

INITIATIVE PETITION

NOTICE

Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a legal voter is liable to prosecution.

Repealing Section 601.02 entitled “Classification of Offenses”; Section 601.05 entitled “Limitation of Criminal Prosecution”; Section 601.99 entitled “Penalties for Misdemeanors”; Section 607.01 entitled “Definitions”; Section 607.02 entitled “Gift of Marihuana”; Section 607.03 entitled “Drug Abuse: Controlled Substance Possession or Use”; Section 607.04 entitled “Possessing Drug Abuse Instruments”; Section 607.13 entitled “Sale of Marihuana Paraphernalia to Juveniles”; Section 607.16 entitled “Definitions”; Section 607.17 entitled “Possession, Manufacture and Sale of Drug Paraphernalia”; Section 607.20 entitled “Soliciting Drug Sales”; Section 663.01 entitled “Definitions”; Section 663.02 entitled “Prohibitions”; and enacting new Section 601.02 entitled “Classification of Offenses”; Section 601.05 entitled “Limitation of Criminal Prosecution”; Section 601.99 entitled “Penalties for Misdemeanors”; Section 601.991 entitled “Expungement of Certain Convictions for Offenses Now Considered Minor Marijuana Misdemeanors or No Longer Illegal”; “Section 607.01 entitled “Definitions”; Section 607.02 entitled “Gift of Marihuana”; Section 607.03 entitled “Drug Abuse: Controlled Substance Possession or Use”; Section 607.04 entitled “Possessing Drug Abuse Instruments”; Section 607.13 entitled “Sale of Marijuana Paraphernalia to Juveniles”; Section 607.16 entitled “Definitions”; Section 607.17 entitled “Possession, Manufacture and Sale of Drug Paraphernalia”; Section 607.20 entitled “Soliciting Drug Sales”; Section 663.01 entitled “Definitions”; Section 663.02 entitled “Prohibitions”;

To the Clerk of Council of the City of Cleveland and to the Council of the City of Cleveland, Cuyahoga County, Ohio:

We, the undersigned qualified electors of the City of Cleveland, Cuyahoga County, Ohio, hereby present by initiative petition, a request that there be submitted for consideration of the people and electors of the City of Cleveland, Ohio for their approval or rejection, at an election in accordance with the law and the Cleveland City Charter, the following Ordinance. A full and correct copy of the title and text of said Ordinance is as follows:

THE SENSIBLE MARIJUANA ORDINANCE

Be it ordained by the people of the City of Cleveland that:

Section 1. The City of Cleveland, Ohio Code of Ordinances shall be and is hereby amended and supplemented by the repeal of the City of Cleveland, Ohio Code of Ordinances Section 601.02, Section 601.05, Section 601.99, Section 607.01, Section 607.02, Section 607.03, Section 607.04, Section 607.13, Section 607.16, Section 607.17, Section 607.20, Section 663.01, Section 663.02.

Section 2. The new City of Cleveland, Ohio Code of Ordinances Section 601.02, Section 601.05, Section 601.99, Section 601.991, Section 607.01, Section 607.02, Section 607.03, Section 607.04, Section 607.13,

Section 607.16, Section 607.17, Section 607.20, Section 663.01, Section 663.02 be enacted to read as follows:

§ 601.02 Classification of Offenses

As used in the General Offenses Code:

- (a) Offenses include misdemeanors of the first, second, third and fourth degree, minor misdemeanors, minor marijuana misdemeanors and offenses not specifically classified.
- (b) Regardless of the penalty which may be imposed, any offense specifically classified as a misdemeanor is a misdemeanor.
- (c) Any offense not specifically classified is a misdemeanor if imprisonment for not more than one (1) year may be imposed as a penalty.
- (d) Any offense not specifically classified is a minor misdemeanor if the only penalty which may be imposed is a fine not exceeding one hundred dollars (\$100.00).
- (e) If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable. Provisions ruled invalid by any court of law shall be revised to the minimum extent necessary to maintain validity and enforceability.

§ 601.05 Limitation of Criminal Prosecution

- (a) Except as otherwise provided in this section, a prosecution shall be barred unless it is commenced within the following periods after an offense is committed:
 - (1) For a misdemeanor other than a minor misdemeanor, two (2) years;
 - (2) For a minor misdemeanor, six (6) months;
 - (3) For a minor marijuana misdemeanor, thirty (30) days.
- (b) If the period of limitation provided in subsection (a) hereof has expired, prosecution shall be commenced for an offense of which an element is fraud or breach of a fiduciary duty, within one (1) year after discovery of the offense either by an aggrieved person, or by his or her legal representative who is not himself or herself a party to the offense.
- (c) If the period of limitation provided in subsection (a) hereof has expired, prosecution shall be commenced for an offense involving misconduct in office by a public servant as defined in Section 615.01, at any time while the accused remains a public servant, or within two (2) years thereafter.
- (d) An offense is committed when every element of the offense occurs. In the case of an offense of which an element is a continuing course of conduct, the period of limitation does not begin to run until such course of conduct or the accused's accountability for it terminates, whichever occurs first.
- (e) A prosecution is commenced on the date an indictment is returned or an information filed, or on the date a lawful arrest without a warrant is made, or on the date a warrant, summons, citation or other process is issued, whichever occurs first. A prosecution is not commenced by the return of an indictment or the filing of an information unless reasonable diligence is exercised to issue and execute process on the same. A prosecution is not commenced upon issuance of a warrant, summons, citation or other process, unless reasonable diligence is exercised to execute the same.
- (f) The period of limitation shall not run during any time when the corpus delicti remains undiscovered.
- (g) The period of limitation shall not run during any time when the accused purposely avoids prosecution. Proof that the accused absented himself or herself from this State or concealed his or her identity or whereabouts is prima-facie evidence of his or her purpose to avoid prosecution.
- (h) The period of limitation shall not run during any time a prosecution against the accused based on

the same conduct is pending in this State, even though the indictment, information, or process which commenced the prosecution is quashed or the proceedings thereon are set aside or reversed on appeal.

