
OLR Bill Analysis

sSB 1085

AN ACT CONCERNING THE LEGALIZATION OF THE RETAIL SALE AND POSSESSION OF CANNABIS AND CONCERNING ERASURE OF CRIMINAL RECORDS IN THE CASE OF CONVICTIONS BASED ON THE POSSESSION OF A SMALL AMOUNT OF CANNABIS.

SUMMARY

This bill allows individuals age 21 or older (consumers) to possess, use, and otherwise consume cannabis (marijuana) and cannabis products, under specified conditions. It sets a possession limit of 1.5 ounces per consumer, with no more than five grams in the form of cannabis concentrate. It correspondingly allows licensed cannabis retailers to sell cannabis and cannabis products to such consumers. The bill extends legal protections to consumers and licensed retailers who comply with the bill's requirements.

Under the bill, a consumer who possesses cannabis may transfer it to someone else age 21 or older, subject to the bill's possession limit, as long as the cannabis was purchased from a licensed retailer. It also allows anyone convicted for possessing 1.5 ounces or less of cannabis to file a court petition to erase the related police, court, and prosecutorial records.

It establishes specific penalties for various actions, such as (1) consumers possessing cannabis in excess of the bill's possession limit, (2) retailers selling cannabis to customers under age 21, (3) customers under age 21 attempting to purchase cannabis, and (4) property owners allowing persons under age 21 to possess cannabis at the property. Existing penalties continue to apply to various actions, such as cannabis sales by someone who is not a licensed retailer.

Among other related provisions, the bill also:

1. allows consumers to manufacture, possess, and purchase cannabis-related paraphernalia or distribute or sell these items to other consumers;
2. specifies that existing law's ban on smoking in various locations applies to both cannabis and tobacco;
3. requires cannabis retailers to use transaction scanners to verify a customer's age before selling cannabis; and
4. limits the circumstances under which a criminal defendant's pretrial release, probation or conditional discharge, or parole may be affected by possessing or using cannabis.

Under the bill, "cannabis" means a "cannabis-type substance" as defined in the existing drug statutes (see BACKGROUND).

The bill also makes minor, technical, and conforming changes.

EFFECTIVE DATE: July 1, 2019, except as noted below.

§§ 2, 13 & 14 — CANNABIS POSSESSION AND USE

Conditions for Possession and Use

The bill allows individuals age 21 or older (consumers) to possess, use, and otherwise consume cannabis and cannabis products, subject to the following conditions:

1. the consumer possesses it in a manner that is secure from unauthorized access and access by anyone under age 21;
2. the items were purchased from a cannabis retailer (the consumer may also receive it from another consumer who purchased it from a retailer, see § 6); and
3. the consumer possesses no more than 1.5 ounces of cannabis (by itself or in cannabis products), including no more than five grams in the form of cannabis concentrate.

Under the bill, "cannabis products" are products (1) comprised of

cannabis or cannabis concentrates and other ingredients and (2) intended for use or consumption, including edible products and ointments. “Cannabis concentrate” is any form of concentration, including extracts, oils, tinctures, and waxes, that is extracted from cannabis and contains cannabinoids.

Current law prohibits the possession of cannabis, except as authorized by law for medical purposes, and imposes civil fines and other penalties for possession of up to ½ ounce of cannabis and criminal penalties for the possession of larger amounts.

Table 1 describes the current penalties. Under the bill, the current penalties continue to apply to (1) individuals under age 21 who possess cannabis and (2) except as explained below, individuals age 21 or older whose possession does not meet the bill’s conditions.

Table 1: Penalties for Cannabis Possession Under Current Law

<p>Possession of less than ½ ounce (CGS § 21a-279a):</p> <ul style="list-style-type: none"> • First offense: \$150 fine • Subsequent offenses: \$200 to \$500 fine (third-time violators must attend drug education, at their own expense) • Violators follow the procedures the law sets for infractions (e.g., they can pay the fine by mail) (CGS § 51-164n) • 60-day suspension of the driver’s license or nonresident operating privileges of anyone under age 21 who is convicted of a violation (if the person does not have a license, he or she is ineligible for one for 150 days (CGS § 14-111e) • Burden of proof is preponderance of the evidence (rather than beyond a reasonable doubt) (CGS § 51-164n(i))
<p>Possession of ½ ounce or more (CGS § 21a-279(a)):</p> <ul style="list-style-type: none"> • Class A misdemeanor, punishable by up to one-year prison term, up to a \$2,000 fine, or both • Second offense: court must evaluate the defendant and may suspend prosecution and order substance abuse treatment if the court determines that the person is drug dependent

<ul style="list-style-type: none"> Subsequent offenses: court may find the person to be a persistent offender for controlled substance possession and impose the prison term that applies to class E felonies (i.e., up to three years)
<p>Possession of ½ oz. or more within 1,500 feet of the property comprising (1) an elementary or secondary school by someone who is not attending the school or (2) a licensed child care center identified as such by a sign posted in a conspicuous place (CGS § 21a-279(b)):</p> <ul style="list-style-type: none"> Class A misdemeanor Court must sentence the person to a term of imprisonment and probation. The conditions of probation must include performing community service.

