



Testimony for Commission on Police Accountability, Community, and Transparency

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Submitted by Matt Simon, New England political director, Marijuana Policy Project

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Dear Commission Members,

My name is Matt Simon, I live in Manchester, and I work for the Marijuana Policy Project (MPP), a non-profit organization dedicated to ending cannabis prohibition in the United States. Prior to working for MPP, I founded the New Hampshire Coalition for Common Sense Marijuana Policy in 2007 and served as its director through 2010.

I have also enjoyed the privilege of working on cannabis policy issues in several other states, including Massachusetts — where I served as a member of the drafting committee for Question 4, the ballot initiative that legalized cannabis for adults' use in 2016 — and Vermont, which in 2018 became the first state to legalize cannabis for adults' use through the legislative process rather than directly by voters.

There are three main points I'd like to make:

(1) Cannabis legalization is essential for improving police-community relations.

The unpopularity of cannabis prohibition presents an enormous challenge to police officers and prosecutors as they seek to earn the trust of the communities they serve. Consecutive polls conducted in 2017 and 2019 by the University of New Hampshire Survey Center found that 68% of Granite Staters support legalization.^[1] Similarly, the national Gallup poll found in 2019 that 66% of Americans support legalization.^[2] A Gallup poll conducted in May 2020 found that a whopping 70% of Americans now believe “smoking marijuana” is morally acceptable.^[3] Despite this sea change in public opinion, New Hampshire continues to punish adults for simple possession and maintains criminal penalties for possession of more than $\frac{3}{4}$ ounce or any number of cannabis plants.

Additionally, the racially disproportionate impacts of cannabis prohibition have long been undeniable, both nationally and in New Hampshire. According to a data reported by the FBI and published by the ACLU, Blacks in the United States were 3.6 times more likely than whites to be arrested for cannabis possession in 2018 despite using cannabis at nearly identical rates.^[4]

New Hampshire's law decriminalizing possession of $\frac{3}{4}$ ounce or less of cannabis, which took effect in September 2017, resulted in somewhat fewer total arrests for cannabis possession in 2018, but decriminalization did not reduce the racial disparity — Blacks in New Hampshire were still 4.11 times more likely than whites to be arrested, and arrests for cannabis possession continued to comprise

43% of all drug arrests in the state.

While these racial disparities persisted in all 50 states in 2018, the data indicate that disparities were much lower in states that had significant experience with cannabis legalization: Colorado had the lowest racial disparity of any state (1.54x), and the other three states that pioneered cannabis legalization in 2012 and 2014 joined Colorado among the seven states with the lowest disparities (Alaska, 1.56x; Oregon, 1.82x; Washington, 2.14x). In addition, the total number of arrests and citations — and unnecessary police-civilian interactions — plummeted in legalization states.

One major problem with decriminalization is the fact that police officers continue using their reported smell of cannabis — or the notoriously unreliable “alert” of a canine — to justify invasive searches or seizures of a vehicle or other property. This contributes to the unequal enforcement of laws: a study found that African Americans in the U.S. are twice as likely as whites to be searched during a traffic stop, even though contraband is found more often on white drivers.^[5] In an effort to reduce racial disparities in enforcement, states with legalization laws have curtailed the ability of police officers to justify searches based on the smell of cannabis, and New Hampshire should do the same.^[6]

Over time, it has become increasingly difficult to understand how the prohibition of cannabis for adults’ use can continue to be viewed as a legitimate function of government. The first article of the New Hampshire Constitution declares that “all government of right originates from the people, is founded in consent, and instituted for the general good.” Similarly, the U.S. Declaration of Independence advises that the “just powers” of government are “derived from the consent of the governed.” Clearly, it is no longer possible to argue that cannabis prohibition is “founded in consent” or that it enjoys “the consent of the governed.”

After thoughtful consideration of the issue, it should be clear that cannabis legalization, while not a panacea, is a necessary step in repairing damaged relationships between the criminal justice system and the individuals, families, and communities it is supposed to serve.

(2) Although we often hear that “police don’t make the laws, they just enforce the laws,” this is entirely false — in particular, the New Hampshire Association of Chiefs of Police has long been known for its aggressive lobbying tactics in opposition to medical cannabis, decriminalization, and other popular and important criminal justice reforms, and these tactics have repeatedly worked.

