

Chair Kropf, Vice Chairs Anderson and Wallan, and Members of the Committee,

Thank you for giving me the opportunity to testify Thursday in support of this bill that further delineates/addresses the severity of the illegal cannabis cultivation operations plaguing Southern Oregon. I wanted to submit supplemental written testimony better explaining the crime seriousness scale and why reducing "Commercial Marijuana Offense" ("CMO") to a "5" would be inconsistent with what the bill is trying to do and criminal law generally.

#### Current Law

- Felony Possession is currently a "1" - probation sentence regardless of criminal history
- Felony Delivery/Manufacture is a "4" baseline -
  - most commonly "more than 12 plants in the family..."
  - probation sentence in nearly all cases
  - A/B criminal history could be up to 11 months DOC (served in County)
- Felony Possession/Delivery/Manufacture as a "CMO" is an "8" - presumptive DOC sentence
  - in nearly all cases, results in probation/downward departure sentence

#### New Frame Work

- Reckless Conduct with outlined environmental/human rights factors would be a "6" - egregiousness ameliorated by lower required mens rea (knew/should have known vs. consciously aware)
  - would result in mostly probationary sentences
- Knowing Conduct with outlined environmental/human rights factors would be an "8" - heightened mens rea, potentially DOC sentence

This framework is consistent with other areas of criminal law along with the principals behind it. The consequences are based on the egregiousness of criminal conduct and the mental state while doing so.

To move "CMO" to a 5, would be inconsistent. It would conflate simple "more than 12 plants" with operations involving greenhouses, modifications of structures (lighting/power/etc), firearms, stolen property, etc. The sentences would be the same in practically all cases and negate any deterrence. Reducing "CMO" to a "5" would end up treating differently situated individuals the same. It would make the consequences practically the same for 13 plants in the backyard as for 13 plants in the backyard, with a full packaging/processing operation, stolen property, and firearms present to protect the 13 plants. CMO is meant to address "operations" or schemes beyond growing too much and recognizes the heightened criminality in those endeavors, which is why treating it more severely than simple manufacture is a necessity.

Keeping it an "8" is consistent with the rest of the framework in 475C—including the new sections and would outline punishments consistent with the degree of the operation/illegal activity.

From a "1" to possessing too much, to a "4" for growing too much, to a "6" for recklessly allowing environmental/human rights harms while growing too much, to an "8" for "knowing" of environmental/human rights harms OR to an "8" for a knowing "business"/operation/CMO.

In sum, this gradation proscribes consequences commensurate with the criminality and harms caused consistent with the principals of criminal law.

Thank you again for your time,

Josh Eastman

Josephine County District Attorney