



April 19, 2021

Re: [House Bill 3112](#) – the Cannabis Equity Act

Dear Chair Smith Warner, Vice Chairs Drazan and Holvey, and members of the House Committee on Rules:

The Office of Public Defense Services (OPDS) seeks to move our criminal and juvenile legal systems towards practices that support improved outcomes for clients, their families and communities, and all Oregonians. The agency is neutral on House Bill (HB) 3112 and seeks to do two things with this testimony. First, we take this opportunity to recognize the disproportionate impact that decades of cannabis-related convictions have had as barriers to opportunity on low-income Oregonians and communities of color. Second, we aim to explain the parts of the bill that call upon the agency to perform new functions.

**Section 37:**

Section 37 requires the OPDS to study Oregon law and compile a list of those offenses that include, as a predicate offense or necessary element of the offense: (1) possession of less than one ounce of the dried leaves, stems or flowers of marijuana; or (2) conduct described in ORS 475B.301 (generally speaking, laws concerning homegrown or homemade cannabinoid products).

**Section 38:**

Section 38 requires the Oregon Judicial Department (OJD) to provide to the ODPS a list of persons who may qualify to have a conviction set aside under ORS 475B.401 (an order setting aside a qualifying marijuana conviction). It also requires the Oregon State Police (OSP) to provide the ODPS with a list of all persons who may qualify to have an arrest, citation or other charge set aside under that same statute.

**Section 40:**

Section 40 requires the OPDS to determine, based on the lists of persons with convictions provided by the OJD and the OSP, whether a person is eligible to set aside a conviction, arrest, citation or other charge. For any person the OPDS determines is eligible for this relief, the OPDS must notify the person of eligibility within 14 days of the agency's receiving the eligibility information. The OPDS must also file a motion on the eligible person's behalf to set aside the conviction, arrest,



citation or charge under ORS 475B.401. If the ODPS is unable to determine whether a person is eligible for relief, the OPDS must make reasonable efforts to notify the person, within 14 days of receiving the information, that the person may qualify for relief and convey that the agency is unable to definitively determine the person's eligibility.

Section 40(3) establishes that the above described filing of a motion does not establish an attorney-client relationship between the agency and the person for whom the motion was filed. We do have questions regarding whether and to what extent agency staff may, nevertheless, create reliance expectations by filing this motion and what agency action or means of relief exist should a person be dissatisfied with the agency's filing of a motion or if the motion faces objection.

Additionally, as of July 1, 2022, and every six months afterwards, the OPDS must prepare a report for the Cannabis Equity Board detailing progress made in setting aside convictions, arrests, citations and other charges for eligible persons.

### **Key Takeaways:**

The agency will need new staff to perform this work, in light of the efforts it will take to determine the number of people eligible for relief, to perform the background work to ensure we are able to reach eligible people (such as tracking down current addresses, particularly if the convictions at issue are old), the 14-day turnaround time to transmit this information to eligible persons, the motions process, and the bi-annual progress reporting requirements.

We are happy to continue working on this bill with its proponents, other agencies, legislative staff, and interested parties. Please feel free to reach out with any questions or for more information.

Thank you for your time,

Bridget

Bridget Budbill  
Legislative Director  
Cell: 503-779-7329  
Email: [bridget.budbill@opds.state.or.us](mailto:bridget.budbill@opds.state.or.us)