

# HOUSE BILL 1261

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CF SB 317

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By: ~~Delegates Mathias, Cane, Conway, and Rudolph~~ Rudolph, Haddaway, and Eckardt

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Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 23, 2009

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Criminal Law - Salvinorin A and Salvia Divinorum - ~~Controlled Dangerous~~**  
3 **Substances Distribution to and Possession by Individual Under 21 Years of**  
4 **Age**

5 FOR the purpose of ~~establishing that a material, compound, mixture, or preparation~~  
6 ~~that contains Salvinorin A or Salvia divinorum, with a certain exception, is a~~  
7 ~~Schedule I controlled dangerous substance; authorizing a certain provider to~~  
8 ~~conduct research in the State with a controlled dangerous substance listed in~~  
9 ~~Schedule I under certain circumstances; providing penalties for a violation of~~  
10 ~~the prohibition against possessing a controlled dangerous substance involving~~  
11 ~~the use or possession of Salvinorin A or Salvia divinorum; providing certain~~  
12 ~~penalties for a person who violates the prohibition against manufacturing,~~  
13 ~~distributing, possessing with intent to distribute, or dispensing a certain volume~~  
14 ~~of Salvinorin A or Salvia divinorum; and generally relating to Salvinorin A and~~  
15 ~~Salvia divinorum~~ prohibiting a person from distributing Salvia divinorum to an  
16 individual under the age of 21 years; providing that it is a defense in a certain  
17 prosecution that the defendant examined a certain license or identification that  
18 positively identified a certain purchaser or recipient as at least a certain age;  
19 establishing penalties for a certain violation of this Act; providing that certain  
20 separate incidents are separate violations for a certain purpose; prohibiting an  
21 individual under the age of 21 years from possessing Salvia divinorum;  
22 establishing that a person who violates this Act shall be issued a certain  
23 citation; authorizing certain individuals to issue certain citations under certain  
24 circumstances; requiring the District Court to prescribe a certain form of  
25 citation; requiring the jurisdiction that issues a certain citation to forward a

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 copy of the citation and a request for trial to the District Court having a certain  
 2 venue; requiring the District Court to schedule a certain trial and summon a  
 3 certain defendant to appear; providing that a willful failure to respond to a  
 4 certain summons is contempt of court; establishing that a violation of a certain  
 5 provision of this Act is a Code violation and a civil offense; providing that a  
 6 minor is subject to certain procedures and dispositions; providing that an  
 7 individual who is under the age of 21 years but not a minor is subject to certain  
 8 provisions of this Act; establishing that an adjudication of a certain Code  
 9 violation is not a criminal conviction for any purpose and does not impose  
 10 certain disabilities; establishing certain procedures for a certain Code violation  
 11 proceeding; establishing certain penalties for a certain violation of this Act;  
 12 prohibiting the Chief Judge of the District Court from establishing a certain  
 13 schedule for the prepayment of fines; authorizing a court to direct the payment  
 14 of a certain fine be suspended or deferred; establishing that the willful failure to  
 15 pay a certain fine is criminal contempt of court; providing that a certain  
 16 defendant is liable for certain costs; establishing that a certain defendant has  
 17 certain rights to appeal or file certain motions; authorizing the State's Attorney  
 18 to prosecute a certain violation in a certain manner; authorizing a certain  
 19 intake officer to refer a certain child to a substance abuse education or  
 20 rehabilitation program under certain circumstances; requiring a certain intake  
 21 officer to forward a certain citation to the State's Attorney if a certain child fails  
 22 to comply with a substance abuse education or rehabilitation program referral;  
 23 establishing that a violation of a certain provision of this Act is a violation for  
 24 certain purposes; authorizing a certain law enforcement officer to issue a  
 25 citation to a child for a violation of a certain provision of this Act under certain  
 26 circumstances; requiring the Attorney General to submit a certain report to  
 27 certain committees on or before a certain date; defining a certain term; making  
 28 conforming changes; and generally relating to Salvia divinorum.