Penalties for Possession Exceeding Allowable Amount (§ 2)

As described in Table 2, the bill sets penalties for consumers who possess more than the bill’s possession limit but otherwise meet the bill’s conditions for lawful possession. These include criminal penalties if the person possesses two ounces or more of cannabis (i.e., at least ½ ounce above the bill’s limit).

Table 2: Penalties for Exceeding Cannabis Possession or Concentrate Limits Under the Bill

Possession Amount	Penalties
More than 1.5 ounces but less than 2 ounces	Current penalties for possession of less than ½ ounce (see Table 1)
2 ounces or more	Current penalties for possession of ½ ounce or more (see Table 1)
More than 5 grams of cannabis concentrate (but less than 1.5 ounces of cannabis in total)	Infraction, punishable by a fine of \$35 to \$90 (set by Superior Court judges) plus fees Violators can pay the fine by mail

§§ 3, 6, 11 & 12 — CANNABIS RETAILERS; SALES AND TRANSFERS

The bill allows cannabis retailers to sell cannabis and cannabis products to consumers age 21 or older, in an amount for any single transaction that does not exceed the bill’s possession limit. Cannabis

retailers must ensure that any sales include transaction scans to verify the consumer's age (see § 15 below).

Under the bill, "cannabis retailers" are persons age 21 or older who are licensed to (1) purchase cannabis from licensed cannabis cultivation facilities, and cannabis and cannabis products from licensed cannabis product manufacturing facilities, and (2) sell cannabis and cannabis products to consumers. "Cannabis retailers" include the retailers' agents or employees who are age 21 or older.

The bill does not establish licensing procedures for retailers, cultivation facilities, or product manufacturing facilities (see BACKGROUND, Related Bills, sHB 7371).

The bill generally prohibits anyone other than cannabis retailers from distributing, selling, offering, or giving cannabis or cannabis products to consumers, except as otherwise authorized by law. It allows consumers who purchase cannabis or cannabis products from a cannabis retailer to offer or give such items to other consumers, subject to the bill's possession limit. Both such individuals must be at least age 21.

Under current law, the unauthorized sale or distribution of cannabis (including possession with intent to sell) is a felony, with mandatory minimum prison terms in certain situations. The current penalties vary based on factors such as the amount sold, where the act took place, and whether the offender is drug-dependent. These penalties continue to apply under the bill to unauthorized sales and similar actions (e.g., sales by persons other than cannabis retailers or medical marijuana dispensaries, or distributions by a consumer to someone under the legal age).

The bill also establishes a specific penalty for unauthorized sales by cannabis retailers, as explained below.

Penalties for Unlawful Sales by Retailers (§ 3)

The bill prohibits cannabis retailers from selling cannabis or cannabis products to anyone under age 21. Anyone who does so, or

who otherwise violates the retailer requirements described above, is guilty of a class A misdemeanor.

Under the bill, cannabis retailers have an affirmative defense if they are prosecuted for selling to individuals under age 21. This defense applies if the seller proves the following:

1. the prospective purchaser presented a driver's license or identity card,
2. the transaction scan of the card indicated it was valid, and
3. the retailer sold the item in reasonable reliance on the identification presented and the completed transaction scan.

In determining whether a retailer has proven the affirmative defense, the trier of fact (judge or jury) must consider that using a scan device does not excuse the retailer from exercising reasonable diligence in determining whether (1) the customer is age 21 or older and (2) the description and picture on the license or identification card are the customer's.

§ 4 — LEGAL PROTECTIONS FOR CANNABIS RETAILERS AND CONSUMERS

Under the bill, a cannabis retailer or consumer may not be arrested, prosecuted, or otherwise penalized, including being subject to civil penalties, or denied any right or privilege for acquiring, distributing, possessing, using, or transporting cannabis or related paraphernalia, if any such actions comply with the bill's requirements. Such protections apply regardless of conflicting statutes.

§ 5 — RETURN OF SEIZED PROPERTY

The bill establishes when law enforcement officials must return cannabis, related paraphernalia, or other property they seize from a consumer or cannabis establishment, in connection with the claimed possession or use of cannabis under the bill's provisions. Specifically, they must return it immediately upon a court's determination that the consumer or establishment complied with the bill's requirements. This

can be shown by the prosecutor's decision not to prosecute, the dismissal of the charges, or an acquittal.

A "cannabis establishment" is a licensed cannabis retailer, cultivation facility, or product manufacturing facility.

