



# Legislative Testimony

Oregon Criminal Defense Lawyers Association

May 13, 2013

The Honorable Jeff Barker, Chair  
The Honorable Chris Garrett, Vice-Chair  
The Honorable Wayne Krieger, Vice-Chair  
House Judiciary Committee, Members

## **RE: Senate Bill 40-A – testimony in support**

Dear Chair Barker, Vice-Chairs and Members,

The Oregon Criminal Defense Lawyers Association is an organization of attorneys who represent juveniles and adults in delinquency, dependency, and criminal prosecutions and appeals throughout the state of Oregon. Thank you for the opportunity to submit the following comments in support of Senate Bill 40-A.

### **SB 40-A makes two changes to the crime classification level of marijuana crimes**

#### I.

### **SB 40-A “cleans-up” Oregon marijuana crimes by making the felony sentencing classification level consistent with other Schedule II controlled substances**

Under current Oregon law, the felony sentencing classification level for the unlawful possession and unlawful manufacture of marijuana is inconsistent with marijuana’s status as a Schedule II controlled substance. SB 40-A corrects that imbalance.

When the Oregon revised criminal code was enacted in 1971, the felony classification level for controlled substance crimes was determined by the schedule of the controlled substance. At the time, marijuana was classified as a Schedule I drug; therefore, the manufacturing or delivery of a Schedule I controlled substance was a Class Felony and possession was a Class B felony. [ORS 475.752 (1) (a) and (3) (a)]

In 2005, the Oregon Legislature separated out (“broke out”) certain controlled substances for purposes of tracking data on the frequency of their occurrence. Marijuana was “broken

out” and codified in ORS 475. 856 – ORS 475.864, consistent with being a Schedule I controlled substance.

In 2009 SB 728, the Legislature directed the Oregon Board of Pharmacy to reschedule marijuana as something other than a Schedule I controlled substance [ORS 475.059]. At the time the Legislature did not know how the Board of Pharmacy would re-schedule marijuana, so it did not adjust the felony classification levels for marijuana “break-out” crimes in ORS 475.856 – 475.475.

Subsequently, as directed, the Board of Pharmacy rescheduled marijuana as a Schedule II controlled substance [OAR 855-080-0022 (1)]. Since then, a disparity exists between the felony classification level for “generic” Schedule I and II controlled substances and the “break-out” crimes for unlawful manufacturing, delivery or possession of marijuana.

SB 40-A corrects this disparity and recalibrates the “break-out” crimes for marijuana to be consistent with their schedule level with the Oregon Board of Pharmacy.

- Manufacturing of marijuana will now be a Class B felony instead of an A felony [Section 1];
- Possession of more than four ounces of marijuana will now be a Class C felony instead of a B felony. [Section 2 (3) (a)]

## II.

### **SB 40-A creates a misdemeanor offense for possession of small amounts of marijuana and “marijuana product”**

Under current law, possession of less than an ounce of marijuana is an unclassified violation with a presumptive fine of \$650. [ORS.475.864 (3)] For possession of more than an ounce, however, possession of marijuana is a Class B felony. [ORS 475.864 (2)]

SB 40-A creates a middle tiered misdemeanor offense in order to avoid the large disparity between those two crime classifications.

With respect to “marijuana” (i.e., the leaves, stems and flowers):

- Possession of less than an ounce remains a violation;
- Possession of more than an ounce, but less than four ounces is a Class B Misdemeanor;
- Possession of more than four ounces is a Class C Felony.

With respect to “marijuana product” (including, in common parlance, “hashish”):

- Possession of less than ¼ ounce is a Class B Misdemeanor;
- Possession of more than ¼ ounce is a Class C Felony.

**With a forthcoming amendment, SB 40-A generates immediate cost savings**

Projected cost-savings to the Department of Corrections and the Public Defense Services Commission for the 2013-2015 Biennium is \$2.43M, and for the 2015-2017 Biennium is \$3.88M.

There is an amendment forthcoming to correct the classification level of the violation offense for possession of less than an ounce. In Section 2 Subsection (3) (c), possession of less than an ounce is *classified* as a Class B violation, which carries a presumptive fine of \$260. Under current law, however, possession of less than an ounce is an *unclassified* violation which has a presumptive fine of \$650. Therefore as written, SB 40-A would have a projected revenue reduction of about \$2.5 million a biennium.

OCDLA understands that there is an amendment forthcoming that would convert the classification level for possession of less than an ounce back to its original status, which is an unclassified violation with a presumptive fine of \$650. With this amendment, there will be no projected revenue loss.

Thank you for your consideration of these comments. Please do not hesitate to contact me if you have any questions.

*Respectfully submitted,*

Gail L. Meyer, JD  
Legislative Representative  
Oregon Criminal Defense Lawyers Association  
glmlobby@nwlinc.com