



February 12, 2024

SB 3335, SD1 Comments

Re: Strongly urging amendments to SB 3335, SD1, and urging passage if it is amended

Aloha Chairs San Buenaventura and Rhoads, Vice Chairs Aquino and Gabbard, and distinguished members of the Health and Human Services and Judiciary Committees.

My name is Karen O'Keefe. I am the director of state policies for the Marijuana Policy Project (MPP), the largest cannabis policy reform organization in the nation. I am an attorney who has worked on cannabis policy at MPP since 2003. MPP has played a leading role in most of the major cannabis policy reforms over the past two decades, including 15 adult-use legalization laws. For the past year, I have had the pleasure of working with a coalition of Hawai'i advocates as part of the Hawai'i Alliance for Cannabis Reform.

I am writing to urge you to amend and then pass SB 3335, SD1. While cannabis legalization is an essential criminal justice reform, SB 3335 and SD1 take an overly punitive approach and fail to include a sufficient commitment to equity. Alarming, the bill could result in *more* people being ensnared in the criminal justice system for cannabis instead of less.

After some introductory remarks on legalization and rebuttals to some prohibitionists' claims, I will turn to revisions that are needed to SB 3335, SD1.

I. Hawai'i should legalize and regulate cannabis for adults, with a focus on equity and justice.

I urge you to listen to Hawai'i voters¹ and legalize and regulate cannabis for adults 21 and older. Cannabis is safer than alcohol,² tobacco,³ and some medications.⁴ Adults should not be penalized for using a less harmful substance.

¹ Although it is no longer visible to the public without a fee, as of mid-2023, Civiqs polling found 73% of Hawaii residents support legalization.

² See: <https://www.mpp.org/special/marijuana-is-safer/> The chronic health effects of alcohol are responsible for more than 80,000 U.S. deaths per year, while cannabis has not been shown to increase all-cause mortality. (CDC, Annual Average for United States 2015-2019 Alcohol-Attributable Deaths Due to Excessive Alcohol Use, Muhuri PK, Gfroerer JC. Mortality associated with illegal drug use among adults in the United States. American Journal of Drug and Alcohol Abuse. 2011;37(3):155-164

³ Tobacco is responsible for more than 480,000 U.S. deaths per year, while cannabis is not known to increase all-cause mortality and has not been shown to cause lung cancer. "Health Effects of Cigarette Smoking," CDC; , Muhuri PK, Gfroerer JC. Mortality associated with illegal drug use among adults in the United States. American Journal of Drug and Alcohol Abuse. 2011;37(3):155-164

⁴ While prescription opiates cause 15,000 deaths per year, suspected cases of fatal cannabis overdoses are vanishingly rare. "Drug Overdose Death Rates," National Institute on Drug Abuse, accessed Feb. 11, 2024.

Like our country's "Noble Experiment" with alcohol prohibition a century ago, cannabis prohibition has been a harmful failure. It tears apart families, stigmatizes individuals with life-altering criminal records, and results in hundreds of traumatic arrests every year. Cannabis prohibition also drives sales underground, putting everyone involved at risk. On the illicit market, buyers and sellers alike are vulnerable to robbery and attacks. In an underground economy, workers face exploitation and abuse.

To what end? Despite more than eight decades of cannabis prohibition, half of Americans have used cannabis.⁵ Those whose lives were derailed by arrests and criminal records are arbitrary at best. Worse, the data shows who is arrested and prosecuted is marked by racial disparities.⁶

Legalization dramatically reduces the number of arrests and convictions.⁷ Only legalization allows for control to protect workers and the environment and to foster public health and safety. Only in the context of legalization can the state require lab testing and move most sales into regulated establishments that check IDs.

More than half of Americans already live in the 24 states and 3 U.S. territories where cannabis is legal. The first of these laws have been in effect for over a decade, and support has increased, not decreased. That's because voters see the sky hasn't fallen.

Cannabis legalization increases freedom, generates economic activity and taxes, allows for health and safety protections, and reduces hypocrisy. It is time for Hawaii's cannabis policy to join the 21st century.

