



Legislative Testimony
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**Written Testimony Supporting Senate Bill 1085,
An Act Concerning the Legalization of the Retail Sale and Possession of
Cannabis and Concerning Erasure of Criminal Records in the Case of
Conviction Based on the Possession of a Small Amount of Cannabis and
Opposing House Bill 7372, An Act Concerning Driving While
Under the Influence of An Intoxicating Drug**

Senator Winfield, Representative Stafstrom, and distinguished members of the Judiciary Committee:

My name is David McGuire, and I am executive director of the American Civil Liberties Union of Connecticut (ACLU-CT). I am here to testify in support of Senate Bill 1085, An Act Concerning the Legalization of the Retail Sale and Possession of Cannabis and Concerning Erasure of Criminal Records in the Case of Conviction Based on the Possession of a Small Amount of Cannabis, and in opposition to House Bill 7372, An Act Concerning Driving While Under the Influence of An Intoxicating Drug.

Connecticut took a step in the right direction when it decriminalized adult possession of small amounts of marijuana and legalized medical marijuana. This bill to legalize marijuana presents a chance for our state to further honor individual privacy rights, prevent discrimination, and remedy the disparate burdens that marijuana prohibition has placed on youth, communities of color, and poor communities throughout our state.

As an organization committed to liberty, justice, and equality under our constitution, the ACLU-CT opposes laws criminalizing the cultivation, sale, possession, use, and delivery of marijuana. These restrictions often impose arbitrary, harsh, and cruel penalties for private conduct for which no criminal penalty is appropriate. Criminalizing the use, possession, manufacturing, or distribution of marijuana violates the principle that the criminal law may not be used to protect individuals from the consequences of their own autonomous choices or to impose upon those individuals a majoritarian conception of morality and responsibility.

In addition, laws criminalizing marijuana impose the hardships of an arrest and arrest record, and often prison terms, on people, who are disproportionately young, poor, and people of color. Criminalization of marijuana has been selectively enforced, and this enforcement has relied on entrapment, illegal searches, and other methods that violate civil liberties. In

addition, these laws have diverted our state's limited resources away from the enforcement of laws against serious crimes.

Replacing arrests for marijuana possession in small amounts with infraction tickets was a positive step toward righting these wrongs, but it is not a panacea for the harms caused by marijuana prohibition. The same racial disparities that existed in our state in arrests for marijuana possession have been replicated in citations for civil offenses. The fines that accompany these civil infractions can place a substantial burden on those fined, particularly the young and the poor, groups that are disproportionately targeted by police. There is also strong evidence to suggest that people who are unable to pay these fines in a timely fashion, or at all, or who do not appear in court to answer to civil charges, are subject to arrest, which results in individuals being brought to court, and in some cases jailed, for failing to pay the fines or to appear. In addition to placing significant personal and financial burdens on the individual, this imposes substantive costs on the state, possibly exceeding the original fine imposed.

Connecticut's history of disproportionately arresting people for marijuana possession overall, and its disturbing track record of racial disparities in this enforcement, mean that communities continue to suffer from decades of prior marijuana criminalization. As with other offenses, an arrest or conviction for a marijuana-related offense can be a scarlet letter, jeopardizing someone's professional standing, employment, housing, or family connections. People in Connecticut with a criminal record, including people returning home from incarceration, on parole, and on probation, face more than 600 legal barriers to supporting themselves and their families. This bill could help to protect more Connecticut residents from these harms. To further remediate the negative effects of past marijuana convictions, we encourage this committee to strengthen the bill with prohibitions on discrimination against people with marijuana-related convictions and with a provision that gives people discriminated against due to a conviction the ability to seek help from the Connecticut Commission on Human Rights and Opportunities. The provision should prohibit discrimination in the areas of professional licensure, employment, housing, public education, public accommodations, public programs and services, insurance, credit transactions, and economic development programs. It should also prohibit the use of lawful marijuana-related activities as a relevant factor in proceedings regarding parental rights or child welfare.

An important step to reducing discrimination and other barriers faced by people who have a conviction for a marijuana-related offense is to create a pathway toward removing those convictions from their records. We should not, however, be bound to the existing mechanism in statute, which is included in the bill. With this bill, Connecticut has the opportunity to determine a mechanism that really gives people a fresh start, is truly effective, and works for everyone. We encourage the committee to explore alternative mechanisms to remove convictions for marijuana-related offenses from criminal records.

