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MEMORANDUM

DATE: September 27, 2016

TO: Members of the Advisory Commission on the Administration of Justice

FROM: Patrick Guinan, Principal Research Analyst
Research Division, Legislative Counsel Bureau

SUBJECT: **Connecticut's Drug Law Reforms ("The Second Chance Society")**

This memorandum responds to the Commission's request for an overview of Connecticut's recently approved drug law reforms, commonly known as the "Second Chance Society," a name given the reforms by Governor Dannel P. Malloy upon introduction.

CONNECTICUT DRUG SENTENCING REFORM

In 2015, with the passage of House Bill 7104, Connecticut revised its sentencing and corrections policies to focus on saving state prison space for violent and career offenders, streamlining the pardons process, and assisting prisoners with reentry to reduce recidivism.

Sentencing

House Bill 7104 replaced the previous penalty structure for drug possession crimes, which punished most types of illegal drug possession as felonies. The bill created a new structure that punishes possession of one-half ounce or more of marijuana, or any amount of another illegal drug, as a class A misdemeanor punishable by up to one year in prison, a fine of up to \$2,000, or both. Possessing under one-half ounce of marijuana is not a crime in Connecticut but is punishable by a \$150 fine. A person under the age of 21 who is convicted of possessing under one-half ounce of marijuana is also subject to a 60-day driver's license suspension.

House Bill 7104 also allows the court to: (1) suspend prosecution for a second offense and order treatment for a drug dependent person; and (2) punish third time or subsequent offenders as persistent offenders, which subjects them to the penalties for a class E felony. The bill

also reduces penalty enhancements for drug possession near a school or day care center from a two-year mandatory prison sentence to a class A misdemeanor with a required prison and probation sentence.

Connecticut statute also provides that a judge can impose less than the mandatory minimum sentence if: (1) no one was hurt during the crime; (2) there was no use or threat to use physical force or a deadly weapon; and (3) the defendant was unarmed. The defendant must show good cause for leniency and may invoke these provisions only once. A judge must state at sentencing the reasons for imposing a given sentence and for departing from the mandatory minimum.

Table 1 below shows Connecticut's drug possession penalties *prior* to the implementation of H.B. 7104:

Possession Crime	Penalties Under Previous Law
Narcotics (i.e. heroin, powder cocaine, crack cocaine)	<p>1st offense: Up to 7-year prison term, up to \$50,000 fine, or both</p> <p>2nd offense: Up to 15-year prison term, up to \$100,000 fine, or both</p> <p>Subsequent offenses: Up to 25-year prison term, up to \$250,000 fine, or both</p> <p>Alternative sentence: Up to 3-year indeterminate prison term with conditional release by Department of Correction (DOC) commissioner</p>
4 oz. of marijuana or any quantity of other hallucinogens	<p>1st offense: Class D felony punishable by up to 5-year prison term, up to \$5,000 fine, or both</p> <p>Subsequent offenses: Class C felony punishable by up to 10-year prison term, up to \$10,000 fine, or both</p> <p>Alternative sentence: Up to 3-year indeterminate prison term with conditional release by DOC commissioner</p>
Any other illegal drug or at least .5 oz. but less than 4 oz. of marijuana	<p>1st offense: Up to 1-year prison term, up to \$1,000 fine, or both</p> <p>Subsequent offenses: Class D felony</p> <p>Alternative sentence for subsequent offenses only: Up to 3-year indeterminate prison term with conditional release by DOC commissioner</p>

Source: Connecticut Office of Legislative Research

The bill also extends eligibility for release to home confinement by the commissioner of the DOC to those sentenced for any type of drug possession crime. Previously, this eligibility applied only to those sentenced for possessing one-half to four ounces of marijuana or other controlled substances that are not narcotics or hallucinogens. Many restrictions apply to home release and offenders can be returned to prison for violating these conditions.

Other Drug Possession Conviction Consequences Eliminated by H.B. 7104

By reducing the drug possession penalties from a felony to a misdemeanor, H.B. 7104 did away with several related consequences. The offender no longer:

- Loses the right to vote or hold office;
- Is disqualified from jury service for 7 years; or
- Is subject to having conviction considered as a factor in denying, suspending, or revoking certain state-issued professional licenses and credentials.

It should be noted that the consequences of a drug possession conviction are not lessened in the areas of:

- Revocation of Peace Officer Standards and Training certification for law enforcement officers;
- Ineligibility to hold a permit to carry certain weapons including several types of guns; and
- Suspension, revocation, or refusal to issue certain licenses by the appropriate commissioner for home care providers, bail agents, et cetera.

Juveniles

Because these crimes are no longer felonies under the provisions of H.B. 7104, a juvenile charged with one of these crimes can no longer be tried as an adult unless the individual is being tried as a persistent offender.

Effect on Other Drug-Related Crimes

The bill specifies that it in no way alters existing provisions on punishment for manufacturing, distributing, selling, prescribing, compounding, transporting to sell or dispense, possessing to sell or dispense, offering, giving, or administering illegal drugs.

Pardons and Parole

House Bill 7104 makes significant changes to the membership of Connecticut's Board of Pardons and Paroles (Board) as well as to the processes for granting either. The Board's full-time membership is reduced from 20 to between 10 and 15, and the Board's part-time membership is reduced from 6 to a maximum of 5. Appointment procedures and member qualifications remain largely the same, but the bill does increase, from two to three, the number of members that must be present at a parole hearing. Provisions are also included allowing the Board to consider qualified inmates for parole without a hearing. There are several requirements in place concerning inmate qualification and Board member or employee qualifications to make evaluations of inmate eligibility for parole. Ultimately, the chair of the Board must present any parole release recommendation to a parole release panel for a final determination.

The bill also expands access to an already in place expedited pardons process to anyone convicted of a nonviolent crime. Those qualified for the expedited process may receive a pardon without a hearing unless a victim requests one. There are victim notification provisions in place for both pardon and parole hearings.

Fiscal Impact

The fiscal note for H.B. 7104 estimates a savings of \$6.6 million in Fiscal Year (FY) 2016 and \$12.4 million in FY 2017 due to a reduction in prison population and facility closures. These savings were projected to be part of a larger overall budgetary savings target within the DOC of \$12.5 million in FY 2016 and \$18.9 million in FY 2017.

The budget also included additional funding for related "Second Chance Society" initiatives within the Office of Policy and Management, State of Connecticut Department of Housing, State Department of Education, and Department of Mental Health and Addiction Services. Presumably, the additional funding dedicated to these areas was to be offset by the savings noted above. With the reduction of penalties for drug related charges, the prison population in Connecticut is expected to be reduced by 1,120 prisoners.

Additional Resources

For the Advisory Commission's review, I have provided the following documents as exhibits:

- Full text of H.B. 7104;
- Statement from Governor Dannel P. Malloy concerning H.B. 7104;
- Bill analysis of H.B. 7104 from the Connecticut Office of Legislative Research;
- Fiscal note on H.B. 7104 from the Connecticut Office of Fiscal Analysis; and
- Comparison chart of current drug possession penalties in Connecticut and Nevada .

I trust the Commission will find this information useful. If I can provide any further information, please contact me at 775-684-6825 or pguinan@lcb.state.nv.us.