



FACT SHEET

WYOMING LEGISLATIVE SERVICE OFFICE

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April 6, 2017
17FS018

MARIJUANA EDIBLE COMMITTEE TOPIC SUMMARY 2015 - PRESENT

The sections listed below are excerpts taken directly from Joint Judiciary Committee (Committee) minutes held during the 2015 and 2016 interims (from March 14, 2015 through November 15, 2016). The excerpts contain information related to previous Committee discussions regarding the topic of edible and drinkable marijuana products, including possible methods for addressing this subject matter within Wyoming Statutes. The bills mentioned as prior drafts are also included as additional attachments.

The Committee sponsored House Bill 37 Controlled substances (16LSO-0013) during the 2016 Budget Session, but the bill was unable to secure the votes for introduction. The Committee voted not to sponsor bill draft 17LSO-0198.7 for the 2017 General Session.

APRIL 15, 2015

DEFINING CANNABINOIDS CONTAINED IN EDIBLE AND DRINKABLE GOODS FOR UNIFORMITY IN PROSECUTION

Co-Chairman Christensen reviewed the information presented to the committee regarding this topic in the previous year. District Court Judge Young, Attorney General Michael, Deputy Attorney General Delicath and Prosecutor Skoric addressed the issue. Mr. Skoric identified a problem with W.S. 35-7-1031(c) – based on the possession statute which deals with weight and form of the content, what is the form of THC in edibles? It starts as oil and solidifies. He suggested adding a new subsection (g) to address the chemical in any other form, but the legislature would have to determine what the weight is. Mr. Skoric urged the committee to avoid dealing with concentration levels. Judge Young stated that judges in southern Wyoming are dealing with this problem. With statutes being strictly construed, there is a hole in the statutes. Senator Hicks stated if the issues were addressed by using a catchall with a weight, the committee would need some idea from the crime lab or further research on the issue. Representative Pownall suggested the committee look at other laws and get information from the crime lab on how to address the problem and the costs involved.

Attorney General Michael agreed to provide the requested information and will address this topic again at the next committee meeting. The committee also requested that a representative from DCI be present at the next meeting to discuss the issue of weight and concentrations, as well as to provide information to the committee regarding the cost and procedures involved with machine and lab testing of edibles.

The committee directed LSO to work with the Attorney General's Office to evaluate what other states are doing in these areas. LSO was also directed to work with DCI in gaining information regarding how these substances should be measured. LSO was directed to work with the Attorney General's Office to develop legislation for the next meeting.

AUGUST 13, 2015
CONTROLLED SUBSTANCES**16LSO-0013 Controlled Substances**

John Knepper and Dave Delicath, Attorney General's Office and John Jolly, Division of Criminal Investigation, provided the Committee with an overview of 16LSO-0013. See **Appendix 3**, Controlled Substances tab. The Committee expressed concern with the prosecution of marijuana contained in edibles and drinkables based upon aggregate weight rather than the concentration of THC contained in the edible marijuana. The Committee discussed whether edibles can be currently prosecuted under the existing statute and the possibility of sending edible samples to other labs that could test for concentration. Mr. Jolly explained the process of chemical analysis within the lab and provided a historical overview of the increased THC content through select breeding in marijuana over time. Mr. Jolly also stated that due to the complexity of determining THC levels, there is not currently an accredited lab that can determine THC concentrations in edible items. Mr. Jolly testified that they can detect THC or marijuana in edibles and explained the difficulties posed by trying to determine THC concentration from a chemical analysis standpoint. Mr. Jolly provided **Appendix 5** as examples of edibles containing marijuana.

Byron Oedekoven, Executive Director, Wyoming Association of Sheriffs and Chiefs of Police, discussed THC concentration levels with the Committee and provided information from an "edibles" website operating in Colorado. He discussed using the general weight of edibles for the determining misdemeanor or felony charges as a solution to the problem of prosecuting edibles. He suggested that there is a need to address the new form of drugs in edibles. Mr. Oedekoven expressed concern that the weight of edibles in 16LSO-0013 may be too high given the potency of some of the edible marijuana products.