29 ~~BY repealing and reenacting, with amendments,~~  
 30 ~~Article – Criminal Law~~  
 31 ~~Section 5–304, 5–402(d), 5–601, and 5–612~~  
 32 ~~Annotated Code of Maryland~~  
 33 ~~(2002 Volume and 2008 Supplement)~~

34 ~~BY repealing and reenacting, without amendments,~~  
 35 ~~Article – Criminal Law~~  
 36 ~~Section 5–402(a)~~  
 37 ~~Annotated Code of Maryland~~  
 38 ~~(2002 Volume and 2008 Supplement)~~

39 BY adding to  
 40 Article – Criminal Law  
 41 Section 10–130 through 10–133 to be under the new part “Part IV. Salvia  
 42 Divinorum”  
 43 Annotated Code of Maryland  
 44 (2002 Volume and 2008 Supplement)

1 BY repealing and reenacting, with amendments,  
 2 Article – Courts and Judicial Proceedings  
 3 Section 3–8A–01(dd), 3–8A–10(k), and 3–8A–33(a)  
 4 Annotated Code of Maryland  
 5 (2006 Replacement Volume and 2008 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 7 MARYLAND, That the Laws of Maryland read as follows:

8 **Article – Criminal Law**

9 ~~5–304.~~

10 ~~(a) If an authorized provider is authorized to dispense or conduct research~~  
 11 ~~under State law, the Department shall register the authorized provider to dispense a~~  
 12 ~~controlled dangerous substance or to conduct research with a controlled dangerous~~  
 13 ~~substance listed in Schedule II through Schedule V.~~

14 ~~(b) The Department need not require separate registration under this section~~  
 15 ~~for an authorized provider who is:~~

16 ~~(1) engaged in research with a nonnarcotic controlled dangerous~~  
 17 ~~substance in Schedule II through Schedule V; and~~

18 ~~(2) already registered under this subtitle in another capacity.~~

19 ~~(c) An authorized provider may conduct research in the State with a~~  
 20 ~~controlled dangerous substance listed in Schedule I if the authorized provider is:~~

21 ~~(1) registered under federal law to conduct research with a controlled~~  
 22 ~~dangerous substance listed in Schedule I and gives evidence of the registration to the~~  
 23 ~~Department;~~

24 ~~(2) APPROVED BY A FEDERALLY REGISTERED INSTITUTIONAL~~  
 25 ~~REVIEW BOARD OR INSTITUTIONAL ANIMAL CARE AND USE COMMITTEE TO~~  
 26 ~~CONDUCT RESEARCH ON A CONTROLLED DANGEROUS SUBSTANCE LISTED IN~~  
 27 ~~SCHEDULE I THAT IS NOT SCHEDULED UNDER FEDERAL LAW AND GIVES~~  
 28 ~~EVIDENCE OF THE APPROVAL TO THE DEPARTMENT; OR~~

29 ~~(3) APPROVED BY THE DEPARTMENT TO CONDUCT RESEARCH ON~~  
 30 ~~A CONTROLLED DANGEROUS SUBSTANCE IN SCHEDULE I THAT IS NOT~~  
 31 ~~SCHEDULED UNDER FEDERAL LAW.~~

32 ~~5–402.~~

33 ~~(a) Schedule I consists of each controlled dangerous substance:~~

1           (1) ~~listed in this section;~~

2           (2) ~~added to Schedule I by the Department under § 5-202(b) of this~~  
3 ~~title; or~~

4           (3) ~~designated as a Schedule I controlled dangerous substance by the~~  
5 ~~federal government unless the Department objects under § 5-202(f) of this title.~~

6           (d) (1) ~~A material, compound, mixture, or preparation that contains any of~~  
7 ~~the following hallucinogenic or hallucinogenic-like substances is a substance listed in~~  
8 ~~Schedule I:~~

