

Decriminalization Bill Summary

Regrading marijuana and hashish offenses

-This bill would regrade marijuana offenses as follows:

- Possession or distribution of 1 lb or less of marijuana would be an unlawful act. A first violation would be subject to a written warning, and a second or subsequent violation would be subject to a civil penalty of \$25 or the performance of community service in lieu of payment of the penalty. Under current law, manufacturing, distribution or dispensing, or possessing or having under control with intent to manufacture, distribute or dispense 1 ounce or more but less than 5lbs of marijuana is a 3rd degree crime (3-5 years state prison, \$25,000 fine). Distribution of less than 1 oz of marijuana is a 4th degree crime (18 months state prison, \$10,000 fine).
- Unlawful possession of more than 1lb of marijuana would be a disorderly persons offense (6 months jail, \$1,000 fine). Under current law, possession of more than 50 grams of marijuana is a 4th degree crime. Possession of 50 grams or less is currently a disorderly persons offense.
- The civil penalty would be recovered before the municipal court having jurisdiction. Whenever community service was imposed, the value of each hour of service would be considered to be not less than state or federal minimum wage, whichever is higher, and the total value of community service imposed could not exceed \$25.

-The odor of marijuana or burnt marijuana would not constitute reasonable articulable suspicion to initiate a search of a person to determine a violation.

-A person would not be subject to arrest, being detained, or otherwise being taken into custody unless the person committed another violation of the law.

-A person who committed an unlawful act under the bill could not be deprived of any legal or civil right, privilege, benefit, or opportunity provided pursuant to any law solely by reason of committing the unlawful act.

-Local and county law enforcement authorities would submit a quarterly report to the Uniform Crime Reporting Unit containing the number of unlawful acts subject to a written warning or a civil penalty or community service in lieu of payment of penalty, committed within their respective jurisdictions, plus the race,

ethnicity, gender, and age of each person committing a violation, and the dispositions of these violations. These violations and associated information, along with a quarterly summary of violations investigated and associated information collected by the State Police, would be summarized by county and municipality in an annual report, and both quarterly summaries and annual reports would be made available at no cost to the public on the State Police's website.

-Using or being under the influence of marijuana or hashish, or failing to voluntarily deliver such to a law enforcement officer (both currently disorderly persons offenses), would no longer be illegal acts.

-Using or possessing with intent to use drug paraphernalia with marijuana or hashish (currently a disorderly persons offense) would no longer be an illegal act.

-The smoking of marijuana or hashish, and use of drug paraphernalia for these substances, could be prohibited or otherwise regulated on or in any property by the person or entity that owns or controls that property, including multifamily housing, condominium units, and mobile home units.

-The unlawful acts of distribution or possession of marijuana, as well as using or being under the influence of same, could not be prohibited or restricted based on conditions imposed as a condition of pretrial release, probation, or parole, nor could they be considered a violation of the terms of pretrial release, probation, or parole.

Reducing the legal consequences of certain marijuana and hashish offenses

-No court would have jurisdiction over any charge, except to dismiss, withdraw, or terminate the charge, based on a prior small amount distribution offense involving less than 10z of marijuana or a prior possession offense involving 50 grams or less of marijuana. Unless a final judgment of conviction has been entered on or before the bill's effective date, these cases would be expeditiously dismissed, by a law enforcement agency, or on a motion to the court with jurisdiction over the case, or the court's own motion, based on guidance or directives issued by the AG and the AOC.

-Any past or future charge, conviction, or adjudication of delinquency for an even broader array of marijuana and hashish charges, and future unlawful acts of distribution and possession,

would not be considered in a risk assessment for pretrial release purposes. These non-considered offenses would be:

- Unlawful distribution of, or possessing with intent to distribute less than 5lbs of marijuana (3rd degree); or for past violations, unlawful distribution of or possessing with intent to distribute less than 1oz of marijuana (4th degree); a past or future violation for distributing, dispensing, or possessing with intent to distribute marijuana or hashish while on school property or within 1,000 feet of school property (3rd degree) or on or within 500 feet of a public housing facility, public park, or public building (2nd degree, 3rd degree where less than 1 oz of marijuana);
- Obtaining or possessing marijuana – for a past offense, any amount (4th degree, disorderly persons offense where 50 grams or less), for a future offense, more than 1lb, or past offenses for using, being under the influence of, or failing to voluntarily deliver to a law enforcement officer any amount of marijuana; or
- A past violation involving any of the above offenses and using or possessing with intent to use drug paraphernalia with that marijuana or hashish.

