
OLR Bill Analysis

sHB 5297

AN ACT CONCERNING THE DECRIMINALIZATION OF POSSESSION OF SMALL AMOUNTS OF PSILOCYBIN.

SUMMARY

This bill reduces the penalty for possessing less than half an ounce of psilocybin from a crime that carries a possible prison term to a (1) \$150 fine for a first offense and (2) \$200 to \$500 fine for a subsequent offense. (Psilocybin is the chemical compound obtained from certain types of hallucinogenic mushrooms.)

Under the bill, people fined for this possession must follow the procedures set by law 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 this violation to seize the psilocybin and have it destroyed as contraband according to law.

The bill prohibits minors from being adjudicated delinquent for a first or second offense of possessing less than half an ounce of psilocybin. Currently, because possession is a crime, they may be adjudicated delinquent for possession of any amount. (Under existing law, 16- and 17-year-olds may not be adjudicated delinquent for non-criminal violations.)

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

The bill also eliminates criminal penalties for specified actions involving drug paraphernalia relating to less than half an ounce of psilocybin.

Lastly, the bill specifically includes psilocybin as an example of a “hallucinogenic substance” under the state’s controlled substances law. (Existing Department of Consumer Protection regulations already classify psilocybin as a schedule I controlled substance.)

EFFECTIVE DATE: October 1, 2024

PSILOCYBIN POSSESSION

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

Currently, it is a crime to illegally possess any amount of psilocybin, the same as for any controlled substances other than cannabis. The current penalties are shown in the following table. (These penalties continue to apply to the possession of one-half ounce or more of psilocybin.)

Table: Penalties for Psilocybin Possession Under Current Law

<i>Brief Description</i>	<i>Authorized Penalties</i>
Possession	<p>First offense: Class A misdemeanor, punishable by up to 364 days in prison, up to a \$2,000 fine, or both</p> <p>Second offense: The court must evaluate the defendant and may suspend prosecution and order substance abuse treatment if it determines that the person is drug dependent</p> <p>Subsequent offenses: The 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 within 200 feet of the property of a (1) K-12 school by a non-student or (2) licensed child care center identified by a sign in a conspicuous place	<p>Class A misdemeanor</p> <p>The court must sentence the person to a term of imprisonment and probation. The conditions of probation must include community service</p>

The law imposes certain other restrictions on people who are convicted of criminal drug possession. For example, they (1) may be denied licensure in certain areas, such as a family child care home (CGS § 19a-87e); (2) are prohibited from getting licensed in certain others, such

as bail enforcement agents (CGS § 29-152f); and (3) are ineligible for various firearm credentials. Under the bill, these restrictions do not apply to people convicted of possessing less than half an ounce of psilocybin.

Burden of Proof (§ 7)

Current law generally extends to trials for violations that follow infraction procedures the same rules of evidence, procedure, burden of proof, and practice that apply to criminal proceedings. The bill provides an exception for trials involving the possession of less than half an ounce of psilocybin. For these trials, the bill lowers the burden of proof from beyond a reasonable doubt to a preponderance of the evidence.

Driver’s License Penalties for People Under Age 21 (§ 5)

The bill sets driver’s license penalties for people who are convicted of possessing less than half an ounce of psilocybin and were under 21 at the time of the violation. It requires the motor vehicles commissioner to suspend the person’s driver’s license or nonresident operating privilege for 60 days. If someone under age 21 commits this violation but does not have a driver’s license, they are ineligible for one for 150 days after meeting all licensing requirements.

§ 3 — DRUG PARAPHERNALIA RELATED TO PSILOCYBIN USE

Current law has criminal penalties for drug paraphernalia-related actions involving all controlled substances other than cannabis. The bill eliminates these penalties for actions involving less than half an ounce of psilocybin.

The current penalties are as follows:

1. a class C misdemeanor (punishable by up to three months in prison, a fine of up to \$500, or both) to use or possess with intent to use drug paraphernalia for various drug-related purposes (e.g., planting, preparing, or ingesting);
2. a class A misdemeanor to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia knowing, or under circumstances where the person should

know, it will be used for these purposes; and

3. a specified mandatory minimum for offenses near schools by non-students (although the court can depart from this under certain conditions).

Under the bill, these penalties continue to apply to the listed actions involving one-half ounce or more of psilocybin.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 24 Nay 13 (03/26/2024)