(i) If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable. Provisions ruled invalid by any court of law shall be revised to the minimum extent necessary to maintain validity and enforceability.

§ 601.99 Penalties for Misdemeanors

(a) Whoever is convicted of or pleads guilty to a misdemeanor as classified in the Codified Ordinances (the “offender”), other than a minor misdemeanor, shall be imprisoned for a definite term or fined, or both, which term of imprisonment and fine shall be fixed by the court as provided in this section.

Whoever is convicted of or pleads guilty to committing, attempting to commit, or complicity in committing a violation of Section 623.01 that is a misdemeanor, or a violation of division (a)(2) of Section 623.02 when the means used are fire or explosion, shall be required to reimburse agencies for their investigation or prosecution costs in accordance with RC 2929.28.

Misdemeanor Classification	Maximum Imprisonment Term	Maximum Fine
1st degree	6 months	\$1,000.00
2nd degree	90 days	\$750.00
3rd degree	60 days	\$500.00
4th degree	30 days	\$250.00
Minor	No imprisonment	\$150.00
Minor Marijuana	No imprisonment	No fine

(b) Notwithstanding the provisions of division (a) of this section, if the sentencing court determines that the victim of an offense set forth in Section 619.04, 621.03, 621.06, 621.07, 621.09, 621.10, 621.11, 623.01, 623.02, 623.03, 623.04, 625.05, 625.07, 625.12, 625.17, 625.20 or 625.26 of these Codified Ordinances was sixty (60) years of age or older at the time of the commission of the offense:

(1) In the case of offenses which are classified misdemeanors of the first degree, the court shall set the offender’s fine at one thousand dollars (\$1,000.00) and in addition to said fine, shall sentence the offender to not less than sixty (60) days’ and not more than six (6) months’ imprisonment;

(2) In the case of offenses which are classified minor misdemeanors or misdemeanors of the second, third or fourth degree, the penalty for the offense shall be the next greater degree of misdemeanor than that which is set forth in the section defining the offense.

A. In the case of offenses which become misdemeanors of the first degree pursuant to this division, the court shall set the offender’s fine at not less than seven hundred fifty dollars (\$750.00) and, in addition to said fine, shall sentence the offender to not less than sixty (60) days imprisonment.

B. In the case of offenses which become misdemeanors of the second degree pursuant to this division, the court shall set the offender’s fine at not less than five hundred dollars (\$500.00) and, in addition to said fine, shall sentence the offender to not less than thirty (30) days’ imprisonment.

C. In the cases of offenses which become misdemeanors of the third degree pursuant to this division, the court shall set the offender’s fine at not less than two hundred fifty dollars (\$250.00) and, in addition to said fine, shall sentence the offender to not less than fifteen (15) days’ imprisonment.

D. In the case of offenses which become misdemeanors of the fourth degree pursuant to this division,

the court shall set the offender's fine at not less than one hundred dollars (\$100.00) and, in addition to said fine, shall sentence the offender to not less than ten (10) days' imprisonment.

(3) Where applicable, the court may require the offender to make restitution for all or part of the property damage that is caused by his or her offense and for all or part of the value of the property that is the subject of any theft offense;

(4) The minimum fines and imprisonment to be imposed by the court pursuant to divisions (b)(1) and (b)(2) of this section are mandatory. The court shall not suspend all or any portion of said minimum fines and imprisonment.

(c) Regardless of the penalties provided in division (a) of this section, an organization convicted of an offense pursuant to Section 601.10 shall be fined, which fine shall be fixed by the court as follows:

Type of Misdemeanor	Maximum Fine
1st degree	\$5,000.00
2nd degree	\$4,000.00
3rd degree	\$3,000.00
4th degree	\$2,000.00
Minor	\$1,000.00
Minor Marijuana	\$1,000.00
Misdemeanor not specifically classified	\$2,000.00
Minor misdemeanor not specifically classified	\$1,000.00

(1) When an organization is convicted of an offense not specifically classified, and the section defining the offense or penalty plainly indicates a purpose to impose the penalty provided for violation upon organizations, then such penalty shall be imposed in lieu of the penalty provided in this division (c);

(2) When an organization is convicted of an offense not specifically classified, and the penalty provided includes a higher fine than that provided in this division (c), then the penalty imposed shall be pursuant to the penalty provided for violation of the section defining the offense;

(3) This division (c) does not prevent the imposition of available civil sanctions against an organization convicted of an offense pursuant to Section 601.10, either in addition to or in lieu of a fine imposed pursuant to this division (c).

(d) All minor marijuana misdemeanors are drug abuse offenses as defined in Section 607.01(z) of these Ordinances.

(e) Arrest or conviction for a minor marijuana misdemeanor violation does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license or other right or privilege, or made in connection with the person's appearance as a witness.

(f) The Cleveland Municipal Court shall keep no record of conviction for any minor marijuana misdemeanor.