II. Many prohibitionists' claims are untethered to reality.

In their attempt to derail legalization, opponents have made several claims that are not backed up by the data. In reality:

- **Teen cannabis use has dropped since legalization in legal states.**

Many opponents' claims are premised on the idea that youth cannabis use will increase post-legalization. In all U.S. states and territories, legalization only applies to adults 21 and older.

⁵ Justin McCarthy, "Fully Half of Americans Have Tried Marijuana," Gallup, August 10, 2023.

⁶ American Civil Liberties Union (ACLU), "A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform," 2020. Available at <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/persons-arrested>.

⁷ See: "Impacts of Marijuana Legalization in Colorado," Colorado Department of Public Safety Division of Criminal Justice Office of Research and Statistics July 2021; Gunadi C, Shi Y. Association of Recreational Cannabis Legalization With Cannabis Possession Arrest Rates in the US. JAMA Netw Open. 2022 Dec 1;5(12):e2244922. doi: 10.1001/jamanetworkopen.2022.44922. PMID: 36469319; PMCID: PMC9855298.

A decade of before-and-after data has shown that adolescents' marijuana use has not increased in legal states.⁸ As National Institute on Drug Abuse Director Nora Volkow testified at a March 23, 2022, Senate Health, Education, Labor, & Pensions Committee hearing, "in the United States, legalization by some states of marijuana has not been associated with an increase in adolescents' marijuana use."

Since then, more recent CDC data came out showing teen use has *decreased* in almost all legal states.⁹

- **There has not been an increase in psychosis in legal states.**

There may be some mental health risks related to cannabis use, particularly for those predisposed to psychiatric disorders.¹⁰ However, *legalization* does not appear to have any negative impact. Research shows that "compared with no legalization policy, states with legalization policies experienced no statistically significant increase in rates of psychosis-related diagnoses or prescribed antipsychotics."¹¹

Education, product labeling, and sensible regulations — not handcuffs, jail cells, and driving cannabis underground — are the most compassionate and productive ways to address cannabis' risks. Patients are much more likely to have an honest conversation with their physicians in the context of legalization, allowing their medical providers the opportunity to counsel patients.

- **Tourism from Japan is up post-legalization.**

Honolulu prosecutor Steve Alm claimed "Japanese tourists will stop coming to Hawaii. Full stop."¹² This is not rooted in any data and is in fact contrary to the data.

Visit California data shows trips from Japan went *up*, not down, post-legalization.¹³ There were 537,000 visits from Japan to California in 2015, the year before legalization. That increased to 555,000 in 2019. (Beginning in 2020, tourism crashed due to COVID.)

- **Fatal crashes are down in legalization states.**

⁸ See: Anderson, Mark D., et al. "Association of Marijuana Legalization With Marijuana Use Among US High School Students, 1993-2019", September 2021.

⁹ For the most recent data, see: <https://www.mpp.org/issues/legalization/teen-marijuana-use-does-not-increase/>

¹⁰ <https://www.cnn.com/2024/02/08/opinions/marijuana-cannabis-psychosis-nathan-grinspoon>

¹¹ Elser H, Humphreys K, Kiang MV, et al. State Cannabis Legalization and Psychosis-Related Health Care Utilization. JAMA Netw Open. 2023;6(1):e2252689. doi:10.1001/jamanetworkopen.2022.52689

¹² <https://www.staradvertiser.com/2023/10/08/editorial/island-voices/column-legalizing-marijuana-will-cause-harm/>

¹³ Available at <https://industry.visitcalifornia.com/research/travel-forecast> (international market forecasts, unhide columns C-L)

Opponents claim road safety will decrease with legalization. Many claims rely on a few studies indicating more drivers testing positive for cannabis post-legalization, ignoring the lack of baseline data, that testing positive for THC does not mean a person is impaired or has used cannabis recently, and the fact that legalization is coupled with an increase in reporting and in trained drug recognition experts.

There have been contradictory studies on whether legalization *correlates* (which is very different from causation) with increased crashes. Almost all of the studies cherry-pick an incomplete number of states. If you examine before-and-after data of *all* the FARS data in legalization states, you will see a decrease (as a whole) in road fatalities post-legalization.¹⁴

Those who would ignore DUI laws post-legalization are already doing so.

