
OLR Bill Analysis

sSB 1014 (as amended by Senate "A" and "B")*

AN ACT CONCERNING THE PENALTY FOR CERTAIN NONVIOLENT DRUG OFFENSES.

SUMMARY:

This bill reduces the penalty for possessing less than one-half ounce of marijuana from a crime that carries a possible prison term to (1) a \$150 fine for a first offense and (2) a \$200 to \$500 fine for a subsequent offense. Under the bill, violaters must follow the procedures the law prescribes for infractions. For example, they can pay the fine by mail without making a court appearance. But the bill provides a lower burden of proof than is generally required for infractions or other violations that follow infraction procedures.

It requires a law enforcement officer who issues a complaint for such a violation to seize the marijuana and cause it to be destroyed as contraband according to law.

The bill requires referral to a drug education program for anyone who for a third time (1) enters a plea of nolo contendere to, or (2) is found guilty after trial of, possessing less than one half-ounce of marijuana. The bill specifies that the person must pay the expenses of his or her participation in the program.

The bill also reduces, from a crime to an infraction, the penalty for specified actions involving drug paraphernalia when such actions relate to less than one-half ounce of marijuana. It provides the same lower burden of proof as provided for possession.

The bill provides that a violation or infraction under the bill is a delinquent act when committed by someone 16-years-old or younger, or 17-years-old starting July 1, 2012. Proceedings related to delinquent acts are generally brought in juvenile court.

The bill also requires a 60-day suspension of the driver's license of anyone under age 21 who is convicted of a violation or infraction under the bill.

*Senate Amendment "A" strikes the underlying bill. It (1) increases the penalty for a first possession offense from an infraction to a \$150 fine; (2) adds the provision requiring police to seize and destroy marijuana after issuing a complaint for possession of less than a half-ounce; (3) reduces, from 150 to 60 days, the suspension of the driver's license or nonresident operating privilege of someone under 21 who commits a violation or infraction under the bill; (4) provides for a lower burden of proof than criminal trials; (5) deletes a provision regarding the sufficiency of a police officer's testimony as to the nature of the substance; and (6) adds the provisions regarding delinquent acts by 16- and 17-year olds.

*Senate Amendment "B" adds the provision requiring three-time violaters to be referred to a drug education program.

EFFECTIVE DATE: July 1, 2011, except the provisions relating to delinquent acts by 17-year olds are effective July 1, 2012.

§§ 1, 2 — MARIJUANA POSSESSION

The bill makes the first offense of possessing less than one-half ounce of marijuana punishable by a \$150 fine. A second or subsequent offense is punishable by a fine of \$200 to \$500.

Currently, the penalties for possessing up to four ounces of marijuana are:

1. for a first offense, up to one year in prison, up to a \$ 1,000 fine, or both;
2. for a subsequent offense, (a) up to five years in prison, up to a \$3,000 fine, or both or (b) an indeterminate sentence of up to three years; and
3. a mandatory two-year prison sentence running consecutively to

the term imposed for possession if the crime is committed within 1,500 feet of an elementary or secondary school (unless the offender is a student at the school) or a licensed day care center. (A judge may depart from this sentence under certain circumstances.)

The law imposes certain other restrictions on people who are convicted of marijuana possession or other specified drug crimes. For example, such people may be denied licensure for a family day care home (CGS § 19a-87e) and are prohibited from obtaining licensure in other areas, such as bail enforcement (CGS § 29-152f). Under the bill, these restrictions do not apply to people convicted of possessing less than one-half ounce of marijuana.

§ 3 — DRUG PARAPHERNALIA RELATED TO MARIJUANA USE

The bill reduces the penalty for specified actions involving drug paraphernalia from a crime to an infraction when such actions relate to less than one-half ounce of marijuana. Specifically, it reduces the penalty from a:

1. class C misdemeanor (up to three months in prison, up to a \$500 fine, or both) when drug paraphernalia is used or possessed with intent to use to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, ingest, inhale, or otherwise introduce into the body less than one-half ounce of marijuana and
2. class A misdemeanor (up to one year in prison, up to a \$2,000 fine, or both) to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia knowing, or under circumstances in which one should reasonably know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, ingest, inhale, or otherwise introduce into the body less than one-half ounce of marijuana.

Current law also provides for a mandatory one-year prison term for such paraphernalia-related offenses committed within 1,500 feet of a school or day care center. This would not apply to infractions under the bill.

§ 4 — DRIVING-RELATED PENALTIES FOR THOSE UNDER AGE 21

The bill establishes driver's license penalties for a person under age 21 who is convicted of possessing less than one-half ounce of marijuana or the actions specified involving drug paraphernalia relating to less than one-half ounce of marijuana. The motor vehicle commissioner must suspend the person's driver's license or nonresident operating privilege for 60 days. If someone under age 21 commits such a violation or infraction but does not have a driver's license, the person is ineligible for a driver's license for 150 days after meeting all licensing requirements.

§ 5 — BURDEN OF PROOF

Current law extends to trials for infractions and violations that follow infraction procedures the same rules of evidence, procedure, burden of proof, and practice that apply to criminal proceedings. The bill creates an exception for trials involving the possession of less than one-half ounce of marijuana or the actions specified above involving drug paraphernalia and less than one-half ounce of marijuana. For such trials, the bill lowers the burden of proof from beyond a reasonable doubt to a preponderance of the evidence.

§§ 7-10 — PERSONS 17-YEARS-OLD OR YOUNGER WHO COMMIT A VIOLATION OR INFRACTION

Under current law, 16-year olds cannot be convicted as delinquent for committing an infraction or violation. The same is true for 17-year olds starting July 1, 2012, when the maximum age for juvenile court jurisdiction is scheduled to rise from age 16 to 17. The bill provides that 16-year olds, or 17-year olds starting July 1, 2012, who commit an infraction or violation under the bill may be convicted as delinquent. It specifies that infractions or violations under the bill, unlike other infractions or violations, are included within the law's definition of

delinquent acts for these age groups. By law, persons under 16 can already be convicted as delinquent for any violation or infraction.

BACKGROUND

Infractions

Infractions are punishable by fines, usually set by Superior Court judges, of between \$35 and \$90, plus additional fees, surcharges, and costs. Some infraction fines increase when committed in designated construction, utility work, and school zones. An infraction is not a crime; thus, violators do not have criminal records and can pay the fine by mail without making a court appearance (CGS §§ 51-164m, -164n).

Related Bills

sSB 952 (File 629) makes a number of changes to the laws that enhance the penalties for illegal drug activities near schools, day care centers, and public housing projects including (1) allowing the court to suspend the enhanced penalty, (2) reducing the size of the zones around the locations from 1,500 to 200 feet in cities with a population of more than 60,000, and (3) eliminating the zones around public housing projects.

SB 1015 (File 605) allows a physician to certify an adult patient's use of marijuana after determining that the patient has a specified debilitating condition and could potentially benefit from the palliative use of marijuana. It prohibits physicians, qualifying patients, and their caregivers who comply with its provisions from being arrested, prosecuted, or otherwise punished for certifying, using, or possessing palliative marijuana.

HB 6293 (File 241) allows a municipality with a population under 25,000 to collect unpaid taxes on marijuana and controlled substances when they are seized during an arrest or found during a search. The bill provides that any unpaid taxes of this nature owed to a municipality constitute a lien against any property the dealer has in the municipality and are treated similarly to a property tax lien.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 23 Nay 15 (04/12/2011)

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 31 Nay 20 (05/10/2011)