(g) No Cleveland Municipal Court judge shall suspend the driver's or commercial driver's license or permit of any offender convicted of a minor marijuana misdemeanor.

(h) All court costs shall be suspended for minor marijuana misdemeanor violations of these sections herein.

(i) If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable. Provisions ruled invalid by any court of law shall be revised to the minimum extent necessary

to maintain validity and enforceability.

§ 601.991 Expungement of Certain Convictions for Offenses Now Considered Minor Marijuana Misdemeanors or No Longer Illegal

(a) As used in this section, certain terms are defined as follows:

(1) “Expunge” means to destroy, delete, and erase a record as appropriate for the record’s physical or electronic form or characteristic so that the record is permanently irretrievable.

(2) “Official records” has the same meaning as in section 2953.51 of the Ohio Revised Code.

(3) “Prosecutor” means any prosecutor in Criminal Division of the Cleveland City Department of Law.

(4) “Record of conviction” means the record related to a conviction of or plea of guilty to an offense.

(b) Any person who is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of a section of chapter 607 of these Ordinances that is now a minor marijuana misdemeanor in the City of Cleveland or no longer a criminal offense the State of Ohio or a violation of section 601.08 (attempt to commit an offense) or 601.09 (complicity) of these Ordinances to the extent that it relates to an offense under chapter 607 of these Ordinances that is now a minor marijuana misdemeanor in the City of Cleveland or no longer a criminal offense in the State of Ohio, may apply to the Cleveland Municipal Court for an expungement of the record of conviction. The person may file the application at any time on or after July 1, 2016. The application shall do all of the following:

(1) Identify the applicant, the offense for which the expungement is sought, and the date of the conviction of or plea of guilty to that offense;

(2) Include evidence that the offense was a violation of a section of chapter 607 of these Ordinances that is now a minor marijuana misdemeanor in the City of Cleveland or no longer a criminal offense in the State of Ohio or a violation of section 601.08 (attempt to commit an offense) or 601.09 (complicity) of these Ordinances to the extent that it relates to an offense that is now a minor marijuana misdemeanor in the City of Cleveland or no longer a criminal offense in Ohio;

(3) Include a request for expungement of the record of conviction of that offense under this section.

(c) Upon the filing of an application under division (b) of this section, the Municipal Court shall set a date for a hearing within ninety (90) days and shall notify the Criminal Division of the Cleveland City Department of Law. A prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons for believing a denial of the application is justified. The Municipal Court shall direct a probation officer to make inquiries and written reports as the Court requires concerning the applicant. The court shall hold the hearing scheduled under this division.

(d)(1) At the hearing held under division (c) of this section, the Municipal Court shall do each of the following:

A. Determine whether the applicant has been convicted of or pleaded guilty to a violation of chapter 607 of these Ordinances as the chapter existed prior to July 1, 2016 or a violation of section 601.08 (attempt to commit an offense) or section 601.09 (complicity) of these Ordinances to the extent that it relates to an offense under chapter 607 of these Ordinances as the chapter existed prior to July 1, 2016, and whether the conduct that was the basis of the violation of the violation is now a minor marijuana misdemeanor in the City of Cleveland or no longer a criminal offense in the State of Ohio.

B. If a prosecutor has filed an objection in accordance with division (c) of this section, consider the reasons against granting the application specified by the prosecutor in the objection and any response by the applicant;

(2)A. The Municipal Court shall order the expungement of all official records pertaining to the case and the deletion of all index references to the case and, if it does order the expungement, shall send notice of the order to each public office or agency that the Court has reason to believe may have an

official record pertaining to the case if the Court, after complying with division d(1) of this section, determines that the applicant has been convicted of or pleaded guilty to a violation of chapter 607 of these Ordinances as the chapter existed prior to July 1, 2016 or a violation of section 601.08 (attempt to commit an offense) or section 601.09 (complicity) of these Ordinances to the extent that it relates to an offense under chapter 607 of these Ordinances as the chapter existed prior to July 1, 2016 and that the conduct that was the basis of the violation is now a minor marijuana misdemeanor in the City of Cleveland or no longer a criminal offense in the State of Ohio.

B. The proceedings in the case that is the subject of an order issued under division (d)(2)(A) of this section shall be considered not to have occurred and the conviction or guilty plea of the person who is the subject of the proceedings shall be expunged. The record of the conviction shall not be used for any purpose, including, but not limited to, a criminal records check. The applicant man, and the Municipal Court shall, reply that no record exists with respect to the applicant upon any inquiry into the matter.

(e)(1) If an applicant moving for expungement under this section is, at the time of the application, still subject to any sanction, detention or sentence that was imposed, in whole or part, for the violation or conduct, the application for expungement may also include an additional request for an order of discharge, release, modification or other appropriate relief from the sanction, detention or sentence. The request for an additional order of relief may be filed at the same time as the application for an order of expungement or at any time after that application has been filed prior to the Court hearing to be held under division (c) of this section. When requesting an order of relief in addition to expungement, the applicant shall identify the basis for the applicant's claim of being still subject to a sanction, detention or sentenced based, in whole or in part, on a conviction for conduct that is now a minor marijuana misdemeanor in the City of Cleveland or no longer a criminal offense in the State of Ohio, and request the Municipal Court to vacate or set aside that sanction, detention or sentence or grant other appropriate relief.