III. SB 3335 needs significant revisions to foster equity and avoid creating Prohibition 2.0.

While MPP strongly supports legalization, SB 3335, SD1 requires significant revisions to avoid going backwards by re-criminalizing innocuous conduct and excessively ramping up cannabis enforcement. Legalization should be rooted in equity and restorative justice, not an excessively punitive approach.

Under current Hawai'i law, possession of up to three grams is a civil offense.¹⁵ SB 3335, SD1 would go backwards, imposing possible jail time and criminal convictions for conduct that is currently a civil violation.

SB 3335, SD1 creates an over-broad open container law and requires “strict compliance” for exceptions from harsh criminal penalties. It re-criminalizes those under 21 who possess cannabis and criminalizes sober drivers — including medical patients — for modest amounts of THC long after impairment wears off. It may actually result in *more* cannabis consumers getting criminal convictions and jail time for conduct that does not put anyone in danger. These troubling provisions must be removed.

A. The per se and zero tolerance “DUI” limits must go. They will ensnare sober drivers long after impairment wears off.

SD 1 changes SB 3335’s “per se” limit for DUI from five nanograms of THC per milliliter of blood to 10 nanograms (Sections 7-10). While this is a higher threshold than the introduced bill, it remains unscientific and will ensnare sober drivers, many of whom are patients. It will also make it more difficult to obtain a conviction for those below that threshold.¹⁶ For those under 21, SD 1 has a zero tolerance level, which deems young adults

¹⁴ <https://www.nhtsa.gov/research-data/fatality-analysis-reporting-system-fars>

¹⁵ H.R.S. 712-1249 (2)

¹⁶ See, “THC per se laws don’t work and are not needed” <https://wesavelives.org/thc-per-se-laws-dont-work-and-are-not-needed-theres-a-better-way/> (discusses Colorado data)

impaired drivers for having trace amounts of THC in their system, which can occur *days* or even over a week after last using cannabis.¹⁷

The per se and the zero tolerance provision are unjust and need to be removed.

As a study by AAA Foundation for Traffic Safety found, “All of the candidate THC concentration thresholds examined [which included 10 ng/mL] would have misclassified a substantial number of driver as impaired who did not demonstrate impairment on the SFST, and would have misclassified a substantial number of drivers as unimpaired who did demonstrate impairment on the SFST.”¹⁸

Similarly, an expert commission in Michigan concluded there is no scientifically supported $\Delta 9$ -THC threshold,¹⁹ “ $\Delta 9$ -THC can fail to detect impaired drivers (when blood levels are low and impairment is high). It can also inappropriately flag unimpaired drivers or chronic users whose blood levels are higher in general (see section on behavioral effects of $\Delta 9$ -THC) even when not impaired.”

Per se laws are all the more unfair because it is impossible for individuals to know if they are above or below the threshold and can legally drive. Those who imbibe alcohol can use simple calculations to determine if they are legal to drive based on weight, the number of drinks, and time passed²⁰ or they can buy their own BAC tests for \$40.²¹ There is no such calculation or affordable and reusable test for blood THC levels. And even if there were, THC levels can increase after abstinence, including after exercise.²²

Rather than criminalizing sober drivers, Hawai'i should invest in more DRE and ARIDE-trained officers. SD 1 allows some public safety grants to be used for those purposes, but has no guaranteed funding for them. It should also create a robust public education campaign on the dangers and illegality of impaired driving.

B. The expungement section should be expanded and clarified to: require a specific authority to expunge cannabis-related convictions by a specific deadline; clearly include state-initiated re-sentencing; prevent discrimination, and require criminal records databases to remove expunged convictions.

¹⁷ Yuan Wei Peng, Ediriweera Desapriya, Herbert Chan, Jeffrey R Brubacher, “Residual blood THC levels in frequent cannabis users after over four hours of abstinence: A systematic review.”, Drug and Alcohol Dependence, Volume 216, 2020, 108177, ISSN 0376-8716, www.sciencedirect.com/science/article/abs/pii/S0376871620303422

¹⁸ “An Evaluation of Data from Drivers Arrested for Driving Under the Influence in Relation to Per se Limits for Cannabis,” AAA Foundation for Traffic Safety, May 2016

¹⁹ “Report from the Impaired Driving Safety Commission,” March 2019.