9                   (i) ~~bufotenine;~~

10                   (ii) ~~diethyltryptamine;~~

11                   (iii) ~~dimethyltryptamine;~~

12                   (iv) ~~4-methyl-2,5-dimethoxyamphetamine;~~

13                   (v) ~~ibogaine;~~

14                   (vi) ~~lysergic acid diethylamide;~~

15                   (vii) ~~marijuana;~~

16                   (viii) ~~mescaline;~~

17                   (ix) ~~peyote;~~

18                   (x) ~~psilocybin;~~

19                   (xi) ~~psilocyn;~~

20                   (xii) ~~SALVINORIN A, EXCEPT FOR A DRUG PRODUCT~~  
21 ~~APPROVED BY THE U. S. FOOD AND DRUG ADMINISTRATION (FDA) THAT~~  
22 ~~CONTAINS SALVINORIN A OR THE ISOMERS, ESTERS, ETHERS, SALTS, AND~~  
23 ~~SALTS OF ISOMERS, ESTERS, AND ETHERS, WHENEVER THE EXISTENCE OF THE~~  
24 ~~ISOMERS, ESTERS, ETHERS, AND SALTS IS POSSIBLE WITHIN THE SPECIFIC~~  
25 ~~CHEMICAL DESIGNATION;~~

26                   (xiii) ~~SALVIA DIVINORUM, EXCEPT FOR A DRUG PRODUCT~~  
27 ~~APPROVED BY THE U. S. FOOD AND DRUG ADMINISTRATION (FDA) THAT~~  
28 ~~CONTAINS SALVIA DIVINORUM OR THE ISOMERS, ESTERS, ETHERS, SALTS, AND~~  
29 ~~SALTS OF ISOMERS, ESTERS, AND ETHERS, WHENEVER THE EXISTENCE OF THE~~  
30 ~~ISOMERS, ESTERS, ETHERS, AND SALTS IS POSSIBLE WITHIN THE SPECIFIC~~  
31 ~~CHEMICAL DESIGNATION;~~

- 1                   ~~[(xii)] (XIV)   tetrahydrocannabinol;~~
- 2                   ~~[(xiii)] (XV)   thiophene analog of phenethylidene;~~
- 3                   ~~[(xiv)] (XVI)   2,5-dimethoxyamphetamine;~~
- 4                   ~~[(xv)] (XVII)   4-bromo-2,5-dimethoxyamphetamine;~~
- 5                   ~~[(xvi)] (XVIII)  4-methoxyamphetamine;~~
- 6                   ~~[(xvii)] (XIX)  3,4-methylenedioxyamphetamine;~~
- 7                   ~~[(xviii)] (XX)   3,4-methylenedioxymethamphetamine (MDMA);~~
- 8                   ~~[(xix)] (XXI)   5-methoxy-3,4-methylenedioxyamphetamine;~~
- 9                   ~~[(xx)] (XXII)   3,4,5-trimethoxyamphetamine;~~
- 10                  ~~[(xxi)] (XXIII)  N-methyl-3-piperidyl benzilate;~~
- 11                  ~~[(xxii)] (XXIV)  N-ethyl-3-piperidyl benzilate;~~
- 12                  ~~[(xxiii)] (XXV)  N-ethyl-1-phenylcyclohexylamine;~~
- 13                  ~~[(xxiv)] (XXVI)  1-(1-phenylcyclohexyl) pyrrolidine;~~
- 14                  ~~[(xxv)] (XXVII)  1-(1-(2-thienyl) cyclohexyl) piperidine;~~
- 15                  ~~[(xxvi)] (XXVIII)  1-methyl-4-phenyl-4-propionoxypiperidine~~  
 16                  ~~(MPPP); and~~
- 17                  ~~[(xxvii)] (XXIX)  1-(2-phenylethyl)-4-phenyl-4-~~  
 18                  ~~acetyloxypiperidine (PEPAP).~~

19                   ~~(2)   Unless specifically excepted under this subtitle, a salt, isomer, or~~  
 20                   ~~salt of an isomer of a substance listed in this subsection is a substance listed in~~  
 21                   ~~Schedule I if the existence of the salt, isomer, or salt of an isomer is possible within~~  
 22                   ~~the specific chemical designation.~~

23                   ~~5-601.~~

24                   (a)   Except as otherwise provided in this title, a person may not:

1           ~~(1) possess or administer to another a controlled dangerous substance,~~  
2 ~~unless obtained directly or by prescription or order from an authorized provider acting~~  
3 ~~in the course of professional practice; or~~

4           ~~(2) obtain or attempt to obtain a controlled dangerous substance, or~~  
5 ~~procure or attempt to procure the administration of a controlled dangerous substance~~  
6 ~~by:~~

7                   ~~(i) fraud, deceit, misrepresentation, or subterfuge;~~

8                   ~~(ii) the counterfeiting or alteration of a prescription or a written~~  
9 ~~order;~~

10                   ~~(iii) the concealment of a material fact;~~

11                   ~~(iv) the use of a false name or address;~~

12                   ~~(v) falsely assuming the title of or representing to be a~~  
13 ~~manufacturer, distributor, or authorized provider; or~~

14                   ~~(vi) making, issuing, or presenting a false or counterfeit~~  
15 ~~prescription or written order.~~

16           ~~(b) Information that is communicated to a physician in an effort to obtain a~~  
17 ~~controlled dangerous substance in violation of this section is not a privileged~~  
18 ~~communication.~~

19           ~~(c) (1) Except as provided in paragraphs (2) and (3) of this subsection, a~~  
20 ~~person who violates this section is guilty of a misdemeanor and on conviction is subject~~  
21 ~~to imprisonment not exceeding 4 years or a fine not exceeding \$25,000 or both.~~

22           ~~(2) A person whose violation of this section involves the use or~~  
23 ~~possession of marijuana, SALVINORIN A, OR SALVIA DIVINORUM is subject to~~  
24 ~~imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both.~~

25           ~~(3) (i) In a prosecution for the use or possession of marijuana, the~~  
26 ~~defendant may introduce and the court shall consider as a mitigating factor any~~  
27 ~~evidence of medical necessity.~~

28                   ~~(ii) Notwithstanding paragraph (2) of this subsection, if the~~  
29 ~~court finds that the person used or possessed marijuana because of medical necessity,~~  
30 ~~on conviction of a violation of this section, the maximum penalty that the court may~~  
31 ~~impose on the person is a fine not exceeding \$100.~~

32 ~~5-612.~~

33           ~~(a) A person may not manufacture, distribute, dispense, or possess:~~

- 1           ~~(1) 50 pounds or more of marijuana;~~
- 2           ~~(2) 448 grams or more of cocaine;~~
- 3           ~~(3) 448 grams or more of any mixture containing a detectable amount~~  
4 ~~of cocaine;~~
- 5           ~~(4) 50 grams or more of cocaine base, commonly known as “crack”;~~
- 6           ~~(5) 28 grams or more of morphine or opium or any derivative, salt,~~  
7 ~~isomer, or salt of an isomer of morphine or opium;~~
- 8           ~~(6) any mixture containing 28 grams or more of morphine or opium or~~  
9 ~~any derivative, salt, isomer, or salt of an isomer of morphine or opium;~~
- 10           ~~(7) 1,000 dosage units or more of lysergic acid diethylamide;~~
- 11           ~~(8) any mixture containing the equivalent of 1,000 dosage units of~~  
12 ~~lysergic acid diethylamide;~~
- 13           ~~(9) 16 ounces or more of phenethylidine in liquid form;~~
- 14           ~~(10) 448 grams or more of any mixture containing phenethylidine;~~
- 15           ~~(11) 448 grams or more of methamphetamine; [or]~~
- 16           ~~(12) any mixture containing 448 grams or more of methamphetamine;~~

17 **OR**

18           ~~(13) 50 POUNDS OR MORE OF SALVINORIN A OR SALVIA~~  
19 ~~DIVINORUM.~~

20           ~~(b) For the purpose of determining the quantity of a controlled dangerous~~  
21 ~~substance involved in individual acts of manufacturing, distributing, dispensing, or~~  
22 ~~possessing under subsection (a) of this section, the acts may be aggregated if each of~~  
23 ~~the acts occurred within a 90-day period.~~

24           ~~(c) (1) A person who is convicted of a violation of subsection (a) of this~~  
25 ~~section shall be sentenced to imprisonment for not less than 5 years and is subject to a~~  
26 ~~fine not exceeding \$100,000.~~