(2) If an application under this section requests an order of relief in addition to expungement, the Municipal Court shall notify the Criminal Division of the Cleveland City Department of Law and a prosecutor may file with the Court a response to the request prior to the date set for the hearing on the application for expungement. The Municipal Court shall direct a probation officer to make inquiries and written reports as the Court requires concerning the request for an order or relief in addition to expungement.

(3) If the Municipal Court determines an order of expungement is to be granted under division (d) of this section, the Court shall then consider any request for additional relief by determining if the applicant is still subject to any sanction, detention or sentence that was based, in whole or in part, upon a conviction for conduct that is now a minor marijuana misdemeanor in the City of Cleveland or no longer a criminal offense in the State of Ohio. The Court shall enter judgment denying additional relief if the Court determines the applicant is not still subject to any sanction, detention or sentence that was based, in whole or in part, upon a conviction for conduct that is now a minor marijuana misdemeanor in the City of Cleveland or no longer a criminal offense in the State of Ohio. The Court shall enter judgment that vacates or sets aside or modifies any sanction, detention or sentence that it determines was based, in whole or in part, upon a conviction for conduct that is now a minor marijuana misdemeanor in the City of Cleveland or no longer a criminal offense in the State of Ohio. The Court may resentence the applicant if the sentence, detention or sanction is also related to a conviction for conduct that is not the subject of the application for expungement.

(4) Any order of relief in addition to an order of expungement granted under this division shall restore to the person who is the subject of the order of relief all rights and privileges forfeited based on the conviction not otherwise restored by termination of the sentence, detention or sanction or by final release on parole or post-release control.

(f)(1) With respect to any person, including, but not limited to, a consumer reporting agency, that

acquires records of conviction from any City entity, that City entity shall not make available to such person information concerning such records of conviction or adjudication that have been expunged pursuant to this section.

(2) Each person, including, but not limited to, a consumer reporting agency, that has acquired records of conviction from any City entity shall, prior to disclosing such records, (A) obtain from that City entity, on a monthly basis or on such other schedule as the City entity may establish, any updated records of conviction or other information available for the purpose of complying with this section, and (B) update its records of conviction to permanently delete such expunged records. Such person shall not further disclose such expunged records.

(3) A person may not be questioned in any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, with respect to any conviction expunged under this section.

(g) Upon request by an applicant when filing an application under division (b) of this section, or upon the filing of any objections by any prosecutor to the application, the Municipal Court may appoint legal counsel to represent the applicant upon a finding that the applicant is indigent and that fair and effective consideration of the application will be aided by providing counsel for the application.

(h) If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable. Provisions ruled invalid by any court of law shall be revised to the minimum extent necessary to maintain validity and enforceability.

§ 607.01 Definitions

If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable. Provisions ruled invalid by any court of law shall be revised to the minimum extent necessary to maintain validity and enforceability. As used in this chapter, certain terms are defined as follows:

(a) “Administer” means the direct application of a drug, whether by injection, inhalation, ingestion, or any other means to a person or an animal.

(b) “Controlled substance” means a drug, compound, mixture, preparation, or substance included in Schedule I, II, III, IV, or V.

(c) “Dispense” means sell, leave with, give away, dispose of, or deliver.

(d) “Distribute” means to deal in, ship, transport, or deliver but does not include administering or dispensing a drug.

(e) “Hypodermic” means a hypodermic syringe or needle, or other instrument or device for the subcutaneous injection of medication.

(f) “Manufacturer” means a person who plants, cultivates, harvests, processes, makes, prepares, or otherwise engages in any part of the production of a controlled substance by propagation, compounding, conversion, or processing, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container and other activities incident to production, except that this term does not include a pharmacist who prepares, compounds, packages, or labels a controlled substance as an incident to dispensing a controlled substance in accordance with a prescription and in the usual course of professional practice.

(g) “Marijuana” means all parts of any plant of *Cannabis indica*, *Cannabis sativa*, *Cannabis ruderalis*, or any other plant of the genus *Cannabis* intended for human consumption as marijuana or marijuana products, whether growing or not. It does not include the seeds of the plant, the mature stalks of the

plant, fiber produced from the stalks, the roots of the plant, oils or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks.

(h) “Marijuana concentrate” means any marijuana extraction intended for human consumption in its extracted form.

(i) “Marijuana liquid” means any marijuana infused fluid intended for human consumption as a beverage, tincture, foodstuff, or dietary supplement.

(j) “Marijuana product” means any marijuana concentrate, marijuana liquid, or marijuana solid.

(k) “Marijuana solid” means any solid marijuana infused item intended for human consumption as foodstuff or dietary supplement, or any marijuana infused item intended for human consumption via topical application.

(l) “Noxious additive” means any element or compound designated by the State Board of Pharmacy for use as a safe and effective ingredient in any product containing the ingredient toluene, the gas, fumes, or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation, or other harmful physiological effects, that will discourage the intentional smelling or inhaling of the fumes of such product. A noxious additive shall not be added to such a product if such addition would make the product unsuitable for its intended use or adversely affect the performance of the product. The addition of a noxious additive to such a product is not required if the Board determines that the normal chemical composition of the product creates a level of noxiousness that is sufficient to discourage the intentional smelling or inhaling of the product’s fumes.

(m) “Official written order” means an order written on a form provided for that purpose by the Director of the United States Drug Enforcement Administration, under any laws of the United States making provision therefor, if such order forms are authorized and required by Federal law.

(n) “Pharmacist” means a person registered with the State Board of Pharmacy as a compounder and dispenser of drugs.