§ 7 — CANNABIS PARAPHERNALIA

The bill allows consumers to manufacture, possess, and purchase cannabis-related paraphernalia or distribute or sell such paraphernalia to other consumers.

Current law prohibits the use, possession with intent to use, manufacture, and other specified actions related to drug paraphernalia (CGS § 21a-267). In general, these actions are infractions if they relate to less than ½ ounce of cannabis or misdemeanors if they relate to larger amounts of cannabis. Under the bill, the current penalties continue to apply to unauthorized actions, such as possession of cannabis-related paraphernalia by someone under age 21, or transfer of such paraphernalia to such a person.

§§ 8-10 — PROHIBITION ON SMOKING IN CERTAIN LOCATIONS

Existing law (sometimes called the Clean Indoor Air Act) prohibits smoking in several locations, such as most state or municipal buildings and school buildings during school or student activities. The law applies to smoking cigarettes, electronic cigarettes, and other specified or similar devices. Violations are punishable as infractions.

The bill specifies that this law applies whether the person is smoking tobacco or cannabis. It makes related conforming changes. For example, as is already the case for other forms of smoking, it (1) permits hotel, motel, or similar lodging operators to allow guests to smoke cannabis in up to 25% of rooms offered as guest accommodations and (2) specifies that a person may be arrested for smoking cannabis in an elevator only if there is a sign indicating that smoking is prohibited.

The bill also specifies that the existing authority for municipalities to regulate smoking on municipally-owned property applies to both

tobacco and cannabis. By law, unchanged by the bill, the Clean Indoor Air Act supersedes and preempts municipal laws and ordinances on smoking and e-cigarette use.

EFFECTIVE DATE: July 1, 2019, except the provision on municipal authority is effective October 1, 2019.

§ 15 — TRANSACTION SCANS

The act extends to cannabis retailers similar provisions as already apply to alcohol sellers on the use of transaction scan devices (transaction scanners) to verify the purchaser's age.

The bill requires cannabis retailers, as a condition of the sale, to use a transaction scanner to check the validity of a customer's driver's license or identity card. It prohibits them from selling cannabis if the information on the license or card is false or does not match the scan results. It does not prevent them, as a condition of the sale, from scanning other documents that have a magnetic strip or bar code.

Prohibited Actions

The bill forbids cannabis retailers from:

1. using a transaction scanner for any purpose other than verifying a customer's age and identity;
2. recording or maintaining information from the scan or otherwise obtained from a driver's license or identity card; or
3. selling or distributing information derived from a transaction scan to any third party for any purpose, including marketing, advertising, or promotional activities.

It subjects violators to a civil penalty of up to \$1,000.

§§ 16 & 17 — PENALTIES FOR PERSONS UNDER AGE 21 ATTEMPTING TO BUY CANNABIS

The bill authorizes (1) anyone who is at least age 21 and has a driver's license with a full-face photograph to use it to prove age when buying cannabis or cannabis products and (2) a cannabis retailer to

accept it as legal proof of age. The bill subjects anyone who misrepresents his or her age, or uses another person's license, to obtain cannabis or cannabis products to a fine of \$200 to \$500, 30 days in prison, or both.

In addition, a person under age 21 who buys or attempts to buy cannabis or cannabis products, or who makes a false statement to obtain such items, is subject to a fine of \$200 to \$500.

These provisions already apply to alcohol purchases.

§ 18 — PENALTIES FOR ALLOWING PERSONS UNDER LEGAL AGE TO POSSESS CANNABIS AT A PERSON'S PROPERTY

The bill makes it a class A misdemeanor for someone who possesses or controls private property, including a dwelling unit, to:

1. knowingly, recklessly, or with criminal negligence permit a person under age 21 to illegally possess cannabis or cannabis products on the property or
2. fail to make reasonable efforts to stop such possession on the property when he or she knows the underage person possesses these items illegally.

These provisions already apply to alcohol.

§§ 19 & 20 — RECORD ERASURE

Under existing law, offenders convicted of acts that are subsequently decriminalized may petition to have their records erased. This includes convictions for the possession of less than ½ ounce of cannabis, which was decriminalized in 2011 (see *State v. Menditto*, 315 Conn. 861 (2015)). The court must order the physical destruction of all related police, court, and prosecution records.

The bill additionally allows anyone convicted for possession of 1.5 ounces or less of cannabis to file a court petition for the records' erasure. The court cannot charge any fees for these petitions.

The petitioner must include a copy of the arrest record or an

affidavit supporting that the conviction was for possessing 1.5 ounces or less of cannabis. If the petition includes the required documentation, the Superior Court must order the physical destruction of all related police, court, and prosecution records.

A person seeking such erasure must file the petition with the Superior Court (1) where the person was convicted, (2) that has the conviction records, or (3) where venue would currently exist if the conviction took place in a court that no longer exists (e.g., the Court of Common Pleas).