27           ~~(2) The court may not suspend any part of the mandatory minimum~~  
28 ~~sentence of 5 years.~~

29           ~~(3) Except as provided in § 4-305 of the Correctional Services Article,~~  
30 ~~the person is not eligible for parole during the mandatory minimum sentence.~~

1 **10-128. RESERVED.**

2 **10-129. RESERVED.**

3 **PART IV. SALVIA DIVINORUM.**

4 **10-130.**

5 **IN THIS PART, "SALVIA DIVINORUM" INCLUDES SALVINORIN A AND ANY**  
6 **MATERIAL, COMPOUND, MIXTURE, PREPARATION, OR PRODUCT THAT CONTAINS**  
7 **SALVIA DIVINORUM OR SALVINORIN A.**

8 **10-131.**

9 **(A) A PERSON MAY NOT DISTRIBUTE SALVIA DIVINORUM TO AN**  
10 **INDIVIDUAL UNDER THE AGE OF 21 YEARS.**

11 **(B) IN A PROSECUTION FOR A VIOLATION OF THIS SECTION, IT IS A**  
12 **DEFENSE THAT THE DEFENDANT EXAMINED THE PURCHASER'S OR RECIPIENT'S**  
13 **DRIVER'S LICENSE OR OTHER VALID IDENTIFICATION ISSUED BY AN EMPLOYER,**  
14 **GOVERNMENT UNIT, OR INSTITUTION OF HIGHER EDUCATION THAT POSITIVELY**  
15 **IDENTIFIED THE PURCHASER OR RECIPIENT AS AT LEAST 21 YEARS OF AGE.**

16 **(C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A**  
17 **MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING:**

18 **(1) \$300 FOR A FIRST VIOLATION;**

19 **(2) \$1,000 FOR A SECOND VIOLATION OCCURRING WITHIN 2**  
20 **YEARS AFTER THE FIRST VIOLATION; AND**

21 **(3) \$3,000 FOR EACH SUBSEQUENT VIOLATION OCCURRING**  
22 **WITHIN 2 YEARS AFTER THE PRECEDING VIOLATION.**

23 **(D) FOR PURPOSES OF THIS SECTION, EACH SEPARATE INCIDENT AT A**  
24 **DIFFERENT TIME AND OCCASION IS A SEPARATE VIOLATION.**

25 **10-132.**

26 **AN INDIVIDUAL UNDER THE AGE OF 21 YEARS MAY NOT POSSESS SALVIA**  
27 **DIVINORUM.**

28 **10-133.**

1       **(A) A PERSON WHO VIOLATES § 10-132 OF THIS PART SHALL BE ISSUED**  
2 **A CITATION UNDER THIS SECTION.**

3       **(B) A CITATION FOR A VIOLATION OF § 10-132 OF THIS PART MAY BE**  
4 **ISSUED BY:**

5           **(1) A POLICE OFFICER AUTHORIZED TO MAKE ARRESTS; AND**

6           **(2) IN STATE FORESTRY RESERVATIONS, STATE PARKS, HISTORIC**  
7 **MONUMENTS, AND RECREATION AREAS, A FOREST OR PARK WARDEN UNDER §**  
8 **5-206(A) OF THE NATURAL RESOURCES ARTICLE.**

9       **(C) A PERSON AUTHORIZED UNDER THIS SECTION TO ISSUE A CITATION**  
10 **SHALL ISSUE IT IF THE PERSON HAS PROBABLE CAUSE TO BELIEVE THAT THE**  
11 **PERSON CHARGED IS COMMITTING OR HAS COMMITTED A VIOLATION OF §**  
12 **10-132 OF THIS PART.**

13       **(D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE FORM**  
14 **OF CITATION ISSUED TO AN ADULT FOR A VIOLATION OF § 10-132 OF THIS PART**  
15 **SHALL BE AS PRESCRIBED BY THE DISTRICT COURT AND SHALL BE UNIFORM**  
16 **THROUGHOUT THE STATE.**