²⁰ <https://www.calculator.net/bac-calculator.html>

²¹ See: https://www.amazon.com/BACtrack-Keychain-Breathalyzer-Portable-Keyring/dp/B00LV0U27U/ref=zg_bs_g_15992781_d_sccl_3/144-4587621-0847464?psc=1

²² See: David Rudoi, “New Study Shows THC Levels Often Spike Well into Periods of Abstinence,” Jan 9, 2012 <https://rudoilaw.com/new-study-shows-thc-levels-often-spike-well-into-periods-of-abstinence/>

We were glad to see SD 1 include expungement language, rather than a weak study that was in the introduced version of the bill. (§A-63) However, the language needs significant revisions to have more than a minimal impact.

Criminal records trigger thousands of collateral consequences that make it difficult to get housing, employment, and jobs.²³ One survey found that 92% percent of employers report using criminal record checks on some or all applicants.²⁴ These barriers to legally making ends meet increase the likelihood that people will turn to the underground economy. Fifty-five percent of people with records report difficulties attaining a job, maintaining employment, or making a living.²⁵ A lifetime of stigma and collateral consequences is unduly harsh and inappropriate for cannabis, particularly in the context of legalization.

While it is encouraging to see expungement language added, it falls short of many recent legalization states. The bill needs to be modified to be clearly state-initiated, with clear obligations on state actors and deadlines. This is essential because few eligible individuals complete petition-based expungement,²⁶ which is costly and cumbersome. The Attorney General's office indicates there are over 50,000 cannabis possession arrest records in Hawai'i.²⁷

SD 1 is ambiguous regarding what offenses qualify for expungement and re-sentencing. It provides that arrest and criminal records for an offense "the basis of which is an act permitted ... or decriminalized" by the law "including the possession or distribution of marijuana, shall be ordered to be expunged in accordance with the provisions of this section." The bill is internally contradictory about distribution. It says "including ... distribution." But it also says it applies to conduct legalized or decriminalized by the law, in which only state-licensed sales are allowed. There is a real possibility distribution, cultivation of over the limit, and possession of over the limit will be excluded absent clarification.

All cannabis convictions should be subject to a state-initiated review. All possession charges should be automatically expunged, and other offenses should be either automatically expunged or should be expunged via a state-initiated process absent some compelling reason why doing so is not in the interests of justice.

²³ See: Jamiles Lartey, "How Criminal Records Hold Back Millions of People," *The Marshall Project*, April 1, 2023.

²⁴ Society for Human Resources Management Background Checking: Conducting Criminal Background Checks, slide 3 (Jan. 22, 2010) https://www.slideshare.net/shrm/background-check-criminal?from=share_email

²⁵ Alliance for Justice national survey of people with records: <https://asj.allianceforsafetyandjustice.org/wp-content/uploads/2023/05/2023-05-15-2023-TimeDoneSurvey-Full.pdf>

²⁶ J.J. Prescott and Sonja B. Starr, "Expungement of Criminal Convictions: An Empirical Study," University of Michigan Law School, 2020. (Finding, "[A]mong those legally eligible for expungement, just 6.5% obtain it within five years of eligibility.")

²⁷ "Report Regarding The Final Draft Bill Entitled "Relating to Cannabis," Prepared by the Department of the Attorney General"

SB 3335 should also create a state-initiated and rapid process to consider the release of all individuals in jail or under supervision for cannabis offenses. There should be a presumption of relief.

To more comprehensively prevent lives from being ruined for prior records, the bill should prohibit landlords and employers from inquiring about and discriminating against applicants and workers for cannabis offenses. Some applicants will not realize they can deny having had a conviction and will “check the box,” some employers may check criminal records database that will not have been updated (especially if the law does not mandate updates), and some Hawai’i residents may have convictions during visits to or while living in other jurisdictions. The law should provide:

- 1) employers, licensing boards, landlords, and state agencies cannot ask about or take a negative action based on prior cannabis use; and
- 2) employers, licensing boards, landlords, and state agencies cannot ask about or take a negative action based on prior cannabis-related activity that has been expunged or that would be expunged were it committed in Hawai’i.

