



**TESTIMONY IN SUPPORT OF THE LEGALIZATION, TAXATION, AND
REGULATION OF CANNABIS FOR ADULTS**

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**ASSEMBLY APPROPRIATIONS COMMITTEE AND
SENATE BUDGET AND APPROPRIATIONS COMMITTEE JOINT HEARING**

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The American Civil Liberties Union of New Jersey is pleased to submit the following testimony in support of the legalization, taxation, and regulation of cannabis for adults.

Founded in 1960, the ACLU-NJ is the state's leading organization dedicated to defending and advancing civil rights and liberties. We are a non-profit, non-partisan organization with more than 45,000 members and donors across New Jersey. The ACLU of New Jersey is a proud member of the steering committee of New Jersey United for Marijuana Reform, a broad-based coalition driven by leaders in the law enforcement, medical, and civil rights communities working together to support the legalization, taxation, and regulation of cannabis for adults.

The ACLU has opposed cannabis prohibition since 1968. It has helped lead the movement for legalization of cannabis for adults in other states and is working for reform around the country. Reform of our cannabis laws is a civil rights priority and a key component of reforming our broken criminal justice system.

It's time to legalize, tax, and regulate cannabis for adults

It's time to move our state forward: New Jersey's cannabis laws have long been an abject failure and it's time to legalize, tax, and regulate cannabis for adults. We have used our police officers to make hundreds of thousands of arrests in the past decade, yet have little to show for it. In its wake we find a trail of often devastating collateral consequences in peoples' lives after an arrest.

New Jersey is making more arrests for cannabis possession than ever before. In 2016, New Jersey made more than 32,000 possession arrests,¹ a 52% increase since 2000.² Someone is arrested for

¹ New Jersey State Police, *2016 Uniform Crime Report 71* (2016), https://www.njsp.org/ucr/2016/pdf/2016_sect_3.pdf.

² New Jersey State Police, *2000 Uniform Crime Report 71* (2000), https://www.njsp.org/info/ucr2000/pdf/ch3_ucr2000.pdf.

cannabis possession in New Jersey approximately every 16 minutes.

However, not all communities are impacted equally by the enforcement of cannabis laws. Black New Jerseyans are arrested for cannabis possession at a rate three times higher than white New Jerseyans, despite government research showing cannabis use is similar among whites and Blacks.³ Black New Jerseyans were disproportionately arrested for cannabis possession in every New Jersey county, but in four counties—Hunterdon, Ocean, Monmouth, and Salem—Blacks were arrested at four or more times the rate of whites.⁴ In four legislative districts—Districts 10, 33, 36, and 21—the rate of Black arrests was eight or more times the rate of white arrests.⁵

A single cannabis possession arrest can have devastating consequences for someone and their family. Under our current laws, potential penalties for one offense include up to six months in jail;⁶ \$1,255 in fines and fees; a driver's license suspension of up to two years;⁷ deportation;⁸ eviction from public housing for an entire family;⁹ a three-year ban from public housing;¹⁰ loss of student financial aid;¹¹ a five-year ban from adoption;¹² and a criminal record that makes getting a job much more difficult.

Prohibition is also costing New Jersey hundreds of millions of dollars each year. In 2010, our state wasted more than \$127 million in police, courts, and corrections costs enforcing our cannabis possession laws.¹³ In 2013, we wasted more than \$143 million,¹⁴ even though most New Jerseyans believe it should be legal.¹⁵ These are resources that would be better spent focusing on serious crime and public safety issues and investing in community services and programs.

Many active and retired law enforcement officials across New Jersey recognize the failures of prohibition and support legalization from a public safety perspective.¹⁶ Currently, police officers are taken off the street for at least 3 hours for each cannabis possession arrest they make. These

³ American Civil Liberties Union of New Jersey, *Unequal & Unfair: New Jersey's War on Marijuana Users*, 24 (2017), available at https://www.aclu-nj.org/files/6614/9744/1887/2017_06_14_mj_rpt.pdf.

⁴ *Id.* at 31.

⁵ *Id.* at 37.

⁶ N.J.S.2C:43-8.

⁷ N.J.S.2C:35-16.

⁸ 8 U.S.C. § 1227(a)(2)(B)(i) (note that while there is an exception for 30 grams of less of cannabis possessed for personal use, this limit is lower than the 50-gram threshold under New Jersey law and the federal exception only applies to a first offense).

⁹ *Dep't of Hous. v. Rucker*, 535 U.S. 125, 130 (2002).

¹⁰ 42 U.S.C. § 13661(a).

¹¹ 20 U.S.C. § 1091(r).

¹² N.J.A.C. 3A:51-5.4(a)(8)(iii).

¹³ American Civil Liberties Union, *The War on Marijuana in Black and White*, 165 (2013), available at https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-re11.pdf.

