



MPP Testimony on S. 21 — NJ Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act

November 9, 2020

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Dear Chairman Scutari, Vice Chair Pou, and members of the committee of the Judiciary Committee:

For eight decades, New Jerseyans have been subject to traumatic arrests and incarceration and marked with a scarlet letter for cannabis — a substance that is far safer than alcohol.^[1] Those who sell and buy cannabis are at risk on the illicit market, where both parties are vulnerable to violence, and the cannabis is untested and unregulated. We are grateful to the governor, legislative leaders, and legislative champions for working to pass legalization law since 2018 and for referring the question voters when the votes were not there to pass the issue directly. We also appreciate Assemblywoman Quijano and Assemblywoman Holley for their efforts to promptly implement the will of voters, to legalize adult-use possession and craft a regulatory structure.

The Marijuana Policy Project (MPP) supports ending cannabis prohibition in a way that repairs damage inflicted by criminalization. That includes expungement, provisions to ensure diversity and social equity in the industry, and reinvestment in the communities most impacted by the war on cannabis. While S. 21 has many commendable provisions and features, we have a number of suggestions to strengthen the proposal to ensure the goals of equity and justice are at the forefront.

I. We encourage the committee to strengthen provision to ensure equity in the industry, including by removing the property requirement.

We appreciate and embrace S. 21's goal of a diverse, inclusive cannabis industry.

S. 21 endeavors to have 15% of cannabis licenses issued to minority-owned businesses and 15% to women or veterans. It also provides for 25% of licenses to be issued to microbusinesses and provides for conditional licenses, which are reserved for applicants with less income. Another way S. 21 seeks to achieve equity is providing for prioritization of applicants related to "impact zones" — which are larger cities or cities with disproportionate arrests, crime rates, and unemployment. Applicants will be prioritized if they have at least one "significantly involved person" who has lived in an impact zone for at least three years, or if they have a plan to employ 25% of employees from an "impact zone."

While we commend the diversity goals, it is unclear if S. 21 includes adequate means to achieve them. It charges the Office of Minority, Disabled Veterans, and Women Cannabis Business

Development with developing “unified practices and procedures for promoting participation” in the cannabis industry “by persons from socially and economically disadvantaged communities,” including minority businesses and women’s businesses. The office will engage in advertising and promotional campaigns and hold seminars, including information on business management and marketing.

However, the factors that will be considered for licensing favor applicants with significant resources and those affiliated with existing operators — in New Jersey or elsewhere. The bill envisions a limited number of licenses and scored criteria for licensing. Applicants must have local approval and have secured the right to use property — both of which could be detrimental to the goals of equity.

Applications are supposed to include “a letter or affidavit from appropriate officials of the municipality that the location will conform to local zoning requirements” and “proof of local support for the suitability of the location, which may be demonstrated by a resolution adopted by the municipality’s governing body indicating that the intended location is appropriately located.” While requiring applications to conform to local zoning is fairly standard, S. 21’s language favoring a proactive local blessing would tilt the scales of those with significant political connections. In Massachusetts, “host community agreements” — negotiated between a locality and a given applicant — have thwarted equity goals.

Regarding the property requirement, S. 21 provides “an application shall be disqualified from consideration unless it includes documentation demonstrating that the applicant will have final control of the premises upon approval of the application, including, but not limited to, a lease agreement, contract for sale, title, deed, or similar documentation.” Thus, applicants will need to either purchase property or have a lease (or an agreement for a lease or purchase) before filing an application. Yet many — likely most — of these applicants will never be licensed due to the limited number of licenses. It would be difficult to get licensed unless the applicant had already spent a large amount of capital they could afford to lose. Other states, such as Illinois and Maryland do not require property during an initial application process. We recommend at least specifying that conditional licenses and microbusinesses do not have to have this documentation upon an initial application. They could be conditionally licensed, pending approval of the location. Applicants could still be required to include the city — or even census tract — where they intend to operate to ensure geographic diversity, without having this burdensome and costly property requirement.

II. Possession should be legalized immediately, and secure home cultivation should be allowed.

If possible, we urge that cannabis possession be legalized immediately for adults 21 and older, and that it be decriminalized immediately for those under 21. Police make a marijuana possession arrest in New Jersey every 22 minutes.^[2] More than two-thirds of New Jersey voters have cast their ballots for legalization. It is imperative that the state immediately stop turning lives upside-down for possessing a substance that voters have chosen to legalize.

We also encourage the legislature to allow the secure cultivation of a limited number of cannabis plants, as 12 of the other 14 legalization states have done. Just as adults can brew their own beer, they should be able to manufacture their own cannabis. This is particularly important for those using cannabis for medical purposes, many of whom cannot afford medical cannabis.