Judge Nick Deegan, District Court, Sixth Judicial District, stated the issue is whether edibles are prosecutable under current statute and that is why proposed subparagraph (G) is created. Judge Deegan stated that he believes this legislation is the best the Committee can currently do based upon the current technology and its ability to measure the amount of THC in edible items. He testified the bill attempts to bring some parity to edibles.

Judge Catherine Rogers, District Court, First Judicial District, testified the possession of edibles may not be prosecutable under the current statute because the marijuana is not necessarily in plant form. She emphasized this is the problem prosecutors and judges are facing with edibles. Judge Rogers further stated that under the current statute, more cases of this type may be dismissed in the future. The Committee requested that LSO obtain an order issued by Judge Kautz dismissing an edibles case and provide the order to the Committee.

Judge John Perry, District Court, Sixth Judicial District, indicated that this is a situation where society has developed something where Wyoming's laws are insufficient to address the issue. He suggested as policy makers, it is their responsibility to draw reasonable lines and establish standards for judges and the public to follow regarding edible marijuana. Judge Perry stated there is a hole in current statute regarding edibles that needs to be addressed by the legislature. Judge Kautz, who is now on the Wyoming Supreme Court, determined edibles are not prosecutable under the current statute as a district court judge. Judge Perry testified about the confrontation clause as a potential problem with using out of state labs to test edibles. He testified there would be significant expenses because the out of state experts who tested the samples would need to travel to Wyoming and testify as required by the confrontation clause.

Glen Asay, Deputy County Attorney, Campbell County Prosecutor's Office, stated that if lab testing were required for each edible sample to determine THC levels there would be significant expense incurred by the counties, making the prosecution of edibles financially difficult. The weight is the only quantification that can practically address the prosecution of edibles. Mr. Asay addressed the Committee's concern that people may be charged with a

felony for possessing edibles where the weight is mostly legal substances. He discussed the importance of prosecutorial discretion. For example, in cases of a first felony offense of this nature, the charges may likely be pled down to a misdemeanor or a deferred prosecution may be used to avoid a felony conviction. He asked the Committee not to make it impossible to prosecute these crimes.

After public comment on this bill, Senator Von Flatern motioned to table the bill until the technology is available to test THC levels or concentration in edible/drinkable items. The motion was seconded and failed by a voice vote. LSO was directed by the Committee to look at Subparagraph (G) in the current bill draft to determine if the terms marijuana bi-products and marijuana derivatives are included in the proposed legislation. The Committee determined to study the issue and work the bill at the November meeting.

NOVEMBER 4, 2015

CONTROLLED SUBSTANCES

16 LSO-0013.4 – Controlled Substances

Mitch Martin reviewed 16LSO-0013 (**Appendix 23**) and provided a summary of the bill to the Committee. Mr. Martin also provided background and historical information regarding the use of weight to determine whether the possession of edible marijuana is a misdemeanor or felony.

Judge Fenn commented that he is glad to see that the Legislature is attempting to provide some guidance to judges on this subject. Judge Fenn stated that determining a felony level regarding drugs is based upon a weight including the cutting agent and can also imply intent for distribution.

Mr. Knepper stated that the issue of marijuana edibles has not been resolved by the Wyoming Supreme Court. Mr. Knepper explained that if in liquid form the amount is 3/10 of a gram for a felony level. Mr. Knepper further stated that the liquid is what is being used in these sophisticated manufacturing processes.

SEPTEMBER 22, 2016

EDIBLE MARIJUANA ANALYSIS AND PROSECUTION

John Knepper, Wyoming Attorney General's Office, addressed the Committee and on the topic of edible marijuana products infused with delta-9-tetrahydrocannabinol (THC). Mr. Knepper stated that it is important for there to be a felony offense for edible marijuana possession at some level.