Finally, SB 3335 should also require criminal records databases to remove expunged convictions. Most employers and property managers find out about criminal convictions not from government databases directly, but from their party criminal history screening services. To ensure expunged convictions do not continue to haunt individuals, SB 3335 should mandate that screening services remove all expunged convictions from the next update. You could draw from Indiana Code § 35-38-9-12 or Virginia Code § 19.2-392.16 for language.

C. SD 1 includes alarming re-criminalization and a “strict compliance” standard. Those must be removed to avoid creating prohibition 2.0.

Any technical violation should carry a modest civil penalty, not jail time.

- **The “open container” language re-criminalizes conduct that is currently punishable by a \$130 fine. It must be removed or revised.**

SB 3335 and SD 1 impose up to 30 days in jail and/or a fine of up to \$2,000 for a driver or passenger who possesses in the passenger area a cannabis package that has *ever* been opened or its seal broken, loose cannabis, or any pipe. (Section 6, "§291) This is extreme.

Unlike alcohol, cannabis is a medicine for many, making this broad prohibition particularly inappropriate. Hawai’i does not criminalize containers that have ever been opened of any other medicine. Patients need to carry their medicine with them and may need to use their medicine in a parked car when they arrive at their destination due to restrictions on where they can use it, including schools, medical facilities, and daycare. Moreover, a container of cannabis edibles and flower often has 10 or more servings which patients and consumers

use over many days or weeks. This is not the case for bottles of alcohol or cans of beer, which are often consumed in one sitting.

If there must be an open container law, it needs to:

- exempt medical cannabis,
- impose a violation/fine no greater than the current penalty (\$130),
- specify where cannabis can be legally stored in a vehicle with no trunk/where the entire vehicle is a passenger area, and
- exempt public transportation, rideshare passengers, taxis, limos, busses/shuttles, and areas of RVs other than the drivers' area.

- **The “strict compliance” standard and failure to repeal criminal laws will result in misdemeanor and felony penalties for innocuous conduct.**

Numerous provisions of SB 3335, SD 1 prohibit relatively innocuous conduct. This includes:

- requiring cannabis to be stored in “sealed child-resistant and resealable packaging with original labels,” (§A-51)(4))
- requiring cannabis to be cultivated out of public view (§A-42 (d)), and
- prohibiting cannabis use — even by non-smoked means — in a public or a parked car, even if it is by a patient (§A-41 (e)).

Most of those activities should not be prohibited at all. If they are prohibited, punishments should be modest civil fines, not criminal matters carrying serious jail time.

Alarmingly, SD 1 keeps criminal laws against possession and cultivation of cannabis on the books — even for adults — and only exempts those in “strict compliance.” (§A-4 and throughout) It provides only an “affirmative defense” and says “Actions that do not strictly comply with the requirements of this chapter and any rules adopted thereunder shall be unlawful and subject to civil, criminal, or administrative procedures and penalties, or all of the above, as provided by law.” (§A-4 (c))

SB 3335 should be revised to remove criminal penalties for adults who grow or possess up to the possession limit. Then, it should impose modest civil fines and/or community service for narrowly-crafted technical violations and activities like public smoking. This is what other states do.

Here are a few examples of the extreme, punitive nature of SD 1:

- A couple with arthritis who live alone store their 10 ounces of cannabis in a glass jar they can open instead of “sealed child-resistant and resealable packaging with original labels.” If they call 9-1-1 for help after a fall and their cannabis is discovered, they would face a misdemeanor conviction, up to a year in jail, and/or a fine of up to \$2,000.

- An adult who grows cannabis that is slightly visible through a window, or who violates whatever technical rules regulators impose, would face felony penalties.

- **The bill would criminalize and jail minors in possession.**

While we have no objection to continue prohibiting the possession of cannabis by those under 21 to use cannabis (other than medical cannabis), SD 1 *increases* penalties to impose up to 30 days in jail and a criminal record for simple possession by those 18-20. (Section 39, §712-1249 (2)) The current penalty is a \$130 civil fine. This *re*-criminalization is unacceptable.

