Written Testimony Supporting, with Proposed Amendments, Senate Bill 16, An Act Concerning the Adult Use of Cannabis

Senator Winfield, Representative Stafstrom, Ranking Members Kissel and Rebimbas, and distinguished members of the Judiciary Committee:

My name is Kelly McConney Moore, and I am policy counsel for the American Civil Liberties Union of Connecticut (ACLU-CT). I am submitting this testimony in support of Senate Bill 16, An Act Concerning the Adult Use of Cannabis, with proposed amendments.

Introduction

At the ACLU-CT, we believe in the complete decriminalization of cannabis—from cultivation to sale and delivery to possession and use. Criminalizing the use, possession, manufacturing, or distribution of cannabis violates the principle that the criminal law may not be used to protect individuals from the consequences of their own autonomous choices. Criminalization of cannabis also represents a misguided attempt to impose a particular view of morality and responsibility on everyone—an imposition that is at odds with individual liberty and self-determination.

Our support for full decriminalization is strengthened by the racist history of enforcement of cannabis offenses in Connecticut.1 Laws criminalizing cannabis impose the hardships of an arrest and arrest record, and often prison terms, on otherwise law-abiding people, who are disproportionately young, poor, and people of color.2 Black people, particularly, have been harmed by this disparity. In 2010, prior to decriminalization, Black Connecticut residents were three times more likely to be

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arrested for marijuana possession than whites, despite similar rates of cannabis use. Criminalization of cannabis has been selectively enforced, and this enforcement has relied on entrapment, illegal searches, and other methods that violate civil liberties. 

Connecticut took a step in the right direction when it decriminalized adult possession of small amounts of cannabis and legalized medical cannabis. The same racial disparities that existed in our state in arrests for cannabis possession, however, have been replicated in citations for civil offenses. This bill to fully legalize cannabis could be a way to honor individual privacy rights, prevent discrimination, and remedy the disparate burdens that cannabis enforcement has placed on youth, communities of color, and poor communities throughout our state — but only if legalization is accomplished thoughtfully and equitably. This bill is well-intentioned but raises serious due process concerns around the changes to DUI procedures. It also requires quite a few amendments to achieve real equity and to avoid further institutionalizing discrimination and disparity.

**Due Process Concerns with DUI Provisions**

While the ACLU-CT agrees that people should not operate vehicles while intoxicated, the procedures amended and created in Senate Bill 16 raise serious due process concerns. First, Sections 11(d)(2) and 16(d)(2) of the bill allow police employees to immediately revoke a person’s driver’s license if they suspect the person is under the influence of drugs or alcohol, even if that person has passed a roadside drug or alcohol test. The bill eliminates an existing statute that provides that a police employee cannot confiscate a person’s license while the results of a drug or alcohol test are pending. Imposing a potentially life-altering penalty without supporting evidence, much less adjudication of guilt, violates the due process rights of the person whose license was revoked.

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Senate Bill 16 also allows for so-called “drug recognition experts” to assess a person without even speaking to them, and to determine conclusively that a person is intoxicated. That opinion is permitted as expert evidence in court under the bill. This raises at least two concerns. First, a person may be assessed without their knowledge or consent, and it is not clear from Senate Bill 16 whether such “experts” are trained on the way that disabilities, neurodivergences, medical conditions, cultural differences, and other characteristics can impact a police employee’s assessment of sobriety. In addition, by prequalifying such police employees as “experts,” this bill strips courts of their discretion to determine if a person is qualified as an expert on a case-by-case basis, as is the norm in courts in this country.

Senate Bill 16 seems to provide that a person can be made to buy and use an ignition interlock device based on the report of a police employee, rather than an adjudication. It also imposes this penalty on people who were under the influence of THC, despite the interlock device being unable to measure THC. This violation of that person’s due process rights is not even linked to a public safety justification.

At a hearing for a person accused of driving while intoxicated, the government does not have to satisfy the “beyond a reasonable doubt standard” when presenting evidence of intoxication, according to Sections 11(g)(3) and 16(g)(3). Instead, the government need only show “substantial evidence” that a person was operating a vehicle while intoxicated. This standard does not provide true due process and should be changed.

Finally, and possibly most problematically, the bill provides that roadside tests that show THC in the blood or urine would be conclusive, non-rebuttable proof of intoxication in Sections 11(g)(2) and 16(g)(2). THC, though, is known to persist in blood or urine for days or even weeks,⁸ meaning that a positive test does not actually demonstrate intoxication at all. Under this bill, a person could be presumptively found to be guilty of driving while intoxicated even if they were wholly sober. This is truly alarming and requires immediate amendment.

While we support the bill for its overall benefits, the lack of due process in the DUI sections of Senate Bill 16 present grave concerns. If the bill moves forward out of this Committee, the ACLU-CT will continue to view these amendments as necessary to the passage of this bill.

**Discrimination on the Basis of a Criminal Record**

The bill explicitly limits participation in the cannabis industry for most people who have been impacted by enforcement of cannabis laws. By providing that only people with certain misdemeanor cannabis convictions need apply, Senate Bill 16 perpetuates the problematic enforcement of the past. Being locked out of participation in the cannabis industry would be just another of the more than 550 legal barriers a person with a criminal record faces in Connecticut. This bill, which aims to achieve equity, needs to start by opening avenues to legal participation in the cannabis industry for people with convictions.

In addition, required diversity reports for cannabis establishments should include, as a diversity category, licensees who have a criminal record. In order to assess the effectiveness of equity provisions, it is a critical metric to track.