John Jolley, Dr. Ella Kubicz and Sarah Barrett, State Crime Laboratory, addressed the Committee. Mr. Jolley stated that there are no criminal forensic laboratories that currently analyze the concentration of THC in edible marijuana products. Mr. Jolley explained this information is based on a survey he requested be performed by the American Society of Crime Laboratory Directors. Ms. Kubicz stated the Colorado Department of Health faces problems quantitating THC in recreational edible marijuana products. Ms. Kubicz provided information about THC analysis in laboratories in Colorado and noted the uncertainty level of analysis is plus or minus twenty percent. Ms. Kubicz also answered questions concerning forensic analysis of edible marijuana products. Ms. Kubicz suggested the Committee could consider the amount of serving as a form of measurement instead of concentration of THC. In addition, the State Crime Laboratory representatives provided information about advancements in technology and instrumentations that would be necessary to analyze THC concentration.

Byron Oedekoven, Wyoming Association of Sheriffs and Chiefs of Police, addressed the Committee and stated that that he did not have any additional information other than what was presented at the last meeting to report.

Dr. Sarah Buss, Wyoming Public Health Laboratory and Ivan Venegas, Chemical Testing Program Manager, Wyoming Public Health Laboratory, addressed the Committee. Dr. Buss answered questions for the Committee regarding toxicology, levels of impairment and human thresholds for consumption of THC.

Jeremiah Sandburg addressed the Committee and provided information about Wyoming court rulings that specify the form of marijuana is a necessary element of the felony level offense of possession. Mr. Sandburg informed the Committee that marijuana infused products, such as lotions and soups, are being found in the State and that products infused with controlled substances are not limited to THC. Mr. Sandburg provided information about concerns the Wyoming County Attorney's Association has with controlled substances statutes in response to the type of substances that are being found in Wyoming. Mr. Sandburg stated any controlled substance in drinkable form over three-tenths of a gram is currently considered a felony.

Mr. Sandburg, speaking on behalf of himself, stated the Committee could consider creating a high misdemeanor for marijuana infused product possession. Mr. Sandburg also indicated a look back period relating to prior charges may be an area of policy the Committee could consider as it addresses this topic.

Public Comment

Frank Latta, Wyoming NORML, addressed the Committee. Mr. Latta stated NORML recognizes that edible marijuana products can be a problem, but he urged the Committee against creating a felony level offense for possession of edible products.

Senator Christensen moved to direct LSO Staff to prepare a draft bill modeled on 2016 House Bill 37, with felony possession of marijuana products set at one pound. The motion was passed by a voice vote. After further discussion, Senator Hicks moved to create a subcommittee for a short meeting to further review this matter. The motion passed the Committee by voice vote. Co-Chairman Christensen was appointed to chair the subcommittee and Senator Hicks, Representative Krone, Representative Pownall, Representative Pelkey and Representative Winters were appointed as members.

OCTOBER 11, 2016

SUBCOMMITTEE ON EDIBLE MARIJUANA STATUTES

DISCUSSION ON EDIBLE MARIJUANA PRODUCTS, WYOMING STATUTES AND OTHER STATES' LAWS

Chairman Christensen provided an overview regarding the tasks of the Subcommittee meeting as outlined at the last Joint Judiciary Committee meeting. Senator Hicks further discussed the purpose and scope of the Subcommittee meeting.

Tamara Rivale, LSO Staff Attorney, provided the Subcommittee with an overview of the pre-meeting materials and provided a summary of 17LSO-0198 WD0.3. (**Appendix 3**). Ms. Rivale also referred the Subcommittee to current Wyoming Statutes governing marijuana possession and use (**Appendix 4**).

Representative Krone addressed the Subcommittee and proposed a graduated penalty scheme for possession of marijuana products. The Subcommittee discussed Representative Krone's proposal. Senator Hicks moved the Subcommittee amend 17LSO-0198 WD0.3 to specify the following: a first offense for possession of one pound or less of marijuana product shall be a misdemeanor punishable by a fine of up to \$200 and up to twenty days in jail; a second offense shall be a misdemeanor punishable by a fine of \$750 fine and up to six months in jail; and a third offense shall be punishable as a low level felony. The motion was seconded and passed by a voice vote.

