# State of Connecticut
## DIVISION OF CRIMINAL JUSTICE

**TESTIMONY**

*JOINT COMMITTEE ON JUDICIARY*

*In opposition to:*

**S.B. No. 953 (RAISED):**
**An Act Concerning Nonviolent Drug Possession Offenses**

**S.B. No. 1014:**
**An Act Concerning the Penalty for Certain Nonviolent Drug Offenses**

*In support of:*

**S.B. No. 1098 (RAISED):**
**An Act Concerning the Sale and Possession of Synthetic Marijuana and Salvia Divinorum**

**H.B. No. 6391 (RAISED):**
**An Act Concerning Penalties for Certain Driving Under the Influence Offenses, Offender Risk Reduction Earned Credits and Home Confinement for Certain Nonviolent Drug Offenders**

*March 14, 2011*

The Division of Criminal Justice opposes S.B. No. 953, An Act Concerning Nonviolent Drug Possession Offenses, and S.B. No. 1014, An Act Concerning the Penalty for Certain Nonviolent Drug Offenses, both of which in layman's terms would "decriminalize" the simple possession of one ounce or less of marijuana. The Division supports and would recommend the Committee's Joint Favorable Report for S.B. No. 1098, An Act Concerning the Sale and Possession of Synthetic Marijuana and Salvia Divinorum, and H.B. No. 6391, An Act concerning Penalties for Certain Driving Under the Influence Offenses, Offender Risk Reduction Earned Credits and Home Confinement for Certain Nonviolent Drug Offenses.

**POSSESSION OF MARIJUANA**

The Division of Criminal Justice respectfully opposes S.B. No. 953, An Act Concerning Nonviolent Drug Possession Offenses, and S.B. No. 1014, An Act Concerning the Penalty for

Certain Nonviolent Drug Offenses. While these bills are before the Committee with the best of intentions, it is our sincere belief that they would not achieve the intended results and would have serious ramifications in terms of practical implementation.

It is ironic that many of the proponents of this bill are those who also would argue that current policy regarding illegal drug use places too much focus on punishment and not enough on treatment. If there is one area where the emphasis is clearly on treatment and alternatives to incarceration, it is the simple possession of marijuana (as clearly opposed to possession with intent to sell). Simple possession cases are typically resolved through the entry of a nolle (not prosecuted), dismissed outright or through referral to one of several treatment, counseling or other alternative to incarceration programs. In many towns in the Judicial District of Hartford, a charge of simple possession would be heard in the Community Court, which exists to hear minor offenses and quality of life issues.

Making the possession of less than one ounce of marijuana an infraction punishable by a fine payable by mail would eliminate entirely the ability of the system to refer the offender for treatment or counseling. We can identify no fewer than five separate diversionary programs available to an individual charged with simple possession (again noting that in practice many cases are nolled without participation in a program). For those under age 18, there is the Youthful Offender program, which is available to offenders an unlimited number of times. If the person is 18 or older, there is the Pretrial Drug Education Program (DEP – section 54-56i), the Community Service Labor Program (CSLP – section 53a-39c), CADAC (section 17a-691 through 17a-701) and possibly Pretrial Accelerated Rehabilitation (section 54-56e). All of these programs provide for dismissal of the charge upon successful completion. In some cases, an individual can take advantage of the same program more than once. The question is whether these programs prevent recidivism and help people lead more productive lives.

Any prosecutor who has been on the job for even a short period of time can recount the cases where otherwise promising young people become sidetracked and do not realize their full potential because of drug use. Before considering the approach of S.B. No. 953 or S.B. No. 1014, the General Assembly should seriously consider evaluating the various diversionary programs available to determine their effectiveness. Similar analysis should be done to determine how many individuals, particularly young people, who must go through the courts because of marijuana possession re-offend or continue in a lifestyle that leads to more serious criminal behavior. Do these programs, in fact, represent part of the safety net against substance abuse, and do we want to effectively remove that safety net to save a few dollars at the potential expense of someone's life or future livelihood? If so, will the people who need these programs get to them if all they have to do is mail in a fine?

Another argument most often cited in defense of the proposed legislation is that it would produce a significant cost savings. As far as the Division of Criminal Justice is concerned, the time spent on these cases is very small because prosecutors quickly refer them to diversionary programs. We can state unequivocally that no one goes to prison for simple possession of marijuana so there is no cost savings to be realized in the Department of Correction (DOC). Our review of the inmate population as of last week found only 31 individuals (of a total population in excess of 17,000) whose primary offense was listed as possession of marijuana. In every case, there were other significant contributing factors that led to incarceration. Several were also

charged with Violation of Probation, one also faces a robbery charge, another domestic violence charges and yet another burglary charges. In some cases, the simple possession charge was substituted in place of more serious counts, including possession with intent to sell, and in at least one case, assault, as part of a sentencing agreement. We could identify no inmate who is in prison - either pretrial or sentenced - solely for the simple possession of marijuana. (We have attached an addendum to this testimony with additional detail on these 31 inmates.) The reality is these individuals are not in prison solely for possession and most certainly would still be there even if the infraction option had existed.

