLLED

BE IT FURTHER RESOLVED that a copy of this Resolution is to be transmitted to the director of the Louisiana State Law Institute.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

February 12, 2018

To: Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

Representative Taylor F. Barras
Speaker of the House of Representatives
P.O. Box 94062
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**REPORT TO THE LEGISLATURE
IN RESPONSE TO SCR NO. 16 OF THE 2015 REGULAR SESSION**

Senate Concurrent Resolution No. 16 of the 2015 Regular Session directed the Louisiana State Law Institute “to establish a working group to study current law relative to marijuana and to make recommendations to protect public safety, hold marijuana offenders accountable, and control costs to the criminal justice system arising out of prosecution of marijuana offenses.” In fulfillment of this request, the Law Institute assigned the project to its Criminal Code and Code of Criminal Procedure Committee.

Extensive background information was compiled with respect to the purpose of the resolution as well as the intent behind the bill on which it was based, Senate Bill No. 323 of the 2014 Regular Session. Research indicated that the purpose of this bill was to reduce criminal penalties for marijuana possession and prohibit application of enhanced sentencing laws to second and subsequent offense marijuana possession. Legislative testimony with respect to Senate Bill No. 323 of the 2014 Regular Session revealed that its author was concerned about the financial burden on the state of incarceration for felony marijuana possession and the immense discretion provided in charging an offender with a second or subsequent offense of possession of marijuana. However, during legislative testimony, other legislators expressed concern over the fact that Louisiana’s statutes provided for possession of up to sixty pounds of marijuana, an amount that is much larger than the amounts allowed in any other states across the country. As a result, legislators suggested that if the penalties for possession of marijuana were going to be reduced, perhaps a graduated scale with respect to the amount of marijuana possessed should be incorporated as well. Nevertheless, legislators could not reach a consensus on what these weight requirements and corresponding penalties should be, resulting in the deferral of Senate Bill No. 323 of the 2014 Regular Session and the passage of Senate Concurrent Resolution No. 16 the following year.

According to the resolution, prior to 2015, “numerous legislative instruments aimed at marijuana sentencing reform have been introduced in both the House of Representatives and the Senate but have not reached consensus in committee or been enacted into law.” In fact, after the resolution was enrolled during the 2015 Regular Session, House Bill No. 149, the purpose of

which was to amend certain criminal penalties for possession of marijuana, was enacted by the legislature as Acts 2015, No. 295. Prior to this Act, the penalties for a first conviction of possession of marijuana were a fine of not more than five hundred dollars, imprisonment in the parish jail for not more than six months, or both. The Act retained these penalties for a first conviction where the offender possesses more than fourteen grams but provided that where the offender possesses less than fourteen grams, the penalty shall be a fine of not more than three hundred dollars (as opposed to five hundred dollars), imprisonment in the parish jail for not more than fifteen days (as opposed to six months), or both.

The Act similarly reduced the penalties for a second conviction of possession of marijuana to a fine of not more than one thousand dollars (as opposed to two thousand dollars), imprisonment in the parish jail for not more than six months (as opposed to imprisonment with or without hard labor for not more than five years), or both. For a third conviction of possession of marijuana, the penalties were reduced to imprisonment with or without hard labor for not more than two years (as opposed to twenty years), a fine of not more than two thousand five hundred dollars (as opposed to five thousand dollars), or both. Additionally, the Act provided that for a fourth or subsequent conviction of possession of marijuana, the penalty shall be imprisonment with or without hard labor for not more than eight years, a fine of not more than five thousand dollars, or both. The Act also provided for similar penalties with respect to possession of synthetic cannabinoids and tetrahydrocannabinol or chemical derivatives thereof.