¹⁴ *See Unequal & Unfair*, *supra* note 3 at 6.

¹⁵ Rutgers Eagleton Institute of Politics, Press Release, *New Jerseyans support marijuana legalization, expungement, taxation* (Oct. 30, 2018), available at <http://eagletonpoll.rutgers.edu/NJ-marijuana-October2018/> (finding 58 percent support for legalization).

¹⁶ Law Enforcement Action Partnership is an international organization supporting drug policy reform, including cannabis legalization, with at least three active representative speakers in New Jersey. Newark's Public Safety Director Anthony Ambrose supports legalization over decriminalization so that officers can work towards reducing violence and engaging with their communities. *See, e.g.*, Tom Moran, *On marijuana, why help criminals keep their monopoly?* (Mar. 4, 2018), https://www.nj.com/opinion/index.ssf/2018/03/on_marijuana_why_help_criminals_keep_their_monopol.html.

officers should be focusing their time and efforts attending to actual threats to public safety.

The status quo has failed and is causing continued damage to New Jersey communities—it's time to begin fixing our criminal justice system by legalizing, taxing, and regulating cannabis for adults.

Today, nine states— Alaska, California, Colorado, Maine, Massachusetts, Michigan, Nevada, Oregon, and Washington —and Washington, D.C., have legalized cannabis for adults. This support is not limited to one side of the political spectrum. While each state has taken its own approach to establishing a regulated marketplace, New Jersey has the opportunity to pass legislation that comprehensively tackles pressing racial justice and social justice issues and emerge as a national leader in the cannabis space.

S2703, as amended, brings New Jersey a step closer towards righting the wrongs of cannabis prohibition

S2703's provisions concerning expunging prior records, building an inclusive cannabis industry, and utilizing delivery services lay the groundwork for New Jersey to repair the harms of cannabis prohibition.

S2703 includes provisions for more efficient expungements

Providing an avenue to erase people's records of the stain of cannabis offenses is critical to addressing the past harms of prohibition. A recent poll from Rutgers Eagleton Institute of Politics shows that an overwhelming majority of people believe people with prior arrests should be allowed to clear their records.¹⁷ As amended, S2703 makes expungements available for certain possession, distribution, and paraphernalia offenses and reduces the burdensome requirements to get such records expunged. The bill also puts the state on a path to using an electronic system to accept and process petitions for expungement.

New Jersey's current expungement process is costly and complicated, and a new mechanism is needed to efficiently process requests and administer expungement orders. The bill, as amended, eliminates the filing fees, notice requirements, and court hearings that erect barriers for individuals seeking to leave the past behind them and move on with their lives.

The electronic filing system contemplated by the bill would streamline expungement processing, which would likely shorten the waiting time to receive an expungement order. While cannabis legalization efforts have been the driving force behind creating this new system, the electronic system will ultimately help law enforcement officials to more efficiently process *all* expungement requests, not just those related to cannabis offenses. We thank the legislature, the Administrative Office of the Courts, and the New Jersey State Police for embarking on the path to reform our expungement process. The ACLU-NJ stands ready to assist the legislature and state agencies in ensuring that any future expungement system is efficient and effective, and serves the interests of justice.

¹⁷ Rutgers Eagleton Institute of Politics, *supra* note 15.

S2703 lays the foundation for an inclusive cannabis industry without arbitrary barriers for those with criminal convictions

Ensuring that New Jersey’s cannabis industry does not exclude people with prior criminal convictions is a top priority for racial and social justice. Because the criminal justice system tends to disproportionately ensnare poor people and people of color, allowing those with prior records to access jobs and business ownership opportunities minimizes the risk that New Jersey’s cannabis industry will unfairly exclude these groups. Making the industry as inclusive as possible also facilitates undercutting the underground cannabis market by offering jobs and business ownership opportunities in spaces where such opportunities would be limited for those with records.

Under S2703, as amended, the regulatory commission, when deciding whether to grant someone a license to own a business, would not be allowed to consider most cannabis possession or distribution convictions. It also may not consider a conviction unless the conviction is no more than five years old and is “substantially related” to the job that would be performed. Even if an applicant has a disqualifying conviction, the commission could still grant her a license if it decides she is suitable for a license and does not pose a public safety threat.

This provision would appropriately limit the influence of unfair bias and prejudice against people with past convictions. Applications to own or work in a cannabis business should be judged on the applicant’s ability to perform the duties and functions required in the industry, not on the applicant’s past acts of wrongdoing.

Currently, the bill only applies this provision to applications for owning a business. If a person applies for certification to be a cannabis handler, her application may be denied for *any* crime if the conviction is less than 10 years old. This discrepancy between licensees and handlers potentially make it easier to get a business license than work in a cannabis business. The bill should be amended to ensure that restrictions on using considering criminal convictions are consistent for both handler certifications and licensure.