The number of people who could be helped by these provisions is significant. In the previous decade, Connecticut's marijuana arrests ensnared thousands of people in our state's criminal justice system. In 2010, Connecticut had the largest number of arrests for marijuana possession out of all New England states. From 2001-2010, Connecticut also had the largest arrest rate increase in marijuana possession arrests in New England, and the fourteenth largest increase nationwide.

Connecticut's Black communities were disproportionately harmed by marijuana arrests in the past and remain disproportionately harmed by marijuana-related infractions today, despite the fact that Black and white Americans use marijuana at the same rate. In 2010, prior to decriminalization, Connecticut had the largest difference between the Black population and marijuana possession arrests out of all New England states. At this time, Black residents were three times more likely to be arrested for marijuana possession than whites; phrased differently, 30.3% of people arrested in Connecticut for marijuana possession were Black, compared to 11% of the state population overall.

Following decriminalization, Black residents were still three times more likely to be arrested for "drug abuse violations" than whites; Connecticut's 2015 statewide crime statistics indicated that 28.7% of people arrested for "drug abuse violations" in the state were Black, compared to a statewide population percentage of 11.6%. Meanwhile, previous disparities in marijuana arrest rates are being replicated in marijuana infraction rates. In 2016, a *Connecticut Mirror* report found significant racial and age disparities in marijuana possession infraction citations; statewide, teenagers and minorities were cited for marijuana most often. In every town but Suffield, Black people were cited for marijuana possession disproportionate to their population percentages overall. In New Canaan, for instance, police imposed nearly half of all marijuana citations on Black people, despite the town's Black population percentage of one percent. In some areas, these disparities were also evident between Latino and white residents. In Darien, police imposed nearly one quarter of all marijuana citations on Hispanic people, despite the town's Hispanic population percentage of two percent. Given Connecticut's history of disparities in marijuana arrests, and its current disparities in marijuana infraction citations, this bill's efforts to legalize marijuana could help to break this cycle of racial injustice.

In addition to simple possession, we believe the bill should address other marijuana-related crimes. Crimes such as intent to distribute should be appropriately legalized or downgraded. Distributing marijuana is currently a felony. Charging someone with a felony for distributing marijuana is already an inappropriately harsh penalty, and our state should especially not keep this law on the books if marijuana is legalized. The data shows that police are more likely to charge people of color with other marijuana-related crimes, in addition to charging them more often with possession. It is important that the bill eliminate the criminalization of other marijuana-related crimes in conjunction with the legalization of marijuana possession.

We strongly encourage this committee to add additional provisions to this bill to establish an office to ensure that marijuana industry revenue is invested in communities that have been most harmed by drug prohibition, and to ensure that these communities have access to business licenses, in order to prevent racial disparities from replicating themselves in a legal marijuana industry.

The War on Marijuana, like the War on Drugs overall, has been a failure. It has torn apart families and communities, ruined people's lives, and acted as a vehicle for racial injustice. We urge you to support Senate Bill 1085 to mitigate these past injustices and prevent them in the future.

The ACLU-CT believes public safety is a legitimate concern when there is suspicion that someone is driving under the influence of drugs. However, the ACLU-CT believes House Bill 7372 is not the answer to protecting people driving in our state. Under this proposal, someone driving under the influence of marijuana or smoking marijuana as a passenger in a vehicle could be charged with a class C misdemeanor, which could result in up to three months in prison, a \$500 fine, or both. These are potentially severe consequences, and current tests for measuring drivers' impairment under the influence of marijuana are unreliable.

The state should not ignore drivers' civil liberties and open the state up to potential liability by relying on faulty and unproven methods, including the use of drug recognition experts, for testing drivers' impairment. The ACLU-CT believes that the state should conduct a study to explore the efficacy of drug recognition experts to ensure that people's rights are not violated by the use of such tests, and that our state would not be wasting financial resources on unproven and potentially ineffective training for police to become "drug recognition experts." Because the Drug Recognition Expert exam has never been validated using standard scientific methodologies, it is not clear that it is effective at measuring impairment. The use of the test threatens the civil liberties of drivers who test positive even when they are not impaired and undermines police who are using a tool that has never been proven to be accurate. Before Connecticut rushes into spending money to train drug recognition experts, it is wise for the state to study all potential options and consult experts in the area. We urge the legislature to keep in mind, however, that it is possible that there is no good way to determine whether someone is under the influence of marijuana.

We strongly encourage the committee to oppose House Bill 7372.