

RESOLUTION 03-08-2007

DIGEST

Marijuana: Possession Offenses Reduced

Amends Health and Safety Code section 11357 to define the possession of small amounts of marijuana or concentrated cannabis as an infraction or infraction-misdemeanor.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Health and Safety Code section 11357 to define the possession of small amounts of marijuana or concentrated cannabis as an infraction or infraction-misdemeanor. This resolution should be approved in principle because it eliminates the current disparity in treatment between those who possess plant cannabis and those who possess a smaller amount of concentrated cannabis, and provides a framework to equate these substances for purposes of criminal sentencing.

Current law provides for disparate treatment of those who possess marijuana versus those who possess concentrated cannabis, also known as “hashish.” (Health & Saf. Code, § 11357, subd. (a), (b).) The proposed resolution equates hashish with marijuana on a ratio of 1:4, meaning that the criminal exposure of one who possesses less than 28.5 grams of marijuana will be equal to the criminal exposure of one who possesses less than 7.125 grams of hashish. A first-offense possession of either of these amounts would be an infraction; a second or subsequent offense would be an alternative infraction-misdemeanor.

While the difference between the two substances is noted, in reality they should be treated similarly under penal law. As the proponent points out, the Compassionate Use Act already provides for equal treatment, as it does not distinguish between marijuana and concentrated cannabis that is used for medicinal reasons. (Health & Saf. Code, § 11362.5.) The ratio suggested by the proponent is appropriate, and the criminal exposure should therefore be made consistent and proportionate as well.

This resolution is similar to Sen. Bill No. 797 (Romero), which was inactive following the 2005-2006 legislative session.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Health & Safety Code section 11357 to read as follows:

1 §11357

2 (a) ~~Except as authorized by law, every person who possesses any concentrated~~
3 ~~cannabis shall be punished by imprisonment in the county jail for a period of not more than~~
4 ~~one year or by a fine of not more than five hundred dollars (\$500), or by both such fine and~~
5 ~~imprisonment, or shall be punished by imprisonment in the state~~
6 ~~prison.~~

7 (ba)(1) Except as authorized by law, every person who possesses not more than 28.5
8 grams of marijuana, ~~other than~~ or 7.125 grams of concentrated cannabis, is, for the first
9 offense, guilty of a misdemeanor or an infraction and shall be punished by a fine of not more
10 than one hundred dollars (\$100), and is, for the second or any subsequent offense, guilty of
11 an infraction or a misdemeanor punishable by a fine not to exceed one hundred dollars
12 (\$100).

13 (2) Notwithstanding other provisions of law, if such person has been previously
14 convicted three or more times of an offense described in this subdivision during the two-
15 year period immediately preceding the date of commission of the violation to be charged,
16 the previous convictions shall also be charged in the accusatory pleading and, if found to be
17 true by the jury upon a jury trial or by the court upon a court trial or if admitted by the
18 person, the provisions of Sections 1000.1 and 1000.2 of the Penal Code shall be applicable
19 to him, and the court shall divert and refer him for education, treatment, or rehabilitation,
20 without a court hearing or determination or the concurrence of the district attorney, to an
21 appropriate community program which will accept him. If the person is so diverted and
22 referred he shall not be subject to the fine specified in this subdivision. If no community
23 program will accept him, the person shall be subject to the fine specified in this subdivision.
24 In any case in which a person is arrested for a violation of this subdivision and does not
25 demand to be taken before a magistrate, such person shall be released by the arresting
26 officer upon presentation of satisfactory evidence of identity and giving his written promise
27 to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected
28 to booking.

29 (eb) Except as authorized by law, every person who possesses more than 28.5 grams
30 of marijuana, ~~other than~~ or 7.125 grams of concentrated cannabis, shall be punished by
31 imprisonment in the county jail for a period of not more than six months or by a fine of not
32 more than five hundred dollars (\$500), or by both such fine and imprisonment.