17           **(2) THE CITATION ISSUED TO AN ADULT SHALL CONTAIN:**

18           **(I) THE NAME AND ADDRESS OF THE PERSON CHARGED;**

19           **(II) THE STATUTE ALLEGEDLY VIOLATED;**

20           **(III) THE LOCATION, DATE, AND TIME THAT THE VIOLATION**  
21 **OCCURRED;**

22           **(IV) THE FINE THAT MAY BE IMPOSED;**

23           **(V) A NOTICE STATING THAT PREPAYMENT OF THE FINE IS**  
24 **NOT ALLOWED;**

25           **(VI) A NOTICE THAT THE DISTRICT COURT SHALL**  
26 **PROMPTLY SEND THE PERSON CHARGED A SUMMONS TO APPEAR FOR TRIAL;**

27           **(VII) THE SIGNATURE OF THE PERSON ISSUING THE**  
28 **CITATION; AND**

29           **(VIII) A SPACE FOR THE PERSON CHARGED TO SIGN THE**  
30 **CITATION.**

1           **(3) THE FORM OF CITATION ISSUED TO A MINOR SHALL:**

2                   **(I) BE PRESCRIBED BY THE STATE COURT**  
3 **ADMINISTRATOR;**

4                   **(II) BE UNIFORM THROUGHOUT THE STATE; AND**

5                   **(III) CONTAIN THE INFORMATION LISTED IN § 3-8A-33(B) OF**  
6 **THE COURTS ARTICLE.**

7           **(E) (1) THE ISSUING JURISDICTION SHALL FORWARD A COPY OF THE**  
8 **CITATION AND A REQUEST FOR TRIAL TO THE DISTRICT COURT IN THE**  
9 **DISTRICT HAVING VENUE.**

10                   **(2) THE DISTRICT COURT SHALL PROMPTLY SCHEDULE THE**  
11 **CASE FOR TRIAL AND SUMMON THE DEFENDANT TO APPEAR.**

12                   **(3) WILLFUL FAILURE OF THE DEFENDANT TO RESPOND TO A**  
13 **SUMMONS DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION IS CONTEMPT**  
14 **OF COURT.**

15           **(F) (1) FOR PURPOSES OF THIS SECTION, A VIOLATION OF § 10-132**  
16 **OF THIS PART IS A CODE VIOLATION AND IS A CIVIL OFFENSE.**

17                   **(2) A PERSON CHARGED WHO IS UNDER THE AGE OF 18 YEARS**  
18 **SHALL BE SUBJECT TO THE PROCEDURES AND DISPOSITIONS PROVIDED IN**  
19 **TITLE 3, SUBTITLE 8A OF THE COURTS ARTICLE.**

20                   **(3) A PERSON CHARGED WHO IS AT LEAST 18 YEARS OLD SHALL**  
21 **BE SUBJECT TO THE PROVISIONS OF THIS SECTION.**

22                   **(4) ADJUDICATION OF A CODE VIOLATION UNDER § 10-132 OF**  
23 **THIS PART IS NOT A CRIMINAL CONVICTION FOR ANY PURPOSE, AND DOES NOT**  
24 **IMPOSE ANY OF THE CIVIL DISABILITIES ORDINARILY IMPOSED BY A CRIMINAL**  
25 **CONVICTION.**

26           **(G) IN ANY PROCEEDING FOR A CODE VIOLATION UNDER § 10-132 OF**  
27 **THIS PART:**

28                   **(1) THE STATE HAS THE BURDEN TO PROVE THE GUILT OF THE**  
29 **DEFENDANT TO THE SAME EXTENT AS IS REQUIRED BY LAW IN THE TRIAL OF**  
30 **CRIMINAL CAUSES;**

31                   **(2) THE COURT SHALL APPLY THE EVIDENTIARY STANDARDS AS**  
32 **PRESCRIBED BY LAW OR RULE FOR THE TRIAL OF CRIMINAL CAUSES;**

1           **(3) THE COURT SHALL ENSURE THAT THE DEFENDANT HAS**  
2 **RECEIVED A COPY OF THE CHARGES AGAINST THE DEFENDANT AND THAT THE**  
3 **DEFENDANT UNDERSTANDS THOSE CHARGES;**