S2703 contemplates an equity program to encourage an inclusive cannabis industry

New Jersey’s regulated cannabis industry must be designed to facilitate participation in the marketplace for members of New Jersey communities who may lack access to extensive capital or preexisting industry connections. For legalization to provide the full economic boon it has the potential to provide, the law must make sure that all of New Jersey’s diverse communities are not only permitted, but encouraged to participate in the legal economy.

S2703 would lay the groundwork for two mechanisms to foster diversity and inclusion in the industry. The bill creates within the commission an Office of Minority, Disabled Veterans, and Women Cannabis Business Development, which would promote participation in the industry by people from “socially and economically disadvantaged communities.” The bill also offers priority review for licensure applicants who (a) live in an “impact zone” or (b) have at least 25% of their workforce living in impact zones.

To be considered an “impact zone,” a city must meet one of two criteria:

1. Have a population of at least 120,000; or
2. Be in the top 33% of cities with the highest number of cannabis possession arrests, have a crime index of at least 1,000, *and* be in the top 15% of cities with the highest unemployment rate.

The expressed goal of the impact zone scheme is to offer economic opportunities to those in communities that have suffered from poverty, unemployment, and heavy policing. While the criteria enumerated in the bill may capture cities that are intended beneficiaries of the program, the Legislature should be mindful that unemployment rates do not offer a complete picture of communities that are struggling economically. Many people in New Jersey are employed, some even working multiple jobs, and are still unable to make ends meet.

This means that towns that may be intended beneficiaries would not meet the listed criteria. For example, small towns cannot meet criterion 1, and towns in which residents are employed but still struggling cannot meet criterion 2.

S2703 injects social justice perspectives into the Cannabis Regulatory Commission

Throughout the movement to legalize cannabis, advocates, members of the public, legislators, and Governor Murphy, have called for legislation that recognizes and elevates the need for racial justice and social justice. The composition of the Cannabis Regulatory Commission will determine whether the cannabis industry will reflect those racial and social justice goals.

Currently, the bill requires that at least one member of the commission be a representative of an organization that works to address issues in racial justice, social justice, or inequality. We believe this requirement will work to advance the causes of racial justice and social justice within the cannabis industry. The ACLU-NJ and New Jersey United for Marijuana Reform stand ready to participate in the commission or make recommendations for organizations or individuals that would be a good fit.

S2703 provides for safe consumption areas for people who cannot or choose not to consume cannabis in their own homes.

If it will be legal for people to buy, possess, and use cannabis, people will need to have a place where they can consume it. Providing safe, regulated consumption spaces will allow an option to people who cannot consume cannabis in their own homes (for example, if a landlord does not allow cannabis use in the home).

S2703 would allow retail cannabis businesses to apply for and operate a consumption space. Providing for the establishment of consumption spaces would make New Jersey a leader in proactively including in its legislation a safe option for people who cannot consume at home.

S2703 allows delivery services that will provide access to those unable to travel

Building a new, regulated cannabis industry requires providing ways for people to access

dispensaries. While many people may decide to travel to a dispensary to purchase products, some people may be unable to travel. They may have limited mobility, they may not have a driver's license, or public transportation may not be available. Allowing delivery services, as S2703 does, will allow those unable to travel themselves to access cannabis and cannabis products in the regulated marketplace and would also encourage additional job creation.

Additional amendments are needed to S2703 to put New Jersey on the path to restorative justice for communities

S2703, as amended, provides a promising starting point for the conversation of what a legal system in New Jersey would look like. As the legislature continues to examine legalization in New Jersey, we urge it to incorporate additional important policy reforms into the legislation.

Reinvest revenue in services for communities harmed by prohibition

New Jersey stands to bring in hundreds of millions of dollars per year in tax revenue from regulated sales.¹⁸ The state will face an important question about how to use that revenue and enforcement cost savings. Currently, S2703 contemplates using cannabis sales tax revenue to (a) fund the operations of the regulatory commission, and (b) defray the costs of providing expungements for covered cannabis offenses. The remaining revenue would go to the State's General Fund.

S2703 should be amended to expressly dedicate funds to important initiatives such as education, drug treatment and prevention programs, and community reinvestment programs. The ACLU of New Jersey, and our partners in New Jersey United for Marijuana Reform, believe that, at a minimum, revenue should be dedicated to at least two important purposes. The first is drug abuse prevention and treatment. We should use revenue from legalization to invest in evidence-based prevention programs that work, including programs focused on our youth. We can and should boost our youth drug prevention efforts to make sure young people understand the risks associated with using drugs. Further, as New Jersey continues to suffer from a significant lack of treatment beds¹⁹ to tackle the troubling increase in opioid addiction in our state, revenue from legalization of cannabis could be put toward ensuring the state is able to better help those suffering from addiction with more and better treatment beds and programs.