(o) “Pharmacy” means any area, room, rooms, place of business, department, or portion of any of the foregoing, where prescriptions are filled or where drugs, dangerous drugs, or poisons are compounded, sold, offered, or displayed for sale, dispensed, or distributed to the public.

(p) “Practitioner” means the following:

(1) A person who is licensed pursuant to RC Chapter 4715, 4731 or 4741 and authorized by law to write prescriptions for drugs or dangerous drugs;

(2) An advanced practice nurse authorized under RC 4723.56 to prescribe drugs and therapeutic devices.

(q) “Prescription” means a written or oral order for a controlled substance for the use of a particular person or a particular animal given by a practitioner in the course of professional practice and in accordance with the regulations promulgated by the Director of the United States Drug Enforcement Administration, pursuant to the Federal drug abuse control law.

(r) “Sale” includes delivery, barter, exchange, transfer, or gift, or offer thereof, and each such transaction made by any person whether, as principal, proprietor, agent, servant, or employee.

(s) “Schedule I”, “Schedule II”, “Schedule III”, “Schedule IV” and “Schedule V” mean controlled substance Schedules I, II, III, IV, and V respectively, established pursuant to RC 3719.41, as amended pursuant to RC 3719.43 or 3719.44.

(t) “Wholesaler” means a person who, on official written orders other than prescriptions, supplies controlled substances that he or she himself or herself has not manufactured, produced, or prepared and includes “wholesale distributor of dangerous drugs” as this term is defined in RC 4729.02.

(RC 3719.01)

(u) “Drug of abuse” means any controlled substance as defined in division (b) of this section, any harmful intoxicant as defined in division (x) of this section and any dangerous drug as defined in division (r) of this section.

(RC 3719.011)

(v) “Dangerous drug” means any of the following:

- (1) Any drug which, under the “Federal Food, Drug and Cosmetic Act”, Federal narcotic law, RC 3715.01 to 3715.22 or RC Chapter 3719, may be dispensed only upon a prescription;
- (2) Any drug which contains a Schedule V controlled substance and which is exempt from RC Chapter 3719 or to which such chapter does not apply;
- (3) Any drug intended for administration by injection into the human body other than through a natural orifice of the human body.

(RC 4729.02)

(w) “Bulk amount” of a controlled substance has the same meaning as in RC 2925.01, as that section may be amended.

(x) “Unit dose” means an amount or unit of a compound, mixture, or preparation containing a controlled substance, such amount or unit being separately identifiable and in such form as to indicate that it is the amount or unit by which the controlled substance is separately administered to or taken by an individual.

(y) “Cultivate” includes planting, watering, fertilizing, or tilling.

(z) “Drug abuse offense” means any of the following:

- (1) A violation of Sections 607.02 to 607.08, 607.12 or 607.14 of this chapter or RC 2925.02, 2925.03, 2925.11, 2925.12, 2925.13, 2925.22, 2925.23, 2925.31, 2925.32, 2925.36, or 2925.37.
- (2) A violation of an existing or former law of this or any other state or of the United States that is substantially equivalent to any section listed in division (z)(1) of this section.
- (3) An offense under an existing or former law of this or any other state, or of the United States, of which planting, cultivating, harvesting, processing, making, manufacturing, producing, shipping, transporting, delivering, acquiring, possessing, storing, distributing, dispensing, selling, inducing another to use, administering to another, using, or otherwise dealing with a controlled substance is an element.
- (4) A conspiracy or attempt to commit, or complicity in committing or attempting to commit, any offense under division (v)(1), (2), or (3) of this section.

(aa) “Felony drug abuse offense” means any drug abuse offense that would constitute a felony under the laws of this State, except a violation of RC 2925.11.

(bb) “Harmful intoxicant” does not include beer, intoxicating liquor, marijuana, or marijuana products but means any compound, mixture, preparation, or substance the gas, fumes, or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation, or other harmful physiological effects, and includes, but is not limited to, any of the following:

- (1) Any volatile organic solvent, plastic cement, model cement, fingernail polish remover, lacquer thinner, cleaning fluid, gasoline, and any other preparation containing a volatile organic solvent;
- (2) Any aerosol propellant;
- (3) Any fluorocarbon refrigerant;
- (4) Any anesthetic gas.

(cc) “Manufacture” means to plant, cultivate, harvest, process, make, prepare, or otherwise engage in any part of the production of a drug, by propagation, extraction, chemical synthesis, or compounding, or any combination of the same, and includes packaging, repackaging, labeling, and other activities incident to production.

(dd) “Possess” or “possession” means having control over a thing or substance but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found.

(ee) “Sample drug” means a drug or pharmaceutical preparation that would be hazardous to health or safety if used without the supervision of a practitioner, or a drug of abuse, and that, at one time, had

been placed in a container plainly marked as a sample by a manufacturer.

(ff) “Standard pharmaceutical reference manual” means the current edition, with cumulative changes if any, of any of the following reference works:

(1) *The National Formulary*;

(2) *The United States Pharmacopeia*, prepared by authority of the United States Pharmacopeial Convention, Inc.;

(3) Other standard references that are approved by the State Board of Pharmacy.

(gg) “Juvenile” means a person under eighteen (18) years of age.

§ 607.02 Gift of Marijuana

(a) No person shall knowingly give or offer to make a gift of twenty eight (28) grams or less of marijuana, 5 grams or less of marijuana concentrate, 1 liter or less of marijuana liquid, or 250 grams or less of marijuana solid.

