



## State of Connecticut

### DIVISION OF PUBLIC DEFENDER SERVICES

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### Testimony of Christine Perra Rapillo, Chief Public Defender

#### Senate Bill 888

### AN ACT CONCERNING RESPONSIBLY AND EQUITABLY REGULATING ADULT-USE CANNABIS

#### Committee on the Judiciary - February 26, 2021

The Office of Chief Public Defender generally supports *SENATE BILL 888 - AN ACT CONCERNING RESPONSIBLY AND EQUITABLY REGULATING ADULT-USE CANNABIS*, except for language regarding the Ignition Interlock Device requirements and the mandatory admissibility of the testimony of a drug recognition expert (DRE) discussed below. This bill is a common sense policy and will, going forward, mitigate the devastating impact that arrest and conviction of cannabis-based offenses has had on youth, the poor and people of color. Eliminating the criminal penalties for small amounts of cannabis possession and right sizing the penalties for criminal possession and providing meaningful opportunity for erasure of past criminal records will improve public safety and make our system fairer. This proposal will enact fair, revenue producing legislation that protects public safety and will take steps to undo the impact of a failed, racially driven “war on drugs”.

This proposal would allow persons over the age of twenty one to legally possess up to one and one half ounces of cannabis. Persons under twenty one years of age or possessing higher amounts could be fined or prosecuted for misdemeanor charges but would be eligible for suspended prosecutions and drug treatment. This legislation will alleviate the negative and disparate impact that cannabis convictions have had on people’s lives. Too many people have been affected by the collateral consequences of a marijuana conviction, and there is no question that the failed “war on drugs” has overwhelmingly harmed people of color. Individuals from over policed communities are prosecuted for marijuana related offenses in numbers disproportionate to their representation in the general population. They are unable to obtain employment, housing, or access to student loans, leaving them unable to move forward or improve their circumstances in life. Legalizing the adult use of marijuana will also

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significantly reduce or eliminate the criminal activity associated with unregulated street level dealing and will allow for significant tax revenue that should be used to improve substance abuse and mental health services in our communities.

This proposal seeks to correct the past injustice of the drug wars by allowing individuals convicted of cannabis offenses prior to legalization to have their convictions erased. The more recent convictions would be automatically erased, and those convicted prior to 2015 would be able to easily petition for erasure. This agency stands ready to assist individuals who need help filing and litigating such petitions.

The Office of Chief Public Defender has two concerns regarding language in this bill. The first concern is about the requirement that an individual charged and convicted of driving under the influence of cannabis would be required to install an ignition interlock device (IID) on their vehicle prior to being able to have their license reinstated. The IID device does not measure cannabis use and thus provides no public safety benefit for individuals only convicted of a cannabis offense. For individuals who do not own a car the IID requirement can result in a defacto lifetime suspension of their license. Connecticut became a “mandatory” IID state in 2015; a person found to be operating under the influence must install an IID for a set period of time – and drive only vehicles so equipped – in order to become eligible to restore his or her operator’s license. Because of the significant costs of IID installation, maintenance, removal, and other fees, public defender clients often have no choice but to forego an IID and face a de facto lifetime suspension. We have proposed language to double the length of suspension for individuals who cannot afford a vehicle and the IID for the last several sessions. Including the IID for cannabis-based offenses potentially extends this lifetime suspension to more individuals but provides no public safety or deterrence benefit.

In addition, we are troubled by language in the proposal that makes testimony by drug recognition experts or DREs automatically admissible in a criminal proceeding. The bill should not take away the court’s gatekeeping authority to determine the reliability and admissibility of expert testimony. The admissibility of scientific evidence is governed by both Connecticut and United States Supreme Court case law, State v. Porter, 241 Conn. 57, 63-64 (Conn. 1997) (citing Daubert vs Dow Pharma, 509 U.S. 579, 589). Those cases require that the court find that proffered scientific evidence is both reliable and relevant before allowing it to be admitted for use. It is important that the DRE testimony be subject to this review. The Porter/Daubert review will allow counsel to test whether the evaluator followed scientifically accepted procedure and if their conclusions are consistent with the facts.

Due process requires that a criminal defendant be able to challenge the evidence against him or her. The DRE evidence must be subject to examination and should not be automatically admissible. There continues to be debate in the scientific community about whether DREs are reliable and valid, and whether they can and should be applied to determining impairment.

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There are also cases in other jurisdictions that have excluded this evidence.<sup>1</sup> Moreover, jurisdictions that do allow DRE evidence still require that it be subjected to their Daubert/Frye equivalent.

Overall however, this proposal is a thoughtful effort to reverse the negative impact of a war on drugs that did little to improve public safety. As public defenders, we see, on a daily basis, how intentional drug policy and unconscious bias have impacted lower-income defendants, leading to unnecessary incarceration and entrenched poverty. SB 888 will make the system fairer and give defendants, victims, and the public more confidence that justice is being done. Thank you for the opportunity to weigh in on this important policy initiative.

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<sup>1</sup> Maryland v. Brightful (appendix A); State v. Baity, 140 Wn. 2d 1 (Wash. 2000)