

RESOLUTION 02-09-2008

DIGEST

Marijuana and Concentrated Marijuana: Possession Offenses Reduced.

Amends Health and Safety Code section 11357 to decriminalize the possession of less than 28.5 grams of marijuana, or 7.125 grams of concentrated cannabis.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to Resolution 03-08-2007, which was withdrawn.

Reasons:

This resolution amends Health and Safety Code section 11357 to decriminalize possession of less than 28.5 grams of marijuana, or 7.125 grams of concentrated cannabis. This resolution should be approved in principle because (1) it eliminates the current disparity in treatment between those who possess plant cannabis and those who possess a smaller amount of concentrated cannabis, and (2) it will save time, money, and already scarce law enforcement resources that can be better used elsewhere.

Current law provides for disparate treatment of those who possess marijuana versus those who possess concentrated cannabis, also known as “hashish.” 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. Under this resolution, the possession of less than the proscribed amount of either substance would not constitute a crime.

While the difference between the two substances is noted, they should be treated similarly under law. As the proponent points out, the Compassionate Use Act provides for equal treatment by not distinguishing between marijuana and concentrated cannabis that are used for medicinal reasons. (Health & Saf. Code, § 11362.5.)

The criminal exposure therefore should be made consistent and proportionate as well. This resolution also would result in significant financial savings for California. In 2002, the Legislative Analyst’s office estimated that treating hashish possession as a misdemeanor would save California \$4.8 million annually.

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 prison.

6 (ba) ~~Except as authorized by law, every A person who possesses not more than~~
7 ~~28.5 grams of marijuana, other than or 7.125 grams of concentrated cannabis, is not guilty~~
8 ~~of a misdemeanor any offense and shall be punished by a fine of not more than one~~
9 ~~hundred dollars (\$100. Notwithstanding other provisions of law, if such person has been~~
10 ~~previously convicted three or more times of an offense described in this subdivision during~~
11 ~~the two year period immediately preceding the date of commission of the violation to be~~
12 ~~charged, the previous convictions shall also be charged in the accusatory pleading and, if~~
13 ~~found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted~~
14 ~~by the person, the provisions of Sections 1000.1 and 1000.2 of the Penal Code shall be~~
15 ~~applicable to him, and the court shall divert and refer him for education, treatment, or~~
16 ~~rehabilitation, without a court hearing or determination or the concurrence of the district~~
17 ~~attorney, to an appropriate community program which will accept him. If the person is so~~
18 ~~diverted and referred he shall not be subject to the fine specified in this subdivision. If no~~
19 ~~community program will accept him, the person shall be subject to the fine specified in this~~
20 ~~subdivision. In any case in which a person is arrested for a violation of this subdivision~~
21 ~~and does not demand to be taken before a magistrate, such person shall be released by the~~
22 ~~arresting officer upon presentation of satisfactory evidence of identity and giving his~~
23 ~~written promise to appear in court, as provided in Section 853.6 of the Penal Code, and~~
24 ~~shall not be subjected to booking.~~

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

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

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

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

43 (2) A fine of not more than five hundred dollars (\$500), or commitment to a
44 juvenile hall, ranch, camp, forestry camp, or secure juvenile home for a period of not more
45 than 10 days, or both, upon a finding that a second or subsequent offense has been
46 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 not guilty of any crime.

The Problem: The distinction between concentrated cannabis possession and plant marijuana possession is obsolete. The active ingredient is the same. The effect is the same. 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 just as a misdemeanor would save the State \$4.8 million annually. Decriminalization of possession of small amounts of cannabis will save time, money and law enforcement resources which can be better spent elsewhere. A number of California cities have adopted resolutions mandating that local law enforcement agencies give the lowest enforcement priority to marijuana offenses. Criminalization of possession of small amounts of marijuana creates incentives for selective arrests and prosecution for conduct which attracts the attention of law enforcement but which is otherwise completely innocent. There is no reason not to decriminalize such conduct.

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.

IMPACT STATEMENT

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

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