The following year, Acts 2016, No. 343 was enacted to provide exemptions from prosecution for a person lawfully in possession of medical marijuana by the addition of Subsection I to R.S. 40:966, as follows:

§966. Penalty for distribution or possession with intent to distribute narcotic drugs listed in Schedule I; possession of marijuana, possession of synthetic cannabinoids, possession of heroin

* * *

I. Immunity from prosecution. Any person who is a patient of the state-sponsored medical marijuana program in Louisiana, and who possesses medical marijuana in a form permissible under R.S. 40:1046 for a condition enumerated therein, a caregiver as defined in R.S. 15:1503, or any person who is a domiciliary parent of a minor child who possesses medical marijuana on behalf of his minor child in a form permissible under R.S. 40:1046 for a condition enumerated therein pursuant to a legitimate medical marijuana prescription or recommendation, shall not be subject to prosecution for possession or distribution of marijuana under this Section for possessing medical marijuana or dispensing medical marijuana to his minor child who is a patient of the state-sponsored medical marijuana program. This defense must be raised in accordance with R.S. 40:991, and the defendant bears the burden of proof of establishing that the possession or distribution of the marijuana was in accordance with the state-sponsored medical marijuana program.

During the 2017 Regular Session, two bills amending the provisions of R.S. 40:966 were enacted. One of these bills, Senate Bill No. 220 of the 2017 Regular Session, was part of the package of legislation on criminal justice reform and made substantial revisions with respect to penalties for felony and misdemeanor offenses. Specifically, according to the Department of Corrections' Justice Reinvestment Package Summary, with respect to drug offenses, Senate Bill No. 220 "tailors penalties to the severity of the offense by narrowing sentence ranges for low-weight simple possession offenses and scaling penalties for most commercial offenses (possession with intent to distribute, distribution, and manufacturing) according to the weight of the controlled substance." The other of these bills, Senate Bill No. 35 of the 2017 Regular Session, expanded the exemptions from arrest and prosecution for those lawfully in possession of medical marijuana. The amendments made to R.S. 40:966 by both of these bills, which were enacted as Acts 2017, Nos. 281 and 319, respectively, are reflected in the appendix attached to this report.

In light of the Senate Concurrent Resolution No. 16's charge that "the provisions of current law regarding marijuana offenses should be reviewed and thoroughly examined with the goal of building consensus among stakeholders and consolidating efforts toward legislative reform," the Committee engaged in a comprehensive review of these 2015, 2016, and 2017 revisions. The Committee noted that the effect of all of these amendments was to reduce the penalties imposed for marijuana offenses, a legislative policy decision that is consistent with both the resolution itself and the bill on which it was based. Additionally, members of the Committee who were intimately involved in the negotiations that took place with respect to these legislative changes stressed that the recent amendments to R.S. 40:966 were the result of compromises made by all of the stakeholders and reflected a delicate balance of interests that should not be upset. As a result, the Committee ultimately concluded that no additional revisions to existing law governing marijuana offenses should be made at this time.

APPENDIX
R.S. 40:966 AS AMENDED BY ACTS 2017, NOS. 281 AND 319

§966. Penalty for distribution or possession with intent to distribute narcotic drugs listed in Schedule I; possession of marijuana, possession of synthetic cannabinoids, possession of heroin

* * *

B. ~~Penalties for violation~~ Violations of Subsection A ~~of this Section~~. Any person who violates Subsection A of this Section with respect to:

(1) Except as otherwise provided in ~~Paragraph (4)~~ Paragraphs (2) and (3) of this Subsection, a substance classified in Schedule I ~~that is a narcotic drug (all substances in Schedule I preceded by an asterisk "*")~~, upon conviction shall be sentenced to imprisonment at hard labor for not less than ten nor more than fifty years, at least ten years of which shall be served without benefit of probation or suspension of sentence, and may, in addition, be required to pay a fine of not more than fifty thousand dollars. for an amount of:

(a) An aggregate weight of less than twenty-eight grams, shall be imprisoned, with or without hard labor, for not less than one year nor more than ten years and may, in addition, be required to pay a fine of not more than fifty thousand dollars.

(b) An aggregate weight of twenty-eight grams or more, shall be imprisoned at hard labor for not less than one year nor more than twenty years and may, in addition, be required to pay a fine of not more than fifty thousand dollars.