4           **(4) THE DEFENDANT IS ENTITLED TO CROSS-EXAMINE ALL**  
5 **WITNESSES WHO APPEAR AGAINST THE DEFENDANT, TO PRODUCE EVIDENCE OR**  
6 **WITNESSES ON BEHALF OF THE DEFENDANT, OR TO TESTIFY ON THE**  
7 **DEFENDANT'S OWN BEHALF, IF THE DEFENDANT CHOOSES TO DO SO;**

8           **(5) THE DEFENDANT IS ENTITLED TO BE REPRESENTED BY**  
9 **COUNSEL OF THE DEFENDANT'S CHOICE AND AT THE EXPENSE OF THE**  
10 **DEFENDANT; AND**

11           **(6) THE DEFENDANT MAY ENTER A PLEA OF GUILTY OR NOT**  
12 **GUILTY, AND THE VERDICT OF THE COURT IN THE CASE SHALL BE:**

13                   **(I) GUILTY OF A CODE VIOLATION;**

14                   **(II) NOT GUILTY OF A CODE VIOLATION; OR**

15                   **(III) PROBATION BEFORE JUDGMENT, IMPOSED BY THE**  
16 **COURT IN THE SAME MANNER AND TO THE SAME EXTENT AS IS ALLOWED BY LAW**  
17 **IN THE TRIAL OF A CRIMINAL CASE.**

18           **(H) (1) IF THE DISTRICT COURT FINDS THAT A PERSON HAS**  
19 **COMMITTED A CODE VIOLATION, THE COURT SHALL REQUIRE THE PERSON TO**  
20 **PAY:**

21                   **(I) FOR A FIRST VIOLATION, A FINE NOT EXCEEDING \$500;**  
22 **OR**

23                   **(II) FOR A SECOND OR SUBSEQUENT VIOLATION, A FINE NOT**  
24 **EXCEEDING \$1,000.**

25           **(2) THE CHIEF JUDGE OF THE DISTRICT COURT MAY NOT**  
26 **ESTABLISH A SCHEDULE FOR THE PREPAYMENT OF FINES FOR A VIOLATION**  
27 **UNDER § 10-132 OF THIS PART.**

28           **(I) WHEN A DEFENDANT HAS BEEN FOUND GUILTY OF A CODE**  
29 **VIOLATION AND A FINE HAS BEEN IMPOSED BY THE COURT:**

30                   **(1) THE COURT MAY DIRECT THAT THE PAYMENT OF THE FINE BE**  
31 **SUSPENDED OR DEFERRED UNDER CONDITIONS THAT THE COURT MAY**  
32 **ESTABLISH; AND**

1           **(2) IF THE DEFENDANT WILLFULLY FAILS TO PAY THE FINE**  
2 **IMPOSED BY THE COURT, THAT WILLFUL FAILURE MAY BE TREATED AS A**  
3 **CRIMINAL CONTEMPT OF COURT, FOR WHICH THE DEFENDANT MAY BE**  
4 **PUNISHED BY THE COURT AS PROVIDED BY LAW.**

5           **(J) (1) THE DEFENDANT IS LIABLE FOR THE COSTS OF THE**  
6 **PROCEEDINGS IN THE DISTRICT COURT AND FOR PAYMENT TO THE CRIMINAL**  
7 **INJURIES COMPENSATION FUND.**

8           **(2) THE COURT COSTS IN A CODE VIOLATION CASE UNDER §**  
9 **10-132 OF THIS PART IN WHICH COSTS ARE IMPOSED ARE \$5.**

10           **(K) (1) A DEFENDANT WHO HAS BEEN FOUND GUILTY OF A CODE**  
11 **VIOLATION UNDER § 10-132 OF THIS PART HAS THE RIGHT TO APPEAL OR TO**  
12 **FILE A MOTION FOR A NEW TRIAL OR A MOTION FOR A REVISION OF A**  
13 **JUDGMENT PROVIDED BY LAW IN THE TRIAL OF A CRIMINAL CASE.**