A conviction, jail time, and even probation requirements can have a devastating impact. Probation meetings can be an insurmountable obstacle to those lacking transportation or with a conflict with their school or jobs. While SD 1 provides these convictions are expungable, the public defender and Innocence Project testified in House Judiciary about how few people avail themselves of this onerous process. The conviction should not be imposed in the first place. A civil fine is far more reasonable.

These penalties need to be removed.

- **The amount allocated to law enforcement and regulation is excessive, as is the creation of 25 new law enforcement positions. The amount dedicated to reparative justice and equity is too low and commingled with enforcement.**

Cannabis regulation and enforcement should be covered by licensing fees, as is the case in many states. Yet, SD 1 allocates 50% of excise taxes to a “cannabis regulation, nuisance abatement, and law enforcement special fund” on top of application and licensing fees. (Section 26, §237-13 (9)(A)) That percentage should be eliminated or dramatically decreased to allow funds for the general fund and to increase social equity funding.

We are alarmed that the bill would create 25 new enforcement positions, zero of which are tasked with state-initiated expungement and release. The bill creates 17 new FTE staff positions in the enforcement unit plus eight FTE positions in the AG’s drug nuisance abatement unit. (Section 61, 63) There should be *less*, not more cannabis enforcement post-legalization.

D. **SB 3335, SD 1 lacks common protections to prevent cannabis consumers’ lives from being ruined.** They need to be added.

Adult-use states are increasingly including provisions to ensure lives are not ruined for the responsible use of cannabis. Protections from the following should be added to the bill to prevent individuals from:

- losing custody of their children for the responsible use of cannabis;
- losing state benefits for the responsible use of cannabis;
- losing professional or occupational licenses for responsibly using cannabis;
- having parole or probation revoked for using or testing positive for cannabis, absent an individualized finding that cannabis use would be a risk for that individual and a condition of parole based on that individualized finding;
- being fired or not hired — at least from a state or local government job — for using cannabis off-hours, and
- being stopped and searched on the basis of the odor of cannabis or possession within the legal limit. Once cannabis is legal, its odor (real or imagined) should not be grounds for a violation of privacy that is otherwise protected by the Fourth Amendment. Traffic searches disproportionately target people of color despite them being less likely to have contraband.²⁸

E. The bill should not put an unpaid, part-time board in charge of cannabis regulation.

People should get paid fairly for their work, especially for such important work to regulate a large industry. Having unpaid part-time workers make major decisions by committee — including rules, licensing, and hiring the executive director — will likely lead to delay, bad decision-making, a lack of accountability, and other issues. One cannot expect the same time commitment and mastery of issues of volunteers who have other full-time jobs.

The AG's report notes Massachusetts as an inspiration. However, Massachusetts does not attempt to have an unpaid board for such a weighty task. Massachusetts' commissioners are paid six-figure salaries for their work.²⁹ In addition, Massachusetts' commission has been plagued by controversy and serious allegations, leading to the resignation of the former chair.³⁰

SD 1 reduced by one the number of possible board members, requiring only four. This would add a new complication as it would likely require 3-1 or 4-0 votes to approve anything. If there must be a board, the number of members should be odd.

It is also vital that any board be composed of people with appropriate backgrounds and who are committed to the mandate of their work. No prohibitionists should be charged with overseeing legalization, or it will be a recipe for obstruction and delay.

²⁸ Magnus Lofstrom, Joseph Hayes, Brandon Martin, and Deepak Premkumar, with research support from Alexandria Gumbs, "Racial Disparities in Law Enforcement Stops," October 2021.

²⁹ https://www.masslive.com/news/2017/08/marijuana_in_massachusetts_her_2.html

³⁰ <https://www.nbcboston.com/news/local/mass-cannabis-control-commission-leadership-fight/3209350/>

F. The social equity section provisions need to be strengthened, both related to allocations and licensing.

In SD 1, the funds that were in SB 3335 are combined into two funds. Fifty percent of the revenue will be allocated to social equity, public education, *and* public safety grants. This creates the risk that *none* of the excise tax will actually be allocated to equity. At least 60% of the excise revenue should go to social equity and reparative justice.