~~(2) Except as otherwise provided in Paragraph (3) of this Subsection, any other controlled dangerous substance classified in Schedule I, shall upon conviction be sentenced to a term of imprisonment at hard labor for not less than five years nor more than thirty years, at least five years of which shall be served without benefit of parole, probation, or suspension of sentence, and pay a fine of not more than fifty thousand dollars.~~

~~(3) A substance classified in Schedule I which is marijuana, tetrahydrocannabinols, or chemical derivatives of tetrahydrocannabinols, or synthetic cannabinoids shall upon conviction be sentenced to a term of imprisonment at hard labor for not less than five nor more than thirty years, and pay a fine of not more than fifty thousand dollars for an amount of:~~

(a) An aggregate weight of less than two and one half pounds, shall be imprisoned, with or without hard labor, for not less than one year nor more than ten years, and pay a fine of not more than fifty thousand dollars.

(b) An aggregate weight of two and one half pounds or more, shall be imprisoned at hard labor for not less than one year nor more than twenty years and pay a fine of not more than fifty thousand dollars.

~~(4)(a)(3) A substance classified in Schedule I that is the narcotic drug heroin or a mixture or substance containing a detectable amount of heroin or of its analogues upon conviction of a first offense shall be sentenced to a term of imprisonment at hard labor for not less than ten nor more than fifty years, at least ten years of which shall be served without benefit of probation or suspension of sentence, and may, in addition, be required to pay a fine of not more than fifty thousand dollars. or a mixture or substance containing a detectable amount of heroin or its analogues, or fentanyl or a mixture of substances containing a detectable amount of fentanyl or its analogues, upon conviction for any amount, shall be imprisoned at hard labor for not less than five years nor more than forty years and may, in addition, be required to pay a fine of not more than fifty thousand dollars.~~

~~(b) A substance classified in Schedule I that is the narcotic drug heroin or a mixture or substance containing a detectable amount of heroin or of its analogues upon conviction of a second or subsequent offense shall be sentenced to a term of imprisonment at hard labor for not less than ten nor more than ninety nine years, at least ten years of which shall be served without benefit of probation or suspension of sentence, and may, in addition, be required to pay a fine of not more than fifty thousand dollars.~~

C. Possession. It is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance classified in Schedule I unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner or as provided in R.S. 40:978, while acting in the course of his professional practice, or except as otherwise authorized by this Part. Any person who violates this Subsection with respect to:

~~(1) A substance classified in Schedule I which is a narcotic drug (all substances in Schedule I preceded by an asterisk), shall be imprisoned at hard labor for not less than four years nor more than ten years and may, in addition, be required to pay a fine of not more than five thousand dollars. Except as otherwise provided in Paragraphs (2), (3), and (4) of this Subsection, a substance classified in Schedule I for an amount of:~~

~~(a) An aggregate weight of less than two grams, shall be imprisoned, with or without hard labor, for not more than two years and may, in addition, be required to pay a fine of not more than five thousand dollars.~~

~~(b) An aggregate weight of two grams or more but less than twenty-eight grams, shall be imprisoned, with or without hard labor, for not less than one year nor more than ten years and may, in addition, be required to pay a fine of not more than five thousand dollars.~~

~~(2) Phenylelidine, shall be sentenced to imprisonment with or without hard labor for not less than five nor more than twenty years and may be sentenced to pay a fine of not more than five thousand dollars, or both.~~

~~(3) Any other controlled dangerous substance classified in Schedule I, shall be imprisoned at hard labor for not more than ten years, and may in addition, be required to pay a fine of not more than five thousand dollars.~~

~~D. Other penalties for possession. (1) Except as otherwise authorized in this Part:~~

~~(a) Any person who knowingly or intentionally possesses twenty-eight grams or more, but less than two hundred grams, of a narcotic drug (all substances in Schedule I preceded by an asterisk "*"), shall be sentenced to serve a term of imprisonment at hard labor of not less than five years, nor more than thirty years, and to pay a fine of not less than fifty thousand dollars, nor more than one hundred fifty thousand dollars.~~

~~(b) Any person who knowingly or intentionally possesses two hundred grams or more, but less than four hundred grams, of a narcotic drug (all substances in Schedule I preceded by an asterisk "*"), shall be sentenced to serve a term of imprisonment at hard labor of not less than ten years, nor more than thirty years, and to pay a fine of not less than one hundred thousand dollars, nor more than three hundred fifty thousand dollars.~~