(b) Whoever violates this section is guilty of trafficking in marijuana, a minor marijuana misdemeanor.

(c) Should the State of Ohio enact lesser penalties than those set forth above, or entirely repeal penalties for the gift of marijuana or marijuana products, then this ordinance, or the relevant portions thereof, shall be null and void.

(d) If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable. Provisions ruled invalid by any court of law shall be revised to the minimum extent necessary to maintain validity and enforceability.

§ 607.03 Drug Abuse: Controlled Substance Possession or Use

(a) No person shall knowingly obtain, possess, or use a controlled substance.

(b) This section does not apply to the following:

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with RC Chapters 3719, 4715, 4723, 4729, 4731, and 4741;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States food and drug administration;

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the “Federal Food, Drug, and Cosmetic Act,” 52 Stat. 1040 (1938), 21 U.S.C. 301, as amended, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act;

(4) Any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(c) Whoever violates this section is guilty of drug abuse, and shall be sentenced as follows:

(1) If the drug involved is a compound, mixture, preparation or substance included in Schedule III, IV or V, and the amount of drug involved is less than the bulk amount, drug abuse is a misdemeanor of the third degree, and if the offender has previously been convicted of a drug abuse offense, drug abuse is a misdemeanor of the second degree;

(2) If the drug involved is marijuana and the amount is one thousand (1,000) grams or less, drug abuse is a minor misdemeanor, unless the amount of marijuana involved is one hundred (100) grams or less,

in which case drug abuse is a minor marijuana misdemeanor;

(3) If the drug involved is marijuana concentrate and the amount is two hundred fifty (250) grams or less, drug abuse is a minor misdemeanor, unless the amount of marijuana concentrate involved is twenty five (25) grams or less, in which case drug abuse is a minor marijuana misdemeanor;

(4) If the drug involved is marijuana liquid and the amount is marijuana liquid and the amount is twenty five (25) liters or less, drug abuse is a minor misdemeanor, unless the amount of marijuana liquid involved is five (5) liters or less, in which case drug abuse is a minor marijuana misdemeanor;

(5) If the drug involved is marijuana solid and the amount is five thousand (5,000) grams or less, drug abuse is a minor misdemeanor, unless the amount of marijuana solid involved is five hundred (500) or less, in which case drug abuse is a minor marijuana misdemeanor.

(6) If the drug involved is an anabolic steroid included in Schedule III, and the amount involved is less than the bulk amount, drug abuse is a misdemeanor of the third degree and, in lieu of sentencing an offender to a definite or indefinite term of imprisonment in a detention facility, the court may place the offender on conditional probation pursuant to division (F) of RC 2951.02, unless the offender previously has been convicted of a drug abuse offense, in which case drug abuse is a misdemeanor of the second degree.

(d) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license or other right or privilege, or made in connection with the person's appearance as a witness.

(e) No Cleveland police officer, nor his or her agent, shall report the possession or use of one thousand (1,000) grams of marijuana or less, two hundred fifty grams (250) of marijuana concentrates or less, twenty five (25) liters of marijuana liquids or less, or five thousand (5,000) grams of marijuana solids or less to any other authority except the Criminal Division of the Cleveland City Department of Law; and the Criminal Division shall not refer any said report to any other authority for prosecution or for any other reason.

(f) Should the State of Ohio enact lesser penalties than those set forth above, or entirely repeal penalties for the possession or use of marijuana or marijuana products, then this ordinance, or the relevant portions thereof, shall be null and void.

(g) If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable. Provisions ruled invalid by any court of law shall be revised to the minimum extent necessary to maintain validity and enforceability.

§ 607.04 Possessing Drug Abuse Instruments

(a) No person shall knowingly make, obtain, possess, or use any instrument, article, or thing whose customary and primary purpose is for the administration or use of a dangerous drug, other than marijuana or marijuana products, when the instrument involved is a hypodermic or syringe, whether or not of crude or extemporized manufacture or assembly, and the instrument, article, or thing involved has been used by the offender to unlawfully administer or use a dangerous drug, other than marijuana or marijuana products, or to prepare a dangerous drug, other than marijuana or marijuana products, for unlawful administration or use.

(b) This section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with RC Chapters 3719, 4715, 4729, 4731 and 4741 or RC 4723.56.

(c) Whoever violates this section is guilty of possessing drug abuse instruments, a misdemeanor of

the second degree. If the offender has previously been convicted of a drug abuse offense, a violation of this section is a misdemeanor of the first degree.

(d) If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable. Provisions ruled invalid by any court of law shall be revised to the minimum extent necessary to maintain validity and enforceability.

§ 607.13 Sale of Marijuana Paraphernalia to Juveniles

(a) As used in this section, “paraphernalia for the use of marijuana” means any instrument, device, article or thing, whether or not of crude or extemporized manufacture or assembly, that is used or intended for use for any of the following:

- (1) Preparing marijuana or marijuana products for ingestion, inhalation or other introduction into the human body;
- (2) Ingesting, inhaling or otherwise introducing marijuana or marijuana products into the human body;
- (3) Enhancing the effect of marijuana or marijuana products upon the human body;
- (4) Testing the strength, effectiveness or purity of marijuana or marijuana products;
- (5) Cultivating or harvesting marijuana;
- (6) Manufacturing marijuana products.

(b) No person shall knowingly sell or offer to sell paraphernalia for the use of marijuana to any juvenile.

