

RESOLUTION 03-09-2007

DIGEST

Marijuana: Cultivation for Personal Use

Amends Health & Safety Code section 11358 to characterize the cultivation of up to 12 marijuana plants grown in an area not larger than 36 square feet as an infraction.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to resolution 11-04-2002, which was withdrawn.

Reasons:

This resolution amends Health & Safety Code section 11358 to characterize the cultivation of up to 12 marijuana plants grown in an area not larger than 36 square feet as an infraction. This resolution should be approved in principle because current marijuana cultivation laws encourage the casual marijuana user to participate in drug trafficking.

Current law provides that cultivation of any amount of marijuana is a felony, even a single plant grown on private property for personal use. (Health & Saf. Code, § 11358.) However, possession of 28.5 grams or less of marijuana is a misdemeanor with a maximum fine of \$100. (Health & Saf. Code, § 11357, subd. (b).) These two laws, read in concert with one another, have the perverse effect of encouraging people to engage in more serious criminal behavior by purchasing marijuana from those who traffic in it. This divergence fuels the more serious illegal activity by providing a customer to the trafficker, who might otherwise not have a customer.

It is acknowledged that reduction of this offense to an infraction will foreclose the right to both a jury trial and appointed counsel. However, on balance, a small fine is preferable to more serious criminal exposure.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Health & Safety Code section 11358 to read as follows:

- 1 §11358.
- 2 (a) Except as provided in subdivision (b), every person who plants, cultivates,
- 3 harvests, dries, or processes any marijuana or any part thereof, except as otherwise provided
- 4 by law, shall be punished by imprisonment in the state prison.
- 5 (b) (1) Notwithstanding subdivision (a), any person who, solely for his or her own
- 6 personal use, plants, cultivates, harvests, dries, or processes 12 or fewer marijuana plants
- 7 grown in an area not larger than 36 square feet shall not be guilty of any crime.
- 8 (2) This subdivision shall apply only to a person who commits the offense on private
- 9 property with respect to which he or she has ownership or control.

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

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: The cultivation of any amount of marijuana is currently defined as a felony for which the punishment is incarceration in state prison.

This Resolution: This proposal would make an exception to the general rule that marijuana cultivation is a felony by providing that any person who, solely for his or her own personal use, cultivates 12 or fewer marijuana plants grown in an area not larger than 36 square feet on private property with respect to which he or she has ownership or control shall, instead, be guilty of an infraction for which the punishment would be a maximum fine of \$100.

The Problem: Under current law the cultivation of any amount of marijuana, even a single plant, is a felony. Possession of small amounts of marijuana is currently a misdemeanor. This has the perverse effect of encouraging otherwise responsible adult marijuana users to buy from criminal traffickers rather than to grow their own at home. The present law is especially burdensome to medical marijuana patients, who, even though they are legally entitled to grow marijuana under Proposition 215, (Health & Safety Code § 11362.5(d)) are nonetheless often arrested on felony cultivation charges. This situation is an invitation to selective prosecutions designed to silence or punish persons who displease law enforcement and threaten the continued waste of money that supports the “drug warriors.” This resolution is similar to Assembly Bill 2223 (Longville) which was introduced in the 2004 Legislative session, but did not pass.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Patrick H. Fabian, 101 Howard Street, Suite 310, San Francisco, CA 94105, 415.543.5443; fax: 510.525.5517; e-mail phf@phfabian.com

RESPONSIBLE FLOOR DELEGATE: Patrick H. Fabian