~~(c) Any person who knowingly or intentionally possesses four hundred grams or more of a narcotic drug (all substances in Schedule I preceded by an asterisk "*"), shall be sentenced to serve a term of imprisonment at hard labor of not less than fifteen years, nor more than thirty years, and to pay a fine of not less than two hundred fifty thousand dollars, nor more than six hundred thousand dollars.~~

~~E.(1) Possession of marijuana:~~

~~(a) Except as provided in Subsection F of this Section, on a conviction for violation of Subsection C of this Section with regard to marijuana, tetrahydrocannabinol, or chemical derivatives thereof, the offender shall be punished as follows:~~

~~(2) A substance classified in Schedule I that is marijuana, tetrahydrocannabinol, or chemical derivatives thereof, shall be punished as follows:~~

~~(i)(a) On a first conviction, wherein the offender possesses fourteen grams or less, the offender shall be fined not more than three hundred dollars, imprisoned in the parish jail for not more than fifteen days, or both.~~

~~(ii)(b) On a first conviction, wherein the offender possesses more than fourteen grams, the offender shall be fined not more than five hundred dollars, imprisoned in the parish jail for not more than six months, or both.~~

~~(iii)(c) Any person who has been convicted for a violation of sentenced under the provisions of Item (i) or (ii) of this Subparagraph (a) or (b) of this Paragraph and who has not been convicted of any other violation of a statute or ordinance prohibiting the possession of marijuana for a period of two years from the date of completion of sentence, probation, parole, or suspension of sentence shall not be eligible to have the conviction used as a predicate conviction for enhancement purposes. The provisions of this Subparagraph Paragraph shall occur only once with respect to any person.~~

~~(b) Except as provided in Subsection F of this Section, on a second conviction for a violation of Subsection C of this Section with regard to marijuana, tetrahydrocannabinol or chemical derivatives thereof, the offender shall be fined not more than one thousand dollars, imprisoned in the parish jail for not more than six months, or both.~~

(d) On a second conviction the offender shall be fined not more than one thousand dollars, imprisoned in the parish jail for not more than six months, or both.

~~(e)(i) Except as provided in Subsection F of this Section, on a third conviction for violation of Subsection C of this Section with regard to marijuana, tetrahydrocannabinol or chemical derivatives thereof, the offender shall be sentenced to imprisonment with or without hard labor for not more than two years, shall be fined not more than two thousand five hundred dollars, or both.~~

(e)(i) On a third conviction the offender shall be sentenced to imprisonment, with or without hard labor, for not more than two years, shall be fined not more than two thousand five hundred dollars.

(ii) If the court places the offender on probation, the probation shall provide for a minimum condition that he participate in a court-approved substance abuse program and perform four eight-hour days of court-approved community service activities. Any costs associated with probation shall be paid by the offender.

~~(d)(i) Except as provided in Subsection F of this Section, on a fourth or subsequent conviction for violation of Subsection C of this Section with regard to marijuana, tetrahydrocannabinol or chemical derivatives thereof, the offender shall be sentenced to imprisonment with or without hard labor for not more than eight years, shall be fined not more than five thousand dollars, or both.~~

(f)(i) On a fourth or subsequent conviction the offender shall be sentenced to imprisonment with or without hard labor for not more than eight years, shall be fined not more than five thousand dollars, or both.

(ii) If the court places the offender on probation, the probation shall provide for a minimum condition that he participate in a court-approved substance abuse program and perform four eight-hour days of court-approved community service activities. Any costs associated with probation shall be paid by the offender.

(e)(g) Except as provided in ~~Item (a)(iii)~~ Subparagraph (c) of this Paragraph, a conviction for the violation of any other statute or ordinance with the same elements as Subsection C of this Section prohibiting the possession of marijuana, tetrahydrocannabinol or chemical derivatives thereof, shall be considered as a prior conviction for the purposes of this Subsection relating to penalties for second, third, or subsequent offenders.

~~(f)(h)~~ Except as provided in ~~Item (a)(iii)~~ Subparagraph (c) of this Paragraph, a conviction for the violation of any other statute or ordinance with the same elements as Paragraph ~~(B)(3)~~ (B)(2) of this Section prohibiting the distributing or dispensing or possession with intent to distribute or dispense marijuana, tetrahydrocannabinol or chemical derivatives thereof, or synthetic cannabinoids shall be considered as a prior conviction for the purposes of this Subsection relating to penalties for second, third, or subsequent offenders.