(c) There is an affirmative defense to a charge under this section if the juvenile involved exhibited to the defendant or his or her agent or employee a draft card, driver’s license, birth certificate or other official or apparently official document purporting to show that the juvenile was eighteen (18) years of age or older, and the person to whom the document was exhibited did not otherwise have reasonable cause to believe that the juvenile was under eighteen (18) years of age.

(d) This section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct is in accordance with RC Chapters 3719, 4715, 4729, 4731 or 4741.

(e) Whoever violates this section is guilty of selling paraphernalia for the use of marijuana to juveniles, a misdemeanor of the first degree.

§ 607.16 Definitions

(a) “Drug paraphernalia” means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance, other than marijuana and marijuana products, in violation of this chapter. It includes, but is not limited to:

- (1) Kits used, intended for use, or designated for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance, other than marijuana, or from which a controlled substance can be derived;
- (2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances, other than marijuana and marijuana products;
- (3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance, other than marijuana and marijuana products;
- (4) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the

strength, effectiveness or purity of controlled substances, other than marijuana and marijuana products;

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances, other than marijuana and marijuana products;

(6) Diluents and adulterants such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;

(7) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances, other than marijuana and marijuana products;

(8) Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances, other than marijuana and marijuana products;

(9) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances, other than marijuana and marijuana products;

(10) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;

(11) Objects used, intended for use, or designed for use in ingesting, inhaling or otherwise introducing cocaine into the human body, including but not limited to:

A. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens or punctured metal bowls;

B. Carburetion tubes and devices;

C. Miniature cocaine spoons and cocaine vials;

D. Chamber pipes;

E. Carburetor pipes.

(b) In determining whether an object is “Drug paraphernalia”, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any City, State or Federal law relating to any controlled substance;

(3) The proximity of the object, in time and space, to a direct violation of this chapter;

(4) The proximity of the object to controlled substances, other than marijuana and marijuana products;

(5) The existence of any residue of controlled substances, other than marijuana and marijuana products, on the object;

(6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner or of anyone in control of the object as to a direct violation of this chapter shall not prevent a finding that the object is intended for use or designed for use as “Drug paraphernalia”;

(7) Instruction, oral or written, provided with the object concerning its use;

(8) Descriptive materials accompanying the object which explain or depict its use;

(9) National and local advertising concerning its use;

(10) The manner in which the object is displayed for sale;

(11) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

(12) The existence and scope of legitimate uses for the object in the community;

(13) Expert testimony concerning its use.

(c) If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable. Provisions ruled invalid by any court of law shall be revised to the minimum extent necessary to maintain validity and enforceability.

§ 607.17 Possession, Manufacture and Sale of Drug Paraphernalia

- (a) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance, other than marijuana and marijuana products, in violation of this chapter.
- (b) It is unlawful for any person to deliver, sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell, drug paraphernalia, knowing that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance, other than marijuana and marijuana products, in violation of this chapter.
- (c) It is unlawful for any person to place in any newspaper, magazine, handbill or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.
- (d) This section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct was in accordance with RC Chapters 3719, 4715, 4729, 4731 and 4741. This section shall not be construed to prohibit any possession, manufacture or use of hypodermics made lawful by Section 607.10 of the General Offenses Code of the Codified Ordinances.
- (e) Any drug paraphernalia used in violation of this section shall be seized and forfeited to the Municipality.
- (f) If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

§ 607.20 Soliciting Drug Sales

- (a) No person shall solicit another person to sell any controlled substance.
- (b) This section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with RC Chapters 3719, 4715, 4729, 4731, and 4741 or to any activity prohibited by RC Chapter 2925.
- (c) This section does not apply to marijuana and marijuana products.
- (d) Whoever violates this section is guilty of soliciting drug sales, a misdemeanor of the first degree.
- (e) If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable. Provisions ruled invalid by any court of law shall be revised to the minimum extent necessary to maintain validity and enforceability.

§ 663.01 Definitions

If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable. Provisions ruled invalid by any court of law shall be revised to the minimum extent necessary to maintain validity and enforceability. As used in this chapter:

- (a) “Discriminate,” “discriminates” or “discrimination” means discrimination solely on the grounds

or because of race, religion, color, sex, sexual orientation, gender identity or expression, national origin, age, disability, ethnic group or Vietnam-era or disabled veteran status.

(b) “Employee” means all persons except those engaged in domestic service, personal service or an employee of an organized religious congregation or an employee of an organization or institution limited to members of a single religious faith.

(c) “Employer” means a person, one (1) or more individuals, a partnership, association or corporation hiring employees unless exemption is provided in Section 663.04.

(d) “Labor organization” means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employees concerning grievances, terms of conditions of employment, or of mutual aid or protection in connection with employment.

(e) “Employment agency” means any person, company, partnership, association, or corporation, which undertakes with or without compensation, to procure opportunities to work, or to procure, recruit, refer or place employees.

(f) “Sexual orientation” means a person’s actual or perceived homosexuality, bisexuality or heterosexuality, by orientation or practice.

(g) “Gender Identity or Expression” means the gender-related identity, external presentation of gender identity through appearance, or mannerism or other gender-related characteristics of an individual, regardless of the individual’s designated sex at birth.

(h) “Marijuana” means all parts of any plant of *Cannabis indica*, *Cannabis sativa*, *Cannabis ruderalis*, or any other plant of the genus *Cannabis* intended for human consumption as marijuana or marijuana products.