-The bill would establish grounds for post-conviction relief due to a past conviction for any of the above-described marijuana or hashish offenses, which would permit an opportunity to have a sentence reduced or changed as permitted by the court.

New form of “virtual expungement for certain marijuana and hashish offenses

-Immediately upon enactment of the bill, any arrest, charge, conviction, or adjudication of delinquency for any of the above described marijuana or hashish offenses that occurred prior to the bill’s effective date would be deemed not to have occurred, providing such legal relief without need to petition a court for an expungement order. Information about such prior charges and convictions would still need to be revealed if seeking employment within the judicial branch or with a law enforcement or corrections agency, and the record would be subject to review in accordance with current expungement law.

Sealing of records associated with unlawful acts of marijuana and hashish distribution or possession

-Once AOC develops and maintains its system for sealing records related to various marijuana and hashish distribution, possession, and drug paraphernalia offenses (pursuant to Sen. Cunningham’s bill),

then all records relating to unlawful acts of marijuana or hashish distribution, for which a civil penalty or community service in lieu of payment was imposed, would, upon disposition of the case, be sealed based upon a court order of nondisclosure to the public of such records.

Reforms applicable to all expungements and sealed records

Penalties for wrongful dissemination of expunged records or information

-The bill would increase the maximum fine from \$200 to \$2,000, which could be imposed on a person who reveals to another the existence of an arrest, conviction, or related legal proceeding with knowledge that the record or information has been expunged or sealed. Such an act is a disorderly persons offense under current law.

-The bill would also provide that any person or entity regularly engaged in the business of collecting, assembling, evaluating, or disseminating records on individuals for a fee is required to regularly update their records to ensure accuracy, promptly delete a record that has been expunged or sealed, provide clients with the date collected and clarify that records are valid only as of the date collected.

-Any such regularly-engaged person or entity who disseminates a record that has been expunged or sealed, and knows or should have known at the time of dissemination that the record has been expunged or sealed, would be liable to the individual who is the subject of the record for damages totaling \$5,000 or the actual damages caused by the violation, whichever is greater, plus costs and attorney fees.

Promoting awareness of expungement process

-The bill would require the AOC to develop and maintain:

- Information, to be provided to a person upon request, about the expungement process and legal services programs Statewide and in each county which may be available to assist with an expedited expungement for various marijuana and hashish offenses, or a clean slate expungement; and
- Develop a multilingual public awareness campaign to promote awareness of the expungement process, as well as information on State, local, nonprofit, and other private job training programs in consultation with DOL, with a focus on assisting those persons eligible for an expedited expungement or clean slate expungement.

Civil justice reforms

-The bill would provide an array of civil protections against discrimination targeting persons with an arrest, charge, or conviction involving the above-referenced broad range of marijuana and hashish offenses as well as targeting persons with a civil penalty or community service imposed in lieu of payment of a penalty for committing an unlawful act of distribution or possession of marijuana or hashish.

-These protections would include monetary penalties, enforceable by the State, against employers regarding employment actions or persons involved with mortgage lending activities, as well as a private cause of action for discrimination in public or private housing, real property, or any place of public accommodation.

-The bill would make confidential, and no longer a government record subject to public inspection under OPRA, the portion of any criminal record concerning a person's detection, apprehension, arrest, detention, trial or disposition for any of the aforementioned offenses, or any record concerning a person's commission of any of the above-referenced unlawful acts subject to a civil penalty, or community service imposed in lieu of payment of a penalty.