~~(2) Possession of synthetic cannabinoids. (a) Except as provided in Subsections F and G of this Section, on a first conviction for violation of Subsection C of this Section with regard to synthetic cannabinoids, the offender shall be fined not more than five hundred dollars, imprisoned for not more than six months, or both.~~

~~(b) Except as provided in Subsections F and G of this Section, on a second conviction for violation of Subsection C of this Section with regard to synthetic cannabinoids, the offender shall be fined not less than two hundred fifty dollars nor more than two thousand dollars, imprisoned with or without hard labor for not more than five years, or both.~~

~~(c) Except as provided in Subsections F and G of this Section, on a third or subsequent conviction for a violation of Subsection C of this Section with regard to synthetic cannabinoids, the offender shall be sentenced to imprisonment with or without hard labor for not more than twenty years, and may, in addition, be fined not more than five thousand dollars.~~

~~(d) A conviction for the violation of any other provision of law or ordinance with the same elements as Subsection C of this Section prohibiting the possession of synthetic cannabinoids shall be considered a prior conviction for the purposes of this Paragraph relating to penalties for second, third, or subsequent offenses.~~

(3) A substance classified in Schedule I which is a synthetic cannabinoid, the offender shall be punished as follows:

(a) On a first conviction, the offender shall be fined not more than five hundred dollars, imprisoned for not more than six months, or both.

(b) On a second conviction, the offender shall be fined not less than two hundred fifty dollars nor more than two thousand dollars, imprisoned with or without hard labor for not more than five years, or both.

(c) On a third or subsequent conviction, the offender shall be sentenced to imprisonment at hard labor for not more than twenty years, and may, in addition, be fined not more than five thousand dollars.

(d) A conviction for the violation of any other provision of law or ordinance with the same elements as this Subsection prohibiting the possession of synthetic cannabinoids shall be considered a prior conviction for the purposes of this Paragraph relating to penalties for second, third, or subsequent offenses.

(e) A conviction for the violation of any other provision of law or ordinance with the same elements as Paragraph ~~(B)(3)~~ (B)(2) of this Section prohibiting the distributing or dispensing or possession with intent to distribute or dispense synthetic cannabinoids shall be considered a prior conviction for the purposes of this Paragraph relating to penalties for second, third, or subsequent offenses.

(f) If the court places the offender on probation, the probation shall provide for a minimum condition that he participate in a court-approved substance abuse program and perform four eight-hour days of court-approved community service activities. Any costs associated with probation shall be paid by the offender.

(4) A substance classified in Schedule I that is the narcotic drug heroin or a mixture or substance containing a detectable amount of heroin or of its analogues, or fentanyl or a mixture or substance containing a detectable amount of fentanyl or its analogues, upon conviction for an amount:

(a) An aggregate weight of less than two grams, shall be sentenced to a term of imprisonment, with or without hard labor, for not less than two years nor more than four years.

(b) An aggregate weight of two grams or more but less than twenty-eight grams, shall be sentenced to a term of imprisonment, with or without hard labor, for not less than two years nor more than ten years and may, in addition be required to pay a fine of not more than five thousand dollars.

F. Except as otherwise authorized in this Part:

~~(1) Any person who knowingly or intentionally possesses two and one-half pounds or more, but less than sixty pounds of marijuana, tetrahydrocannabinol or chemical derivatives thereof, or synthetic cannabinoids shall be sentenced to serve a term of imprisonment with or without hard labor of not less than two years, nor more than ten years, and to pay a fine of not less than ten thousand dollars nor more than thirty thousand dollars.~~

~~(2) Any person who knowingly or intentionally possesses sixty pounds or more, but less than two thousand pounds of marijuana, tetrahydrocannabinol or chemical derivatives thereof, or synthetic cannabinoids shall be sentenced to serve a term of imprisonment at hard labor of not less than five years, nor more than thirty years, and to pay a fine of not less than fifty thousand dollars nor more than one hundred thousand dollars.~~