(i) “Marijuana products” means any marijuana extraction intended for human consumption in its extracted form, any marijuana infused fluid intended for human consumption as a beverage, tincture, foodstuff, or dietary supplement, any solid marijuana infused item intended for human consumption as foodstuff or dietary supplement, or any marijuana infused item intended for human consumption via topical application.

(j) “Qualifying condition” means the following diagnoses: glaucoma; multiple congenital cartilaginous exostosis; multiple sclerosis; nail-patella syndrome; positive status for human immunodeficiency virus and acquired immune deficiency syndrome (HIV/AIDS); Alzheimer’s disease; muscular dystrophy; neurofibromatosis; polyneuropathy; amyotrophic lateral sclerosis; cancer; celiac disease; Crohn’s disease; chronic pancreatitis; lupus; Huntington’s disease; hydromyelia; hydrocephalus; hepatitis C; myelomalacia; inflammatory bowel disease; interstitial cystitis; causalgia; chronic inflammatory demyelinating; post-traumatic stress; reflex sympathetic dystrophy; residual limb pain; Parkinson’s disease; Sjogren’s syndrome; cervical dystonia; spinocerebellar ataxia; syringomyelia; Tarlov cysts; rheumatoid arthritis; dystonia; fibrous dysplasia; sickle cell anemia; injury or disease to the spinal cord, spinal column or vertebra; traumatic brain injury; post-concussion syndrome; anorexia, Tourette’s syndrome; a chronic or debilitating disease or medical condition or its treatment that produces cachexia or wasting syndrome, severe or chronic pain, severe or chronic nausea, seizures, including those characteristic of epilepsy, or severe or persistent muscle spasms; and depression.

§ 663.02 Prohibitions

If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable. Provisions ruled invalid by any court of law shall be revised to the minimum extent necessary to maintain validity and enforceability. No employers, employees, labor unions, employment agencies or others subject to this chapter shall:

(a) Discriminate against any person with regard to hire, discharge, tenure, upgrading, terms or

conditions of employment or union membership solely on grounds of race, religion, color, sex, sexual orientation, gender identity or expression, national origin, age, disability, ethnic group or Vietnam-era or disabled veteran status;

(b) Publish or cause to be published any notice or advertisement relating to employment or membership which contains any specification or limitation as to race, religion, color, sex, sexual orientation, gender identity or expression, national origin, age, disability, ethnic group or Vietnam-era or disabled veteran status;

(c) Require of any applicant as a condition of employment or membership any information concerning the applicant's race, religion, color, sex, sexual orientation, gender identity or expression, national origin, age, disability, ethnic group or Vietnam-era or disabled veteran status;

(d) Terminate the employment of any employee diagnosed with a qualifying condition because that employee tests positive for the presence of Delta 9-tetrahydrocannabinol, or any other compound found in marijuana or marijuana products, provided that employee does not use marijuana or marijuana products during his or her hours of employment, nor at the employer's place of business without the employer's express permission;

(e) Aid, abet, encourage or incite the commission of any discrimination in employment practice prohibited by this chapter.

Section 3. The form of the ballot by which this ordinance shall be submitted to the electors of the City of Cleveland at the primary election to be held in March of 2016 shall be substantially as follows:

Shall the City of Cleveland adopt the Sensible Marijuana Ordinance, which protects citizens' rights and saves taxpayer money by lowering the penalties for minor marijuana misdemeanors, modernizing the City of Cleveland's approach to marijuana law enforcement, preventing discrimination against those who use marijuana for medical purposes, and allowing for expungement of certain past convictions for marijuana related offenses?

	For the ordinance
	Against the ordinance

Section 4. This Ordinance shall become effective on July 1, 2016.

Each of the undersigned electors hereby request that said ordinance hereinbefore set forth be certified to the proper election authorities and submitted to the electors of the City of Cleveland, Ohio for approval or rejection, and the proper notices be published, all as required by law and the provisions of the Charter of the City of Cleveland, Ohio.

The undersigned hereby designate the following electors of the City of Cleveland, Ohio signers of this petition as proponents of this Petition and as the Committee in charge thereof:

Brian Adams
4416 W 53rd St
Cleveland, OH 44144

Rev. Adam McGilvray
19210 Muskoka Ave DN
Cleveland, OH 44119

Gerald Braseman
3569 W 147th St
Cleveland, OH 44111

John Rutkowski
382 E 165th St
Cleveland, OH 44110

Gerald Clough
7905 Bancroft Ave
Cleveland, OH 44105

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STATEMENT OF CIRCULATOR

I, _____, declare under penalty of election falsification that I am the circulator of the foregoing petition paper containing the signatures of _____ electors, that the signatures appended hereto were made and appended in my presence on the date set opposite each respective name, and are the signatures of the persons whose names they purport to be or of attorneys in fact acting pursuant to section 3501.382 of the Revised Code, and that the electors signing this petition did so with knowledge of the contents of same. I am employed to circulate this petition by

(Name and address of employer). (The preceding sentence shall be completed as required by section 3501.38 of the Revised Code if the circulator is being employed to circulate the petition).

I further declare under penalty of election falsification that I witnessed the affixing of every signature to the foregoing petition paper, that all signers were to the best of my knowledge and belief qualified to sign, and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

(Signed)

(Address of circulator's permanent residence in this state) Number and Street, Road, or Rural Route

City, Village or Township

State

Zip Code

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.