III. The penalty — at least \$250 — for possession of cannabis by those aged 20 or younger

is excessive.

While MPP shares the goal of reducing cannabis by youth (apart from medical cannabis with a doctor's support), we wholeheartedly agree that arrest and incarceration are not the appropriate approach to possession of cannabis by those under the age of 21. However, the fine for underage possession in a public place — a *minimum* of \$250 — is excessive and could be devastating to young people who are already struggling. A \$250 fine could cause a person to miss rent and lose their housing.

IV. The “open package” penalty is inappropriate.

S. 21 would inappropriately treat an open package of cannabis like an open can of beer. A first offense for having an unsealed container of cannabis in the passenger compartment of the car would carry a fine of \$200. This will result in continued penalization of individuals who are in no way a public danger. A container of edibles may have 10 servings, with a jar of flower having even more. The fact that a container of cannabis — including a passenger's — with many servings has been opened does not mean that the driver was impaired. In this time of national reckoning about racial justice and policing this is a step in the wrong direction. It opens the door for unnecessary police-civilian interactions, intrusive questioning, and penalization for conduct that in no way endangers others.

V. Individuals with U.S. territories and other countries should not be excluded.

S.21 only allows an individual to enter a cannabis establishment if they display a U.S. passport or a driver's license or ID issued by a state. This appears to exclude most residents of Washington, D.C., of U.S. territories, and other countries, along with Native American tribal citizens. (The exception would be those who have a U.S. passport with them.) Washington, D.C., Guam, the Northern Mariana Islands, Uruguay, and Canada have all legalized cannabis — and other territories and countries can be expected to continue to follow suit.

There is no good policy reason to exclude these Americans or foreign visitors. We are not aware of any legalization state that prohibits visitors from other countries or U.S. territories from purchasing cannabis for their own use. We recommend allowing retailers to accept passports from other countries and driver's licenses and other photo IDs from U.S. territories, D.C., and Native American tribes.

VI. The language appears inconsistent regarding whether cannabis remains a controlled substance — and to what extent excessive penalties for using cannabis and not making a “lawful disposition” remain.

S. 21 removes marijuana from Schedule I and prohibits it from being re-scheduled. In the instance of cannabis, this *should* remove existing penalties for being under the influence of a controlled substance and for failing to hand one's cannabis over to law enforcement. But that is unclear. It seems the disorderly conduct penalties for unauthorized sales or cultivation of a controlled substance seem to still apply to cannabis.

Moreover, section 56 proposes revisions to N.J.S.2C:35-16 that suggest these penalties still apply to cannabis. It says “ the forfeiture or postponement of driving privileges set forth in subsection a. of this section shall not apply to any person convicted of or adjudicated delinquent for an offense which if

committed by an adult would constitute:" ... "(2) using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of paragraph (3) of subsection a., or subsection b. or subsection c. of N.J.S.2C:35-10."

To avoid any confusion, cannabis should explicitly be removed the provisions penalizing being under the influence of a controlled substance and for failing to hand one's cannabis over to law enforcement.

2C:35-10 b reads, "Any person who uses or who is under the influence of any controlled dangerous substance, or its analog, for a purpose other than the treatment of sickness or injury as lawfully prescribed or administered by a physician is a disorderly person." It should include an explicit exception for cannabis.

In addition to the need to except legal use by adults, this penalty could negate the decriminalization of cannabis for those under 21, as it would remain a disorderly persons offense to be under the influence of cannabis.

2C:35-10 c. reads, "Any person who knowingly obtains or possesses a controlled dangerous substance or controlled substance analog in violation of subsection a. of this section and who fails to voluntarily deliver the substance to the nearest law enforcement officer is guilty of a disorderly persons offense. Nothing in this subsection shall be construed to preclude a prosecution or conviction for any other offense defined in this title or any other statute."

Here, too, this would seemingly negate the decriminalization of cannabis for those under 21, as it would remain a disorderly persons offense to fail to hand cannabis over to law enforcement.

VII. Conclusion

Thank you for your time and attention to this important issue. We strongly support the aims of S. 21, and urge the legislature to improve the bill and swiftly enact it.

If you have any questions or need any additional information, we would be happy to help and can be reached at the email address or phone number below.

Sincerely,

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[1] Cannabis is far less toxic, less addictive, and less harmful to the body than alcohol. For more details and citations, see www.mpp.org/marijuana-is-safer/.

[2] Unequal & Unfair: NJ's War On Marijuana Users, ACLU New Jersey. Available at

<https://www.aclu-nj.org/theissues/criminaljustice/unequal-unfair-njs-war-marijuana-users>.