While many of the possible public safety grants' areas have a focus that is rooted in reparative justice and uplifting communities, the possible uses of the public safety fund include: "grants to state and county law enforcement agencies for equipment and training to assist with investigating and prosecuting illegal activities related to cannabis" and "grants for the effective enforcement and prosecution of violations of the nuisance abatement laws."

Any grants that are not harm reduction oriented should be removed from the public safety grants program and should instead be taken from the funds directed to law enforcement and regulation.

The bill should also spell out a minimum threshold of licenses to be issued to equity applicants and ensure that licensing happens in a timely manner. We are also concerned an individual can be a social equity applicant if they simply have 51% of employees currently living in a disproportionately impacted area. This should be eliminated as it will dilute ownership by members of impacted communities. As a practical matter, applicants do not yet have employees and employment composition will change a lot during the length of licensure.

G. SB 3335 needs to clearly exempt medical cannabis sold at dual-use retailers from the 10% excise tax.

Registered patients should be able to purchase from any dispensary and should not be subject to "sin taxes" for buying their medicine.

H. Additional areas of concern

In addition to the previously listed issues, we are concerned about these provisions:

- The bill should not prohibit possession of cannabis at universities and similar locations. (§A-5 (4))
- Processors and retailers should not be required to separate medical cannabis and adult-use cannabis, except for medical-only products, such as those with higher THC limits. (§ A-17 (14))
 - Often the same product is used by both patients and consumers — many of whom use cannabis as an over-the-counter medicine. There's no good policy reason to separate the products out before retail sales.

Requiring it could lead to shortages if predictions aren't 100% accurate of how much patients vs. adult-use consumers will consume.

- The bill weakens the provision providing the medical use of cannabis doesn't disqualify a patient from an organ transplant or other needed medical care. (§A-41 (f)) It allows a provider to deny necessary care if they think it increases the risk of a bad outcome, even if their judgement is not the scientific consensus, and even if the patient would still be better off with the procedure. This needs to revert to the original language.
- SB 3335 allows the board to come up with restrictions on medical home cultivation, which appears to be a new provision not in existing law (§A-42 (f)) That should be removed.
- Other than pardoned and expunged convictions, and most cannabis convictions, it bars anyone with a felony from working at any cannabis business. This is at the very least overbroad. (§A-79 (f))
- There should be a clear deadline for licensing new businesses, and a floor for a reasonable number of new licenses, with a focus on small businesses.
- Bans cannabis and hemp products "intended to be introduced via non-oral routes of entry to the body ..." "external topical application to the skin or hair." This would ban products that are currently providing relief, including suppositories and products for menopausal (and other) folks with vaginal dryness. (§A-84 (c), §A-134 (e))
- Classifies distributing marijuana concentrates to someone from 18-21 as "promoting a harmful drug in the first degree." (Section 38). The current age for this extremely harsh penalty, and for all other harmful drugs, is 18. This appears to apply even if both the parties are under 21, and even if the recipient is the same age or older than the person sharing or if the parties are spouses. This is harsher than the penalty for far more dangerous drugs.
- Classifies distributing marijuana to someone from 18-21 as "promoting a harmful drug in the second degree." (Section 40.) The current age is 18.
- As with the above, this appears to apply even if both the parties are under 21, and even if the recipient is the same age or older than the person sharing or if the parties are spouses. This is harsher than the penalty for far more dangerous drugs.
- Sec 78 should be deleted. It nullifies any section that would jeopardize federal funding. If the federal government were to threaten funding, the legislature should evaluate whether to change the law to keep funding, or to stick to its guns.

Please don't hesitate to reach out if I can answer any questions or if you would like any draft language.

Mahalo for your time and consideration,

A handwritten signature in black ink, reading "Karen O'Keefe". The script is fluid and cursive, with the first name "Karen" and last name "O'Keefe" clearly distinguishable.

Karen O'Keefe
Director of State Policies
202-905-2012
kokeefe@mpp.org