The ACLU-CT does note that Senate Bill 16 provides for mandatory erasure of all convictions for possession of four or fewer ounces of cannabis, upon application. This is a good effort and, since cannabis convictions were not previously charged differently from other controlled substance offenses, provides the most appropriate way to clear cannabis offenses from people’s records. We encourage the Committee to amend the bill to provide for mandatory erasure, upon application, of more offense categories than just simple possession.

Senate Bill 16 makes minor efforts to limit the impact of past cannabis-related convictions inside the cannabis industry but fails to limit their harm in the broader world. To further remediate the negative effects of past cannabis convictions, the ACLU-CT encourages this Committee to amend this bill to prohibit discrimination on the basis of past cannabis convictions in hiring, housing, higher education, public

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*National Inventory of Collateral Consequences of Conviction, available at [https://nicce.ca/qisjusticelcenter.org/database/results?jurisdiction=260&consequence_category=&narrow_category=&triggering_offense_category=&consequence_type=&duration_category=&page_number=1].*
accommodations, financial products, and proceedings regarding parental rights or child welfare.

**Inequitable Criminal Penalties**

Senate Bill 16 criminalizes possession of just two ounces of cannabis as a class B misdemeanor, carrying with it up to six months' incarceration. Other states that have legalized cannabis allow possession of higher amounts. For example, our neighbors in Massachusetts allow possession of up to ten ounces. Applying criminal penalties to excessive possession is unacceptable in a bill that legalizes the substance. Senate Bill 16 recognizes that cannabis enforcement has disproportionately harmed some groups. If Connecticut does not want to repeat the mistakes of its past, it should not apply criminal penalties to simple possession of cannabis in any amount.

**Input of Cannabis Equity Commission**

Because of the racist and harmful history of cannabis enforcement, the creation of the Cannabis Equity Commission is laudable and an important step towards making communities that were disproportionately harmed by criminalization of cannabis whole. The Cannabis Equity Commission, though, has too limited a voice in this bill.

Equity needs to be built into every step of the legalization process, especially when the bill already creates a robust and well-constituted Cannabis Equity Commission. That Commission, for example, should provide input on decisions about licensing standards that right now are entirely in the hands of the Department of Consumer Protection. The Commission should also approve municipal zoning requirements relating to cannabis establishments, to ensure that towns in Connecticut are not perpetuating harms to already-harmed communities through unfair zoning of cannabis establishments. Likewise, the Commission's input on decisions to revoke licenses – made solely by the Commissioner of Consumer Protection under Senate Bill 16 – would be invaluable to ensuring that such penalties are not imposed inequitably. Such sensitivity is especially necessary if the Cannabis Equity Commission provides for equity licensing or microlicensing.

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Employees' Legal Use of Cannabis

Employers should not be able to regulate the legal activities of their employees outside of work. Sections 45 and 49, though, seem to provide that an employer "may implement a policy prohibiting the possession, use or other consumption of cannabis by an employee," with no requirement that the prohibition apply to on-the-job behavior only. This language conflicts with Sections 46 and 50, which provide that an employer may not prohibit an employee from using cannabis outside of work. We thus recommend that Section 45 and 49 be amended to clarify that employer policies may only be directed to the employee's behaviors in the workplace. We believe that this is the bill's intention and this change would be a simple clarification.

Senate Bill 16 also undermines its previous protections of employees' outside legal use of cannabis by exempting far too many employers from providing those protections. While some categories of employment might be appropriate for exemption, the current exemptions in the bill are too broad. Senate Bill 16 should be amended so that only the smallest possible group of employers are permitted to regulate their employees' legal extracurricular activities.

Conclusion

Connecticut can make significant strides toward equity and liberty with a strong and equitable cannabis legalization bill. To make such Senate Bill 16 as strong as possible, we encourage this Committee to:

1. Eliminate immediate penalties for people who have clean roadside sobriety tests or whose sobriety tests are pending;
2. Prohibit "drug recognition experts" from using nonverbal assessments and require that their expertise be evaluated by courts on a case-by-case basis;
3. Prohibit the use of ignition interlock devices unless there has been an adjudication of guilt for operating a motor vehicle while intoxicated
4. Require a person's intoxication to be proved beyond a reasonable doubt, rather than on a showing of "substantial evidence";
5. Allow the presumption of intoxication from a positive THC test to be rebuttable if a person presents evidence that the positive test was the
result of prior legal use and that they were not intoxicated while operating a motor vehicle;

6. Prohibit discrimination against people with criminal records for cannabis offenses;

7. Provide mandatory erasure of a broader range of cannabis offenses;

8. Prohibit discrimination for past cannabis-related convictions in employment, housing, financial products, public accommodations, higher education, and court proceedings;

9. Fully decriminalize of all cannabis possession offenses going forward

10. Require the Cannabis Equity Commission, or a subcommittee, to evaluate more decisions in this bill, such as licensure standards, license revocations, and municipal zoning decisions;

11. Amend Sections 45 and 49 to clarify that employers cannot restrict their employees’ legal consumption of cannabis outside of work; and

12. Significantly narrow the categories of employers who are permitted to regulate their employees’ extracurricular use of cannabis.

The war on cannabis, like the war on drugs overall, was a failure that ruined millions of lives. It has torn apart families and decimated communities, all while acting as a vehicle for racial injustice. Connecticut cannot repeat these mistakes by passing a recreational cannabis bill that creates new and different opportunities for disparate harm to people of color. Yet, without amendment, parts of Senate Bill 16 would do just that.

Because of this, the ACLU-CT strongly urges this Committee to adopt the amendments described above. With those changes, Senate Bill 16 would be an important step forward to remedying the harm done by the war on cannabis. If—and only if—those amendments are made, the ACLU-CT supports Senate Bill 16 and would ask this Committee to support it, as well.