~~(3) Any person who knowingly or intentionally possesses two thousand pounds or more, but less than ten thousand pounds of marijuana, tetrahydrocannabinol or chemical derivatives thereof, or synthetic cannabinoids shall be sentenced to serve a term of imprisonment at hard labor of not less than ten years nor more than forty years, and to pay a fine of not less than one hundred thousand dollars nor more than four hundred thousand dollars.~~

~~(4) Any person who knowingly or intentionally possesses ten thousand pounds or more of marijuana, tetrahydrocannabinol or chemical derivatives thereof, or synthetic cannabinoids shall be sentenced to serve a term of imprisonment at hard labor of not less than twenty five years, nor more than forty years and to pay a fine of not less than four hundred thousand dollars nor more than one million dollars.~~

~~G. With respect to any person to whom the provisions of Subsections D and F of this Section are applicable, the adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for probation or parole prior to serving the minimum sentences provided by Subsection D or F of this Section.~~

D. If a person knowingly or intentionally possesses a controlled substance as classified in Schedule I, unless such substance was obtained directly or pursuant to a valid prescription or order from a practitioner, as provided in R.S. 40:978, while acting in the course of his professional practice, where the amount of the controlled substance is equal to or above the following weights, it shall be considered a violation of Subsection A of this Section:

(1) For marijuana, tetrahydrocannabinol, synthetic cannabinoids, or chemical derivatives thereof, two and one-half pounds.

(2) For any other Schedule I controlled substance, twenty-eight grams.

~~H.E. Notwithstanding any other provision of law to the contrary, unless eligible for parole at an earlier date, a person committed to the Department of Public Safety and Corrections serving a life sentence for the production, manufacturing, distribution, or dispensing or possessing with intent to produce, manufacture, or distribute heroin shall be eligible for parole consideration upon serving at least fifteen years of imprisonment in actual custody.~~

~~I.F. Immunity from prosecution. (1) Any person who is a patient of the state-sponsored medical marijuana program in Louisiana, and who possesses medical marijuana in a form permissible under R.S. 40:1046 for a condition enumerated therein, a caregiver as defined in R.S. 15:1503, or any person who is a domiciliary parent of a minor child who possesses medical marijuana on behalf of his minor child in a form permissible under R.S. 40:1046 for a condition enumerated therein pursuant to a legitimate medical marijuana prescription or recommendation issued by a physician licensed by and in good standing with the Louisiana State Board of Medical Examiners, shall not be subject to prosecution for possession or distribution of marijuana under be exempt from the provisions of this Section for possessing medical marijuana or dispensing medical marijuana to his minor child who is a patient of the state sponsored medical marijuana program. This defense must be raised in accordance with R.S. 40:991, and the defendant bears the burden of proof of establishing that the possession or distribution of the marijuana was in accordance with the state-sponsored medical marijuana program. This Paragraph shall not prevent the arrest or prosecution of any person for diversion of marijuana or any of its derivatives or other conduct outside the scope of the state-sponsored medical marijuana program.~~

(2) Any pharmacy licensed to dispense marijuana pursuant to R.S. 40:1046, and any employee, board member, director, or agent of a pharmacy licensed to dispense marijuana pursuant to R.S. 40:1046, shall be exempt from the provisions of this Section for possession of marijuana at a location designated by the Louisiana Board of Pharmacy rules and regulations, or distribution of marijuana in a form approved by the Louisiana Board of Pharmacy to a patient with a valid recommendation or prescription, in the state-sponsored medical marijuana program. This Paragraph shall not prevent the arrest or prosecution of any person for diversion of marijuana or any of its derivatives or other conduct outside the scope of the state-sponsored medical marijuana program or for violations of Louisiana Board of Pharmacy rules and regulations.

(3) Any licensee or its subordinate contractor licensed by the Department of Agriculture and Forestry to produce marijuana pursuant to R.S. 40:1046, and any employee, board member, director, or agent of a marijuana licensee or its subordinate contractor licensed pursuant to R.S. 40:1046, shall be exempt from prosecution under this Section for possession, production, or manufacture of marijuana at the production facility designated by the Department of Agriculture and Forestry or for the transportation of marijuana or any of its derivatives in accordance with the Department of Agriculture and Forestry rules and regulations. This Paragraph shall not prevent the arrest or prosecution of any person for diversion of marijuana from the production facility designated by the Department of Agriculture and Forestry outside the scope of the state-sponsored medical marijuana program or for violations of Department of Agriculture and Forestry rules and regulations.