Representative Winters moved the Subcommittee amend 17LSO-0198 WD0.3 to specify the following: possession of four ounces or less of marijuana product shall be a misdemeanor punishable by a fine of up to \$200 and up to

twenty days in jail; possession of eight ounces or less shall be a misdemeanor punishable by a fine of \$750 fine and up to six months in jail; and possession of up to one pound shall be punishable as a low level felony. After discussion, Representative Winters amended his motion to specify possession of more than eight ounces of marijuana product shall be punishable as a felony, in lieu of the one pound threshold weight specified in the bill draft. After discussion and public comment, the motion was second and failed by a roll call vote with Senator Hicks and Representative Winters voting in favor of the motion.

The Subcommittee discussed the language created by W.S. 35-7-1031(c)(i)(G) and whether it should be revised to more clearly specify the type of marijuana products implicated by the bill draft. The Subcommittee instructed LSO to modify 17LSO-0198 WD0.3 to be applicable to edible marijuana products, drinkable marijuana products and other marijuana products. In addition, the Subcommittee authorized LSO to work with the Attorney General's Office on the bill draft.

Public comment was provided by John Knepper, Wyoming Attorney General's Office; Frank Latta, Wyoming chapter of the National Organization for the Reform of Marijuana Laws (NORML), Bennett Sondeno, Wyoming NORML; Tony Frishcknecht, Colorado Dispensary Owner; and Kate Bell, Marijuana Policy Project. Ms. Bell also provided a written testimony. (**Appendix 5**).

Ms. Rivale summarized the conceptual amendments to 17LSO-0198 WD0.3 that the Subcommittee adopted during the meeting. Representative Krone moved the Subcommittee recommend the amended bill be considered by the Joint Judiciary Committee at its next meeting. The motion passed by a voice vote.

NOVEMBER 15, 2016

SUBCOMMITTEE ON EDIBLE MARIJUANA

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17LSO-0198 – Controlled substances

Co-Chairman Christensen addressed the Committee and provided background information regarding the October 11, 2016 meeting of the Subcommittee on Edible Marijuana. Ms. Rivale provided a summary of the 17LSO-0198 WD0.7, as amended by the Subcommittee (**Appendix 17**). Jennifer Lockwood, LSO Research, provided the Committee with an update regarding the Subcommittee's request for expert testimony relating to the forensic analysis of marijuana products. The Committee discussed the tiered penalty structure within the bill and the current science of marijuana testing.

John Knepper addressed the Committee and provided information on controlled substances production and stated the Attorney General's Office supports 17LSO-0198 WD0.7.

Frank Latta, Wyoming NORML, addressed the Committee and provided public comment in support of regulating marijuana similar to DUI laws. Marsha Studinell, citizen, testified in support of reduction of prison overcrowding from drug offenses. Cathy Ide, citizen, presented public testimony relating to edible and topical marijuana.

Representative Pownall moved the Committee sponsor 17LSO-0198 WD0.7. The motion failed by a roll call vote with Senator Esquibel, Senator Hicks, Representative Krone, Representative Pownall, Representative Winters, Co-Chairman Miller and Co-Chairman Christensen voting in favor of the motion.

Update on Forensic Analysis of Marijuana Products

Sarah Urfer, Director, Chematox Labs, testified before the Committee via teleconference. Ms. Urfer provided information on plant material, extracts, concentrates, THC, THC-A and products made from extracts and concentrates. In addition, Ms. Urfer provided the Committee with a description regarding how edibles are made

both historically and today, and provided an explanation of the extraction process. Ms. Urfer also explained the levels of concentration in manufactured edible products. Ms. Urfer further testified to the Committee regarding the difficulties and lack of technology currently available for accurate testing in marijuana products, as well as the costs associated with the development of testing procedures.

Kate Bell, Marijuana Policy Project, addressed the Committee via conference call and offered public testimony concerning felony intent to distribute in other states. In addition, Ms. Bell discussed the negative consequences of an individual receiving a felony conviction.

John Jolly, Wyoming Crime Lab, stated that the crime lab agrees with the majority of the testimony offered by Ms. Urfer. Dr. Ella Kubich, Wyoming Crime Lab, stated that she agreed with Ms. Urfer's assessment concerning testing equipment.

If you need anything further, please contact LSO Research at 777-7881.