March 2, 2020

Senator Gary Winfield, Co-Chair Judiciary Committee
Representative Steven Stafstrom, Co-Chair Judiciary Committee

RE: TESTIMONY OF FRANK J. RICCIO II, PRESIDENT-ELECT, CCDLA
Senate Bill 16 – AN ACT CONCERNING THE ADULT USE OF CANNABIS

Dear Members of the Judiciary Committee:

The Connecticut Criminal Defense Lawyers Association ("CCDLA") is a statewide organization of approximately 350 attorneys, both private and public, who are dedicated to defending people accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by ensuring that the individual rights guaranteed by the Connecticut and United States Constitutions are applied fairly and equally, and that those rights are not diminished.

The CCDLA joins the position taken by the Office of Chief Public Defender in supporting SENATE BILL 16 - AN ACT CONCERNING THE ADULT USE OF CANNABIS. This policy will mitigate the devastating impact that those arrested and convicted of cannabis offenses, especially on our youth, indigent and people of color. Eliminating penalties for small amounts of cannabis possession and adjusting those penalties for criminal possession is quite beneficial, and providing the opportunity for erasure of past criminal records will assist those in battling the collateral consequences of such convictions which include their inability to obtain employment, housing or student loans.

This proposal – allowing those over 21 to possess up to 1/2 ounces of cannabis and those under 21 or possessing higher amounts to be prosecuted for misdemeanor charges but would be eligible for suspended prosecutions and drug treatment – will alleviate the negative impact that cannabis convictions have had on people's lives.

This proposal will enact commonsense, revenue-producing measures and take steps to undo the impact of a failed, racially-driven "war on drugs." Significant tax revenue that should be used to improve substance abuse and mental health services in our communities.
The CCDLA does find troubling two areas of the legislation. The bill as drafted mandates the admissibility of the testimony pertaining to the drug influence evaluation conducted by a law enforcement office who is trained as a drug recognition expert ("DRE"). This would eliminate a court's discretion in admitting such testimony. Federal law (Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and state law (State v. Porter, 241 Conn. 57 (1997)) provide judges the ability to act as a gatekeeper with regard to certain scientific evidence. While some jurisdictions permit DRE testimony as expert testimony, some including Connecticut currently do not. This proposed legislation essentially legislates the admission of DRE testimony.

DREs conduct a twelve-step process to determine whether or not a subject is under the influence of a substance. The process begins with the arresting officer administering a breath alcohol test during the initial traffic stop. If the officer determines that alcohol is not the cause of impaired driving, the officer requests a full DRE examination. The DRE then conducts several tests, such as taking the subject's pulse, checking their muscle tone, horizontal gaze nystagmus (HGN), vertical gaze nystagmus (VGN) and checking their pupil size, in order to determine which substance is influencing the subject. The DRE also interviews the subject about their drug use. The final step of the process is a toxicology examination for additional evidence to support the opinion of the DRE. As one can see, this is a subjective determination.

Under Daubert and Porter, factors DREs need to satisfy in order for their evidence to be admissible include: (1) whether the theory or technique in question can be and has been tested; (2) whether it has been subjected to peer review and publication; (3) its known or potential error rate; (4) the existence and maintenance of standards controlling its operation; and (5) whether it has attracted widespread acceptance within a relevant scientific community. Many of these steps contain subjective interpretations and a lack of peer review. Legislating its admissibility is concerning.

The second troubling area concerns the requirement that an individual charged and convicted of driving under the influence of cannabis would be required to install the ignition interlock device (IID) prior to license reinstatement. An IID does not monitor cannabis use and consequently one must question the usefulness of such a requirement. The installation of an IID device is costly and, here, would not provide any public safety or deterrence benefit.

For these reasons, the CCDLA supports SB 16 but appreciates the ability to point out potential issues.