



## **FAQs: Reclassifying Drug Possession to a Misdemeanor (H5384)**

### **What will this bill do?**

- This bill reclassifies simple drug possession from a felony to a misdemeanor charge.
- This reduces the penalties of drug possession from up to 3 years in prison and a fine of up to \$5,000 to up to 1 years in prison and a fine of up to \$500. Here's a link to the [bill](#).

### **What are the benefits of this bill?**

- Increasingly, we recognize that someone with substance use disorder is living with a disease that requires support and treatment, rather than a costly and ineffective incarceration-based approach. This bill better aligns our criminal laws with this understanding. Furthermore, this change would eliminate many of the barriers that people with a felony record face that prevent them from accessing important recovery supports (see below).

### **What are the barriers of a felony record?**

- When someone has a felony record, their opportunities are often limited in areas such as: employment, occupational licensing, housing (public housing as well as many private landlords), the right to bear arms, serving on a jury, federal educational aid (e.g. Pell Grants), becoming a foster or adoptive parent, volunteering at a school, and benefits including grants, contracts, and loans, when they are funded by the US government.

### **What are the differences between this bill and the bill introduced by the Attorney General?**

- We appreciate that the Attorney General is also working to lessen the criminal penalties for drug possession charges. However, we believe that version does not go far enough. Importantly, the Attorney General's version puts the weight threshold of a substance to be considered for misdemeanor possession at 10 grams (the current weight threshold for substance possession is 28 grams, with police discretion). Initial research shows that the weight threshold being at 10 grams would leave out 40% of people arrested in RI. This version also decriminalizes buprenorphine, a medication used for opioid use disorder. If we are going to pass this legislation we want to do it right and to ensure that people with more intense substance use disorders can also not have the weight of a felony record.

### **What have been the results from other states?**

- Several other states (including Connecticut, Oklahoma, Utah, California, Oregon, and Alaska) have implemented this policy change. These states have seen a huge reduction in corrections costs which have been reinvested in treatment and other supportive services. These states have also seen decreased rates of recidivism. These reforms have increased access to housing, employment, and other services by eliminating the effects of a felony record.

### **What about people who sell or traffic drugs?**

- Under this bill, selling drugs would remain a felony. We have specifically worked with law enforcement to ensure that drug selling investigations would not be hindered by the legislation. Other states that have implemented this policy have still been able to prosecute people who sell drugs.

- There is already discretion around what is drug possession beyond the amount of a substance and what is drug possession with intent to distribute (e.g. drug selling paraphernalia, informant information): this discretion will remain.
- There is no evidence that this bill will allow people who sell drugs to be “off the hook” by limiting their possession to a small amount of a substance while they sell them. There are already sentencing discrepancies between selling less than and greater than 1oz of a substance, and as noted, law enforcement can take other factors into consideration when building a distribution case.

#### **What about fentanyl -- isn't a small amount potentially harmful?**

- Fentanyl is a powerful opioid that is in almost all of the illicit drug supply, including heroin, cocaine, methamphetamine, and counterfeit pills. Most people who use illicit substances are using fentanyl, whether they know it or not.
- We do not see that excluding fentanyl from this legislation makes sense given the current reality for people struggling with substance use disorder. However, if people have actual knowledge of fentanyl or a potent substance, this could be used as evidence that someone is willfully selling or trafficking a substance.
- While fentanyl is powerful, the level of purity of fentanyl on the street is 2-3%. This means that street-level fentanyl of <28 grams is often still what one uses for personal use, not trafficking amounts.

#### **Do we have the treatment capacity to support this initiative?**

- We agree that we need to keep expanding and improving our treatment continuum to ensure that there are enough treatment and support options for everyone.
- However, the status quo is that not enough people have access to treatment *and* they are being saddled with a felony record that prevents them from gaining meaningful employment and other ‘recovery capital’. We need to work on both sides of this issue simultaneously.
- While we are fortunate to have substance use treatment at the ACI, most people with a felony drug possession charge do not even spend a night at the ACI. Furthermore, research shows that community-based treatment is the most effective approach in terms of both individual outcomes and financial cost. This bill will not change the supply or demand for community-based treatment, and we are committed to ensuring that people have access to the treatment that they want.

#### **What organizations support this effort?**

- Some of the organizations that support this effort are: The Office of the Public Defender, Rhode Island Medical Society, Parent Support Network, RI Latino Political Action Committee, Addiction Policy Forum, Latino Policy Institute, House of Hope Community Development Corporation, Direct Action for Rights and Equality, RICARES: Rhode Island Communities for Addiction Recovery Efforts, and many others.

#### **What about Drug Court?**

- Under this current proposal Drug Court would continue to exist. Drug Court is a great option for some people. However, the capacity of Drug Court is very limited: 86 people entered Drug Court in 2017. The system simply does not have the capacity to treat the hundreds of drug possession charges each year through Drug Court. We see that reforms need to happen in conjunction with the Drug Court.

#### **I have another question that wasn't answered here.**

- We'd love to talk further! Please email us at [overdosepreventionpac@gmail.com](mailto:overdosepreventionpac@gmail.com)