There would seem to be little, if any, savings to police departments by allowing for a mail-in infraction. The police in issuing an infraction would still be required to collect and process the evidence; the only likely change would be that they would not be required to book the recipient of an infraction. An alternative to this already exists in that a misdemeanor summons could be issued. Again, there is no great savings, if any at all, to be realized.

The cost to the court system might even increase if the possession of less than one ounce is reclassified as an infraction. Simple possession cases do not command a tremendous amount of time on the part of the prosecutor or the courts. Changing the penalty to an infraction may produce the opposite. We have found that with many infractions one of the first questions a defendant will ask is whether the charge will be on that person's record. The response is that it will not be on a criminal record, but that there will a record of it somewhere. What effect will this have on a person's ability to get a security clearance to work at Electric Boat or Sikorsky? We don't know, but it seems that a dismissal or nolle that is erased will be less likely to have an impact. People are never happy with that response because they worry about potential employment implications. This concern will only be heightened in the case of a drug offense. Defendants will therefore ask for an infraction hearing before a magistrate, and at this point the costs will really escalate - to send the marijuana to a laboratory for testing and for the testimony associated with that testing just to start. For those who lose at this stage, it will be on to a *de novo* hearing before a Judge with all of the associated costs. By comparison, none of this currently happens because the ramifications of a guilty verdict on a drug misdemeanor clearly outweigh the alternative of community service, Accelerated Rehabilitation or a drug education or treatment program. What proponents would lead you to believe is a "simple" change is anything but and may actually dramatically increase the cost and time spent on these cases. Further, the General Assembly should analyze whether the expected revenue from infraction fines would be less than the revenue now produced by fees charged for participating in the various diversionary programs and the resulting ramifications for the future of those diversionary programs. The greatest cost savings could result from not sending people to treatment or counseling programs - which is the exact opposite of what most critics of current drug policy argue is most needed, an emphasis on treatment versus punishment.

The reclassification of the possession of less than one ounce of marijuana as an infraction would create an inconsistent penalty scheme. The possession of marijuana - still an illegal substance - would no longer automatically constitute grounds for Violation of Probation for other offenses, unless such use was specifically prohibited as a term of probation in each and every case. There would be no sanction whatsoever for repeated violations - you could simply pay the infraction time and time again. Possession of an illegal substance would carry less

weight than a traffic violation where repeat infractions can result in sanctions such as the suspension of a driver's license.

Finally, and on a very practical note, it should also be stated that these bills do not propose to decriminalize the possession of "small" amounts of marijuana. While an ounce may sound like a small quantity, it is actually more sizeable than most people realize. This bill is not simply seeking to revise the penalty for the teenager caught with a couple of joints. It is also impossible to state with any degree of certainty the impact these bills would have on individual cases because there is no readily available data to determine how many individuals are charged each year with possession of less than one ounce of marijuana. The statistics we have are based on the existing charge, which applies to the possession of less than four ounces and makes no distinction of any lesser amount. The enactment of either of these bills sends a fundamental message that the use of an illegal drug is not be to taken seriously. Reducing the penalty to a mail-in infraction suggests that illegal drug use is acceptable. To do so further feeds the drug trade, an illicit industry that is built on violence and specifically the marijuana gangs that have become increasingly violent in recent years. Violent crime directly related to drug dealing is not limited to foreign countries; it occurs regularly in this state. There is very little solid data to support the arguments most often advanced in support of these bills and far more questions and potentially negative or unconsidered implications give rise to the Division's opposition.

## S.B. NO. 1098

The Division of Criminal Justice respectfully recommends the Committee's Joint Favorable Report for S.B. No. 1098, An Act Concerning the Sale and Possession of Synthetic Marijuana and Salvia Divinorum. This legislation would bring conformity to state and federal statute and regulations prohibiting the sale of chemical compounds that are intended to produce the same intoxicating effect as marijuana. While some would dispute the long-term negative medical or psychological effects of marijuana use, there is little doubt that little, if anything, is known of the health implications of these synthetic products. If for no other reason than basic public health, the state should prohibit the legal sale and use of these products.

## H.B. NO. 6391

The Division supports H.B. No. 6391, An Act Concerning Penalties for Certain Driving Under the Influence Offenses, Offender Risk Reduction Earned Credits and Home Confinement for Certain Nonviolent Drug Offenders. We commend the Governor for recommending this bill, which would provide additional alternatives to incarceration for certain DUI offenders and drug offenses that do not involve the commission of violence. The Division is currently developing the agenda for our annual prosecutor training program, and one area of focus will be the various diversionary programs and alternatives to incarceration. We would note one apparent inconsistency between Section 3 of the bill and the provisions of S.B. No. 953 and S.B. No. 1014. Section 3 of this bill provides that a person placed in home confinement be returned to state custody if found to have consumed alcohol. By contrast, making the possession of marijuana an infraction payable by mail-in fine, as proposed in S.B. No. 953 or S.B. No. 1014, would remove the ability of the court to impose a similar sanction for repeated possession of marijuana. The Division supports the approach of H.B. No. 6391.