Another important factor negatively impacting police-community relationships is the way police officers are represented at the statehouse. If there’s one thing I can conclude with certainty after 14 years of advocating for bills that were opposed by the police chiefs’ association and other law enforcement agencies, it’s that the adage “police don’t make the laws, they just enforce the laws” is a pernicious and remarkably persistent myth.

The chiefs’ association, in particular, has often purported to speak for all members of law enforcement in opposition to cannabis reform legislation. Here’s an example from 2010:

“You may hear today from a couple of police officers who will testify in favor of this legislation. Let me be very clear: they do not represent the law enforcement officers in our communities — not even one percent of the law enforcement officers in our communities. If this legislation is passed, we will see a wave of devastation not seen before in our wonderful state.” — former Enfield Police Chief Richard Crate, speaking in the House Criminal Justice and Public Safety Committee on behalf of the chiefs’ association on January 20, 2010^[7]

The bill in question, HB 1653, would have reduced the penalty for possessing one-quarter ounce or less of cannabis to a violation punishable by a fine of up to \$200.

Fortunately, we know that many rank-and-file officers feel very differently about cannabis policies than the N.H. chiefs' association. A 2016 Pew survey of nearly 8,000 police officers nationwide found that 68% believed cannabis should be legal for medical use and 32% believed it should be legal "for personal or medical use." [8] These numbers are consistent with the private conversations I've had with many New Hampshire police officers who have told me they personally support legalization but are understandably reluctant to defy their superiors in public.

Over the course of the last 14 years, police chiefs have also appeared repeatedly on television and radio programs to argue against medical cannabis, decriminalization, and legalization bills, further contributing to their adversarial relationship with Granite Staters who have friends, family members, or neighbors who use cannabis for medical or non-medical reasons.

(3) It doesn't have to be this way.

The chamber of the New Hampshire Legislature that most closely represents the people of our state has repeatedly tried to reform cannabis policies, but most of these efforts have been rebuffed by the Senate and executive branch after passing the House. For many years, the police chiefs' association and other law enforcement entities have relied on their close relationships with governors and senators to kill legislation they don't like (it only takes nine votes to block a veto-override in the Senate), and this strategy has proven very effective over the years.

If it had been up to the House, decriminalization would have become law in 2008 (HB 1623) instead of 2017, medical cannabis legislation would have passed in 2009 (HB 648, veto-override fell two votes short in the Senate) instead of 2013, and the state would have passed a comprehensive bill to legalize and regulate cannabis for adults' use in 2019 (HB 481). [9]

In each of these cases, the chiefs' association and others in law enforcement have succeeded in delaying progress on reform for many years, in spite of public opinion and the growing body of data that shows cannabis policy reforms have proven beneficial for other states. Additionally, the most unpopular aspects of New Hampshire's medical cannabis and decriminalization laws — e.g., the fact that home cultivation remains a felony, the "decrim" threshold being $\frac{3}{4}$ ounce, etc. — resulted from demands made by police chiefs while those bills were being considered by the General Court.

Similarly, the state's "Granite Hammer" and "Granite Shield" responses to the overdose crisis should be thoroughly re-examined in light of their impact on police-community relations.

Thank you, commission members, for your time and commitment to improving New Hampshire's criminal justice policies. If you have any questions regarding cannabis policy, please feel free to reach out to me at msimon@mpp.org.

[1] https://scholars.unh.edu/survey_center_polls/554/

[2] <https://news.gallup.com/poll/267698/support-legal-marijuana-steady-past-year.aspx>

[3] <https://news.gallup.com/poll/312929/record-low-say-death-penalty-morally-acceptable.aspx>

[4] <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>

[5] <https://www.washingtonpost.com/news/monkey-cage/wp/2018/07/17/what-data-on-20-million-traffic-stops-can-tell-us-about-driving-while-black/>

[6] <https://www.bostonglobe.com/news/marijuana/2019/01/14/vermont-ruling-says-scent-burnt-marijuana-not-probable-cause-for-search-seizure/jXbd3w4lgsch8QYD179UmM/story.html>

[7] <https://www.youtube.com/watch?v=lnyDY-3JDC0>

[8] <https://www.pewsocialtrends.org/2017/01/11/police-views-public-views/>

[9] Additionally, at least one decriminalization bill passed the House in the 1970s, but it did not pass the Senate.