(4) Any laboratory that tests marijuana or marijuana preparations produced and distributed under the state-sponsored medical marijuana program, and any employee, board member, director, or agent of a testing laboratory pursuant to R.S. 40:1046, shall be exempt from prosecution under this Section for possession of marijuana or any of its derivatives at a research laboratory designated by the Louisiana Board of Pharmacy or for transportation of marijuana or any of its derivatives in accordance with Louisiana Board of Pharmacy rules and regulations. This Paragraph shall not prevent the arrest or prosecution of any person for diversion of marijuana from a research laboratory designated by the Louisiana Board of Pharmacy or other conduct outside the scope of the state-sponsored medical marijuana program or for violations of Board of Pharmacy rules and regulations.

(5) Any person conducting research as the licensee pursuant to R.S. 40:1046 and any employee, board member, director, agent, or any person conducting research in partnership with the licensee shall be exempt from prosecution under this Section for the possession, production, or manufacture of marijuana or any of its derivatives at the production facility designated by the Department of Agriculture and Forestry or for the transportation of marijuana or any of its derivatives in accordance with Department of Agriculture and Forestry rules and regulations. This Paragraph shall not prevent the arrest or prosecution of any person for diversion of marijuana or any of its derivatives from the production facility designated by the Department of Agriculture and Forestry or other conduct outside the scope of the state-sponsored medical marijuana program or for violations of Department of Agriculture and Forestry rules and regulations.

(6)(a) The defenses in Paragraph (1) of this Subsection shall be raised by reproducing a patient's medical records that have been created by his attending physician, that contain the recommendation to possess marijuana for therapeutic use in a form permissible under R.S. 40:1046.

(b) Notwithstanding any other provision of law to the contrary, except when the person to be arrested has committed a felony, although not in the presence of the officer, no peace officer may arrest any employee, board member, director, or agent during the course and scope of his employment with the following, pursuant to R.S. 40:1046:

(i) A pharmacy licensed to dispense marijuana for therapeutic use.

(ii) A licensee of marijuana for therapeutic use or its subordinate licensed contractor.

(iii) A testing laboratory of marijuana for therapeutic use, authorized to do business.

(iv) A licensed researcher of marijuana for therapeutic use, performing his official duties.

(c) The defendant shall bear the burden of proving that the possession, manufacture, production, transportation, or distribution was in accordance with the state-sponsored medical marijuana program, the Louisiana Board of Pharmacy rules and regulations, or the Department of Agriculture and Forestry rules and regulation, as applicable.

G. Treatment for heroin and fentanyl addiction as a condition for probation. (1) Upon conviction of Paragraph (B)(3) or (C)(4) of this Section, possession with intent to distribute heroin or fentanyl or possession of heroin or fentanyl, the court may suspend any sentence which it imposes and place the defendant on probation pursuant to Code of Criminal Procedure Article 893. The court may order the division of probation and parole of the Department of Public Safety and Corrections to conduct a presentence investigation, or may order the defendant to obtain a substance abuse evaluation, for the purpose of determining whether the defendant has a substance abuse disorder.

(2) Upon receiving the report or evaluation, the court shall, if it finds probable cause from such report to believe the defendant has a substance abuse disorder, order a contradictory hearing for the purpose of making a judicial determination on whether the defendant has a substance abuse disorder.

(3) If, at such contradictory hearing, the court determines that the defendant has a substance abuse disorder, it shall require as a condition of probation that the defendant complete a drug treatment program if the following conditions are met:

(a) There is an available program in the local jurisdiction that has sufficient experience in working with criminal justice participants with substance abuse disorders and is certified and approved by the state of Louisiana.

(b) The cost of the approved treatment does not create a substantial financial hardship to the defendant or his dependents. For purposes of this determination, "substantial financial hardship" shall have the same meaning as provided in R.S. 15:175.

(4) If the offender does not successfully complete the drug treatment program, or otherwise violates the conditions of his probation, the court may revoke the probation or impose other sanctions pursuant to Code of Criminal Procedure Article 900.