

No. 263

AN ACT

HB 2130

Amending the act of April 14, 1972 (Act No. 64), entitled "An act relating to the manufacture, sale and possession of controlled substances, other drugs, devices and cosmetics; conferring powers on the courts and the secretary and Department of Health, and a newly created Pennsylvania Drug, Device and Cosmetic Board; establishing schedules of controlled substances; providing penalties; requiring registration of persons engaged in the drug trade and for the revocation or suspension of certain licenses and registrations; and repealing an act," further defining "control," and further providing for the use of drugs in the treatment of drug dependency, for distribution of controlled substances to persons under age eighteen, for second or subsequent offenses for expunging criminal records and for probation without verdict.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The definition of "control" in subsection (b) of section 2, clause (13) of subsection (a) of section 13, sections 14, 15 and 17, the heading of section 18 and subsection (a) of section 19, act of April 14, 1972 (Act No. 64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," are amended to read:

Section 2. Definitions.—\* \* \*

(b) As used in this act:

\* \* \*

"Control" means to [remove] *regulate*, or change the placement of a controlled substance or immediate precursor; under the provisions of this act.

\* \* \*

Section 13. Prohibited Acts; Penalties.—(a) The following acts and the causing thereof within the Commonwealth are hereby prohibited:

\* \* \*

(13) The sale, dispensing, distribution, prescription or gift by any practitioner otherwise authorized by law so to do of any controlled substance to any person known to such practitioner to be or whom such practitioner has reason to know is a drug dependent person, unless said drug is prescribed, administered, dispensed or given, for the cure or treatment of some malady other than drug dependency, [except that a controlled substance, including but not limited to methadone, may be permitted for the treatment of drug dependency pursuant to regulations of the secretary providing for such use.] *except that the council, in accordance with Federal narcotic and food and drug laws, shall allocate the responsibility for approving and designating certain clinics, and shall provide or allocate the responsibility for providing regulations for such clinics at which controlled substances, including but not limited to methadone, may be prescribed, administered or dispensed for the treatment of drug*

*dependency.* This clause shall not prohibit any practitioner from prescribing, distributing or dispensing any controlled substance on a short term basis pending confirmed admission of the patient to a hospital or rehabilitation center.

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Section 14. Distribution to Persons Under Age Eighteen.—Any person who is at least twenty-one years of age *and who is not himself a drug dependent person* who violates this act by distributing a controlled substance listed in Schedules I through V to a person under eighteen years of age who is at least **[five] four** years his junior is punishable by a term of imprisonment up to twice that otherwise authorized by subsection (f) of section 13 of this act, in addition to any fine authorized by this act.

Section 15. Second or Subsequent Offense.—(a) Any person convicted of a second or subsequent offense under clause (30) of subsection (a) of section 13 of this act or of a similar offense under any statute of the United States or of any state **[prior to the commission of the second offense]** may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to the commission of the second offense, the offender has at any time been convicted under *clause (30) of subsection (a) of section 13 of this act* or *of a similar offense* under any statute of the United States or of any state relating to controlled substances.

Section 17. Probation Without Verdict.—A person may be entitled to probation without verdict under the following circumstances:

(1) A person who has not previously been convicted of an offense under this act or under a similar act of the United States, or any other state, is eligible for probation without verdict if he pleads nolo contendere or guilty to, or is found guilty of, any nonviolent offense under this act. The court may, without entering a judgment, and with the consent of such person, defer further proceedings and place him on probation for a specific time period not to exceed the maximum for the offense upon such reasonable terms and conditions as it may require.

Probation without verdict shall not be available to any person who is charged with violating clause (30) of subsection (a) of section 13 of this act and who is not himself a drug abuser *and who does not prove the fact of such drug abuse to the satisfaction of the court.*

(2) Upon violation of a term or condition of probation, the court may enter a judgment and proceed as in any criminal case, or may continue the probation without verdict.

(3) Upon fulfillment of the terms and conditions of probation, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal shall be without adjudication of guilt and shall not constitute a conviction for any purpose whatever, including the penalties imposed for second or subsequent convictions: Provided, That probation

without verdict shall be available to any person only once: And further provided, That notwithstanding any other provision of this act, the prosecuting attorney or the court, and the council shall keep a list of those persons placed on probation without verdict, which list may only be used to determine the eligibility of persons for probation without verdict and the names on such lists may be used for no other purpose whatsoever.

Section 18. Disposition in Lieu of Trial *or Criminal Punishment*.—

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Section 19. Expunging Criminal Records.—(a) Any records of arrest or prosecution or both for a criminal offense under this act, except for persons indicted for violations of clause (30) of subsection (a) of section 13, or under the provisions previously governing controlled substances in the Commonwealth of Pennsylvania or any political subdivision thereof shall be promptly expunged from the official and unofficial arrest and other criminal records [**files and other documents pertaining to the particular arrest or prosecution, or both,**] *pertaining to that individual* when the charges are withdrawn or dismissed or the person is acquitted of the charges: Provided, That such expungement shall be available as a matter of right to any person only once. Within five days after such withdrawal, dismissal or acquittal the court, in writing, shall order the appropriate keepers of criminal records (i) to expunge and destroy the official and unofficial arrest and other criminal records [**files and other documents pertaining to the arrest or prosecution or both,**] *of that individual*, to request in so far as they are able the return of such records as they have made available to Federal and other State agencies, and to destroy such records on receipt thereof; and (ii) to file with the court within thirty days an affidavit that such records have been expunged and destroyed, together with the court's expunction order and to retain no copies thereof. Upon receipt of such affidavit, the court shall seal the same together with the original and all copies of its expunction order and shall not permit any person or agency to examine such sealed documents.

The court shall file with the council a list of those persons whose record was expunged. The council shall maintain a confidential list, which list may be used only for the purpose of determining the eligibility of persons for the expunction provisions under this section and to be made available to any court upon request.

\* \* \*

Section 2. This act shall take effect immediately.

APPROVED—The 26th day of October, A. D. 1972.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly  
No. 263.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive, flowing style with a large initial "C" and a prominent "T" at the end.

*Secretary of the Commonwealth.*