Under the bill, these provisions for cannabis possession convictions, and for any decriminalized acts, do not apply if the (1) criminal case is pending or (2) person was charged with multiple counts, until all counts are entitled to destruction. But if there are multiple counts, the court must direct the records of any offenses that would be entitled to destruction to be deemed erased.

Court Records and Erasure (§ 19)

The bill also specifies that, for various record erasure requests under existing law, the petitioner must file the request with the Superior Court where venue would currently exist if the conviction took place in certain courts that are now obsolete. Current law instead requires these petitions to be filed with the Judicial Branch records center.

Current criminal record erasure laws generally do not apply to court records and transcripts prepared by official court reporters, assistant court reporters, and monitors. The bill extends this exception to record erasure for decriminalized acts or cannabis possession, as described above. It similarly provides that, for purposes of other specified criminal record laws, “court records” do not include such records and transcripts.

EFFECTIVE DATE: July 1, 2019, except certain general provisions on court records and erasure are effective October 1, 2019.

§§ 21-25 — PROBATION OR CONDITIONAL DISCHARGE, PRETRIAL RELEASE, OR PAROLE

The bill limits the circumstances under which a criminal defendant's pretrial release, probation, conditional discharge, or parole may be affected by possessing or using cannabis. These provisions apply if the defendant (1) was at least age 21 at the time of the possession or use and (2) did not possess more than the bill's possession limit. The specific restrictions are set forth in Table 3 below.

Table 3: Bill's Restrictions on Cannabis Affecting Probation, Conditional Discharge, Pretrial Release, or Parole

<i>Issue</i>	<i>Restrictions (if above conditions are met)</i>
Probation or Conditional Discharge (§ 21)	<p>The defendant cannot be arrested, detained, or returned to custody for violating probation or conditional discharge conditions, if the violation was based solely on the defendant's cannabis possession or use</p> <p>The defendant cannot be arraigned or brought before the court for a hearing for violating such conditions, if the only charge leading to the arraignment or hearing is a violation based entirely on cannabis possession or use</p> <p>The defendant's probation or conditional discharge cannot be revoked if the only violation leading to revocation is based entirely on cannabis possession or use</p>
Pretrial Conditions of Release (§ 22)	<p>The court may not order the defendant to appear for a hearing on an alleged violation of release conditions if the sole violation is based entirely on cannabis possession or use</p> <p>The court may not revoke pretrial release, and there is no rebuttable presumption that release should be revoked, if the entire cause for revocation is based solely on cannabis possession or use</p>
Parole (§§ 23-25)	<p>The Board of Pardons and Parole may not order a person on parole to be detained or imprisoned based solely on the person's cannabis possession or use</p> <p>A person on parole may not be taken into custody based solely on his or her cannabis possession or use</p> <p>A person's parole or special parole may not be revoked or rescinded</p>

	based solely on his or her cannabis possession or use
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EFFECTIVE DATE: October 1, 2019

BACKGROUND

Cannabis-Type Substances

Existing law defines “cannabis-type substances” to include parts of a plant or species of the genus *cannabis*, whether or not it is growing, and including its seeds and resin; its compounds, manufactures, salts, derivatives, mixtures, and preparations; and cannabimon, cannabimol, cannabidiol (CBD) and similar compounds. Among other things, the definition excludes a plant’s mature stalks; fiber made from the stalks; a compound, manufacture, salt, derivative, mixture, or preparation made from the stalks; oil or cake made from the seeds; and industrial hemp (CGS § 21a-240(7)).

Federal Controlled Substance Classification

Federal law classifies marijuana as a Schedule I controlled substance. The law generally prohibits anyone from knowingly or intentionally possessing, manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense Schedule I drugs. Licensed practitioners, including pharmacies, can use Schedule I substances in government-approved research projects. The penalty for violations varies depending on the amount of drugs involved (21 U.S.C. §§ 812, 823, and 841 et seq.).

Related Bills

sSB 1089 (File 804), reported favorably by the Judiciary Committee, allows employers to prohibit employees from possessing or using cannabis at work and, subject to certain conditions and limits, outside of work.

sHB 7371 (File 585), reported favorably by the General Law Committee, establishes the regulatory structure to allow consumers age 21 or older to purchase cannabis from a licensed retailer.

sHB 7372 (File 788), reported favorably by the Judiciary Committee,

makes it a class C misdemeanor to (1) smoke or otherwise inhale or ingest cannabis while driving a motor vehicle or (2) smoke cannabis while a passenger in a motor vehicle.

sHB 7200, §§ 18 & 19 (File 579), reported favorably by the Public Health Committee, extends the current ban on smoking at certain locations, such as banning smoking on all school property, instead of only within a school building during school or student activities.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 21 Nay 19 (04/08/2019)