In conclusion, the Division of Criminal Justice wishes to express its thanks to the Committee for this opportunity to provide input on these important issues. We would be happy to provide any additional information the Committee might require or to answer any questions that you might have.

# ADDENDUM

## INMATES INCARCERATED FOR WHAT THE DEPARTMENT OF CORRECTION RECORDS POSSESSION OF MARIJUANA AS THE PRIMARY (CONTROLLING) OFFENSE

*Analysis by the State of Connecticut Division of Criminal Justice - March 11, 2011*

### PRETRIAL DETENTION – 12 individuals

1. Defendant has two other pending cases with a pending charge of failure to appear in one of those cases.
2. The primary charge is incorrectly identified as possession. The defendant is charged with possession with the intent to sell.
3. The defendant has four pending cases, three of which involve burglaries.
4. The defendant has five pending cases, one involving a burglary, one involving a charge of Larceny in the First Degree and forgery charges.
5. The defendant was on probation at the time of the offense and has another case pending.
6. The defendant's case is being handled through a special drug intervention court. The defendant was on probation at the time the marijuana charge was brought.
7. The defendant has a lengthy record. The possession case is a companion case to a sale case where the defendant is held on a more substantial bond.
8. The defendant is being held on three other files in two of which he has pending failures to appear.
9. The defendant has five pending cases, one of which is a violation of probation, one involves Larceny in the First Degree and one involves possession of a sawed off shotgun or silencer.
10. The case involves an Interfering with a Police Officer charge.
11. The defendant has multiple domestic cases pending as well as a violation of probation.
12. Defendant has a number of prior convictions.

### SENTENCED INMATES – 19 individuals

1. The convicted individual has thirteen prior convictions and was on probation at the time he was arrested for the marijuana. The record shows that the defendant owed 60 days on the Violation of Probation (VOP) and that the VOP was disposed of at the same time sentence was imposed in this case. The record also shows that the defendant was originally charged with possession of narcotics with the intent to sell but that the charge was reduced to possession of marijuana. The defendant's prior convictions were for a variety of crimes including, sale of narcotics, assault, larceny, failure to appear, burglary, interfering, criminal impersonation, assault on a corrections officer. The defendant also had multiple violations of probation.
2. This individual was originally charged with possession of a weapon in a motor vehicle. The charge of possession of marijuana was substituted. The defendant had prior convictions for sale of narcotics, interfering, and operating under the influence.
3. The defendant was originally charged with sale of a controlled substance. He has lengthy record that includes multiple convictions for burglary, and convictions for breach of peace, larceny, assault, and another possession of marijuana. He was on released on a conditional discharge for possession of marijuana when he was arrested for this case.

4. In what appears to be a plea bargain the defendant was allowed to plead to the marijuana charge and the state nolled a case involving Burglary in the Second Degree. The defendant has multiple prior convictions for threatening, interfering and larceny. In addition, he has a conviction for criminal mischief and multiple probation violations.
5. It appears that the defendant picked up the marijuana charge while he had a VOP pending in another case. The defendant has prior convictions for interfering, larceny and multiple drug offenses. He has violated probation on a number of occasions.
6. The defendant committed the crime only two months after being put on probation. He owed one year on a domestic assault. He had prior convictions for burglary, sale of narcotics, failure to appear, and violation of a protective order. He had violated probation in the past.
7. It appears that the state entered into a plea bargain with the defendant whereby it agreed to forego felony charges including Assault in the Second Degree, and sale of a controlled substance. The defendant had prior convictions for assault, threatening, and reckless endangerment.
8. The defendant was on probation for an assault two that was substituted down from an assault two with a firearm when he picked up two separate cases involving marijuana. The defendant, thereafter, failed to appear in one of the marijuana cases. The probation violation was disposed of with the marijuana cases.
9. The defendant disposed of three pending marijuana cases, in one of which he was charged with sale. Two of the offenses were committed while the defendant was released on bond in the sale case.
10. The defendant committed the crime while on probation. The defendant was originally charged with sale of a controlled substance. The probation violation was disposed of with the marijuana case.
11. The defendant had two sale cases substituted down to possession cases.
12. The defendant who had two prior convictions for possession of marijuana had a sale case substituted down to possession. At the same time, the defendant was convicted of a felony drug offense.
13. The defendant had a case in which he was charged with possession of a controlled substance with intent, he was apprehended with over three pounds of marijuana, substituted down to possession.
14. DOC records show the defendant received a sentence of two years to serve, which would indicate it was more than just a simple possession of marijuana since that is punishable by only one year in jail.
15. In this case where the defendant had felony was charged with sale and possession of narcotics, both felonies, the state substituted two counts of possession of marijuana.
16. The defendant had a sale case substituted down to possession.
17. The defendant had two sale charges substituted down to possession.
18. The defendant who had five cases pending plead to two counts of possession after the state dropped the charges from sale.
19. The defendant pleaded guilty to possession in three separate cases as part of a plea bargain in which the state agreed to drop charges of possession of narcotics with intent to sell and possession of narcotics, both felonies.