The second is a strategy of justice reinvestment. As not all communities have faced enforcement of cannabis possession laws at the same rates, we believe it is important to reinvest savings and revenue into our communities, particularly communities of color, that have suffered disproportionately from the war on cannabis users in New Jersey. Investing in treatment, re-entry, job training, affordable housing, and related programs in communities that have borne the brunt of enforcement practices will help ensure that justice, equity, and economic empowerment guide reform of our cannabis laws.

¹⁸ See American Civil Liberties Union of New Jersey, *NJ Policy Perspective & NJ United For Marijuana Reform Analysis Projects \$300 Million In Annual Sales Tax Revenue To Come With Legalization For Adults* (May 24, 2016), <https://www.aclu-nj.org/news/2016/05/24/marijuana-legalization-would-bring-100s-millions-nj-tax-reve>.

¹⁹ Stephen Stirling, *Dying for help: Treatment options don't meet demand of growing N.J. heroin and opiate epidemic*, NJ.COM (July 27, 2014), https://www.nj.com/news/index.ssf/2014/07/dying_for_help_available_treatment_doesnt_meet_need_of_growing_n_j_heroin_and_opiate_epidemic.html.

Home cultivation for personal use

The bill currently does not permit home cultivation of cannabis. The ACLU of New Jersey believes that once cannabis is legal, New Jerseyans should not have to rely on companies or the cannabis industry to possess or use cannabis. The right of New Jerseyans to grow a limited amount of cannabis for personal use, with appropriate regulation, should be protected under the law. Allowing limited home cultivation will allow those with limited mobility to access cannabis and prevent “Big Marijuana” monopolies over the industry supply.

Remove cannabis from the New Jersey Controlled Dangerous Substances Act

A change that would have significant ramifications in an array of areas would be the removal of cannabis from the state’s list of Controlled Dangerous Substances (CDS). Currently, S2703 does not remove cannabis from the New Jersey Controlled Dangerous Substances Act (N.J.S.24:21-1 et seq.). Cannabis, especially once legal, certainly would not fit appropriately on the CDS list. Removal from the list is critical, as New Jersey’s statutes contain countless references to substances on the CDS list, and all these references cannot practically be amended by S2703.

Terminate the custody and supervision of those currently in the criminal justice system as a result of cannabis possession

As New Jersey legalizes cannabis, we cannot forget about the people who are currently entangled in the criminal justice system for cannabis offenses. S2703, as amended, mandates dismissals for any pending cases for small cannabis possession. However, the bill does not address people who may be currently incarcerated, on parole, or on probation as a result of a cannabis offense. The bill should be amended to terminate supervision for these people.

Additionally, going forward, the terms of being on probation or parole should not prohibit people under supervision from engaging in legal cannabis consumption. Probation or parole conditions sometimes require people to avoid otherwise legal behavior, such as being late for a meeting, drinking alcohol, failing to keep a job, or missing curfew. If someone commits a technical violation by not adhering to these strict rules, they can be placed in jail. The ACLU believes that conditions of supervision should not unnecessarily restrict legal behavior unless reasonably related to the underlying offense.

Proper regulation will be crucial in ensuring New Jersey’s legal industry is effective and inclusive

Efforts to reform our cannabis laws will not end when New Jersey enacts legislation legalizing cannabis. Rule and regulation development will be crucial to whether New Jersey’s legalization scheme is viewed as a success or a failure.

Many important aspects of legalization are still to be decided: whether there will be a limit to the number of licenses issued, the cost of licenses and applications, and the educational or financial requirements for cannabis handler certification, and whether the application scoring system will

place heavy emphasis on building an inclusive industry, to name a few.

As the regulatory commission will hold tremendous power in answering these and other questions, member appointments should be carefully deliberated and selected. Appointments should be made with careful consideration of the person's experience and dedication to carrying out the stated goals of legalization.

The ACLU of New Jersey and our partner advocates will continue to be actively involved in regulation development and monitoring implementation of New Jersey's cannabis laws. We look forward to engaging with the appointed commission members, legislators, and other government officials to ensure that our rules and regulations keep New Jersey on the right path.

Conclusion

The legalization, taxation, and regulation of cannabis for adults is a critical policy reform for New Jersey, and the state should move towards passage of comprehensive legislation as soon as possible. Thank you for offering the public an opportunity to engage with the legislature on this important matter. The ACLU of New Jersey, together with our partners in New Jersey United for Marijuana Reform, look forward to working with you and stakeholders across the state to safely and responsibly legalize cannabis.