14           **(2) A MOTION SHALL BE MADE IN THE SAME MANNER AS**  
15 **PROVIDED IN THE TRIAL OF CRIMINAL CASES, AND THE COURT, IN RULING ON**  
16 **THE MOTION HAS THE SAME AUTHORITY PROVIDED IN THE TRIAL OF CRIMINAL**  
17 **CASES.**

18           **(L) (1) THE STATE'S ATTORNEY FOR ANY COUNTY MAY PROSECUTE A**  
19 **CODE VIOLATION UNDER § 10-132 OF THIS PART IN THE SAME MANNER AS**  
20 **PROSECUTION OF A VIOLATION OF THE CRIMINAL LAWS OF THE STATE.**

21           **(2) IN A CODE VIOLATION CASE UNDER § 10-132 OF THIS PART,**  
22 **THE STATE'S ATTORNEY MAY:**

23                   **(I) ENTER A NOLLE PROSEQUI IN OR PLACE THE CASE ON**  
24 **THE STET DOCKET; AND**

25                   **(II) EXERCISE AUTHORITY IN THE SAME MANNER AS**  
26 **PRESCRIBED BY LAW FOR VIOLATION OF THE CRIMINAL LAWS OF THE STATE.**

27                   **Article - Courts and Judicial Proceedings**

28           **3-8A-01.**

29           **(dd) "Violation" means a violation for which a citation is issued under:**

30                   **(1) § 10-113, § 10-114, § 10-115, or § 10-116 of the Criminal Law**  
31 **Article;**

1           (2)    § 10–108 of the Criminal Law Article; [or]

2           **(3)    § 10–132 OF THE CRIMINAL LAW ARTICLE; OR**

3           ~~[(3)]~~ **(4)    § 26–103 of the Education Article.**

4   3–8A–10.

5           (k)    (1)   If the intake officer receives a citation other than a citation  
6           authorized under § 10–108 of the Criminal Law Article, the intake officer may:

7                   (i)   Refer the child to an alcohol **OR SUBSTANCE ABUSE**  
8           education or rehabilitation program;

9                   (ii)   Assign the child to a supervised work program for not more  
10           than 20 hours for the first violation and not more than 40 hours for the second or  
11           subsequent violation;

12                   (iii)   Require the parent or guardian of the child to withdraw the  
13           parent’s or guardian’s consent to the child’s license to drive, and advise the Motor  
14           Vehicle Administration of the withdrawal of consent; or

15                   (iv)   Forward the citation to the State’s Attorney.

16           (2)    The intake officer shall forward the citation, other than a citation  
17           authorized under § 10–108 of the Criminal Law Article, to the State’s Attorney if:

18                   (i)    The parent or guardian of the child refuses to withdraw  
19           consent to the child’s license to drive;

20                   (ii)   The child fails to comply with an alcohol **OR SUBSTANCE**  
21           **ABUSE** education or rehabilitation program referral; or

22                   (iii)   The child fails to comply with a supervised work program  
23           assignment.

24   3–8A–33.

25           (a)    A law enforcement officer authorized to make arrests shall issue a  
26           citation to a child if the officer has probable cause to believe that the child is violating:

27                   (1)    § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal Law  
28           Article;

29                   (2)    § 10–108 of the Criminal Law Article; [or]

30           **(3)    § 10–132 OF THE CRIMINAL LAW ARTICLE; OR**

1                    ~~[(3)]~~ (4)      § 26-103 of the Education Article.

2                    SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1,  
3 2009, the Attorney General shall, in accordance with § 2-1246 of the State  
4 Government Article, submit to the Senate Judicial Proceedings Committee and the  
5 House Judiciary Committee a report detailing a recommended scheme for the  
6 regulation of sales of Salvia divinorum, including requirements for sellers and the  
7 placement of products in stores.

8                    ~~SECTION 2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take  
9 effect June 1, 2009.

Approved:

\_\_\_\_\_ Governor.

\_\_\_\_\_ Speaker of the House of Delegates.

\_\_\_\_\_ President of the Senate.