33 (ec) Except as authorized by law, every person 18 years of age or over who
34 possesses not more than 28.5 grams of marijuana, ~~other than~~ or 7.125 grams of concentrated
35 cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or
36 any of grades 1 through 12 during hours the school is open for classes or school-related
37 programs is guilty of a misdemeanor and shall be punished by a fine of not more than five
38 hundred dollars (\$500), or by imprisonment in the county jail for a period of not more than
39 10 days, or both.

40 (ed) Except as authorized by law, every person under the age of 18 who possesses
41 not more than 28.5 grams of marijuana, ~~other than~~ or 7.125 grams of concentrated cannabis,
42 upon the grounds of, or within, any school providing instruction in kindergarten or any of
43 grades 1 through 12 during hours the school is open for classes or school-related programs is
44 guilty of a misdemeanor and shall be subject to the following dispositions:

45 (1) A fine of not more than two hundred fifty dollars (\$250), upon a finding that a
46 first offense has been committed.

47 (2) A fine of not more than five hundred dollars (\$500), or commitment to a juvenile
48 hall, ranch, camp, forestry camp, or secure juvenile home for a period of not more than 10
49 days, or both, upon a finding that a second or subsequent offense has been committed.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: Existing law provides that, possession of any amount of concentrated cannabis, (hashish) is a “wobbler” chargeable as either a misdemeanor or a felony. Existing law also provides that, except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor, punishable by a fine of not more than \$100, and if that person has been previously convicted 3 or more times of that offense during the previous 2 years and has been found guilty of the current offense after a trial, or has admitted guilt, the person is eligible for diversion.

This Resolution: The proposed amendments equate concentrated cannabis with marijuana on a ratio of 1 to 4, provide that every person who possesses not more than 28.5 grams of marijuana, or 7.125 grams of concentrated cannabis, is, for the first offense, guilty of an infraction, punishable by a fine not to exceed \$100 and is, for the 2nd or any subsequent offense, guilty of an infraction or a misdemeanor, punishable by a fine not to exceed \$100 and (b) if that person has been previously convicted 3 or more times of that offense during the previous 2 years, the person is eligible for diversion, as specified.

The Problem: The distinction between concentrated cannabis possession and plant marijuana possession is obsolete, given the much touted increase in potency of plant marijuana. Concentrated cannabis is not distinguished from marijuana under the medical marijuana law. (Health & Safety Code §11362.5.). The Legislative Analyst’s analysis of the 2002 budget estimated that treating hashish possession as a misdemeanor would save the State \$4.8 million annually. Reduction of first and second offenses for small amount possession to an infraction would save time and money and police energies which can be better spent elsewhere. A number of California cities recently adopted resolutions mandating that their local law enforcement agencies give the lowest law enforcement priority to marijuana offenses. There is no reason not to make these offenses to lowest sort of crime.

The war on drugs has been a colossal failure. It is time to drop the “war” metaphor. The prisoners of the war should be released. Those who are functionally impaired by their drug dependencies should be treated if they wish and the rest of the population should be left alone to indulge in private.

This resolution is similar to Senate Bill 131 (Sher) which was introduced in the 2004 Legislative session, but did not pass.

IMPACT STATEMENT

Conforming amendments would need to be made to Vehicle Code section 23222.

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COUNTERARGUMENTS

SANTA CLARA COUNTY BAR ASSOCIATION

The proponent cites an "increase in the potency of plant marijuana" in support of the argument that the distinction between possession of plant marijuana and concentrated cannabis is "obsolete." If so, one might expect a recommendation that the penalty for possession of plant marijuana be increased closer to that of concentrated cannabis. Instead, the proponent suggests possession of small amounts of either be made an infraction! We find this reasoning unpersuasive. However, we would support making possession of small amounts of concentrated cannabis a misdemeanor as proposed in lines 29-33.

We also note that reducing offenses to infractions has other consequences such as no right to appointed counsel or jury trial which makes it more difficult to raise Fourth Amendment issues.

Finally, judges in our county often offer first time offenders the opportunity to attend some classes with the promise of a dismissal upon successful completion.