



Legislative Testimony  
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**Written Testimony Supporting Senate Bill 888, An Act Responsibly and Equitably Regulating Adult-Use Cannabis, If Amended**

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

My name is Kelly McConney Moore, and I am the interim senior policy counsel for the American Civil Liberties Union of Connecticut (ACLU-CT). I am submitting this testimony supporting the concept of decriminalization expressed in Senate Bill 888, An Act Responsibly and Equitably Regulating Adult-Use Cannabis and supporting the bill only if it is amended as follows:

**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.<sup>1</sup> Laws criminalizing cannabis impose the hardships of an arrest and arrest record, and often convictions and prison terms, on otherwise law-abiding people,<sup>2</sup> who are disproportionately young, poor, and

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<sup>1</sup> See generally “The War on Marijuana in Black and White.” ACLU (Jun. 2013), available at [https://www.aclu.org/sites/default/files/field\\_document/1114413-mj-report-rfs-rel1.pdf](https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-rel1.pdf)

<sup>2</sup> See, e.g., “Marijuana Arrests & Punishments.” ACLU, available at <https://www.aclu.org/other/marijuana-arrests-punishments>.

people of color.<sup>3</sup> Black people, particularly, have been harmed by this disparity. In 2010, prior to decriminalization of possession in certain amounts, Black Connecticut residents were three times more likely to be arrested for cannabis possession than whites,<sup>4</sup> despite similar rates of cannabis use.<sup>5</sup> Criminalization of cannabis has been selectively enforced, and this enforcement has relied on entrapment, illegal searches, and other methods that violate civil liberties.<sup>6</sup>

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.<sup>7</sup> While we support this bill in concept as a way to legalize cannabis and move toward honoring individual privacy rights, preventing discrimination, and remedying the disparate burdens that cannabis enforcement has placed on youth, communities of color, and poor communities throughout our state, the actual bill before us fails to achieve full legalization or long-overdue equity. Senate Bill 888 does not (1) end criminalization of people for cannabis offenses, (2) make up for past harms from racist cannabis laws and enforcement, (3) provide sufficient due process around the changes to DUI procedures, or (4) enact policies that will end discrimination and disparity. While this bill represents a step in the direction of legalization and equity, it requires a number of amendments before we can support it. We urge this Committee to consider the ways that equity and legalization could be advanced by this bill by considering the robust equity provisions contained in House Bill 6377, An Act Concerning Labor Peace Agreements and a

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<sup>3</sup> See generally “The War on Marijuana in Black and White.” ACLU (Jun. 2013), *available at* [https://www.aclu.org/sites/default/files/field\\_document/1114413-mj-report-rfs-rel1.pdf](https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-rel1.pdf)

<sup>4</sup> “The War on Marijuana in Black and White” at Tables 7 and 8. ACLU (Jun. 2013), *available at* [https://www.aclu.org/sites/default/files/field\\_document/1114413-mj-report-rfs-rel1.pdf](https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-rel1.pdf).

<sup>5</sup> Center for Behavioral Health Statistics and Quality, “2016 National Survey on Drug Use and Health: Detailed Tables,” at Table 1.32B. Substance Abuse and Mental Health Services Administration (Sept. 7, 2017), *available at* <https://www.samhsa.gov/data/sites/default/files/NSDUH-DetTabs-2016/NSDUH-DetTabs-2016.pdf>.

<sup>6</sup> “The War on Marijuana in Black and White” at 91-95. ACLU (Jun. 2013), *available at* [https://www.aclu.org/sites/default/files/field\\_document/1114413-mj-report-rfs-rel1.pdf](https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-rel1.pdf)

<sup>7</sup> See Archive of Andrew Ba Tran, “Who in CT Is Being Cited for Marijuana Possession and By Whom.” Trend CT (Sept. 26, 2016), *available at* <https://web.archive.org/web/20161106201159/https://trendct.org/2016/09/26/where-connecticut-residents-have-been-arrested-the-most-for-marijuana-poessionion/>; see also Jaqueline Smith, “Examining Racial Disparity in Marijuana Arrests.” Middletown Press (May 31, 2019), *available at* <https://www.middletownpress.com/opinion/article/Jacqueline-Smith-Examining-racial-disparity-in-13907837.php>.

Modern and Equitable Cannabis Workforce. The provisions in that bill around remedying past wrongs to people resulting from the disparate enforcement of cannabis laws provide a model for a better version of equity than what appears in this bill.

### **Good Provisions in Senate Bill 888**

Before highlighting the areas of major concern, though, it is worth identifying some strong points in the bill. First, the provision, in a separate but related Governor's bill, for \$2 million in bonding to create an automated erasure process for people with low-level cannabis convictions is an important, but incomplete, move. People should not continue to face a lifetime of collateral consequences – over 550 of them in Connecticut<sup>8</sup> – that result from having a criminal conviction for something that is now not only legal but profitable. Erasure, though, is too limited: it is not available to people with convictions for possession of 4 ounces or more. The ability to have convictions relating to less than 4 ounces expunged is a good start, but that expungement needs to be broadened to all cannabis convictions, over all time periods.

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. 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

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<sup>8</sup> National Inventory of Collateral Consequences of Conviction, *available at* [https://niccc.csgjusticecenter.org/database/results/?jurisdiction=260&consequence\\_category=&narrow\\_category=&triggering\\_offense\\_category=&consequence\\_type=&duration\\_category=&page\\_number=1](https://niccc.csgjusticecenter.org/database/results/?jurisdiction=260&consequence_category=&narrow_category=&triggering_offense_category=&consequence_type=&duration_category=&page_number=1); *see also* Kelan Lyons, "Council Begins Study of Discrimination against People with Criminal Records." CT Mirror (Aug. 22, 2019), *available at* <https://ctmirror.org/2019/08/22/council-begins-study-of-discrimination-against-people-with-criminal-records/>.

licenses – made solely by the Commissioner of Consumer Protection under Senate Bill 888 – 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.

Recognizing that the odor of cannabis, once legalized, should no longer constitute due process for a police stop is an important explicit change in the bill. There are several exceptions to this standard that should be tightened or eliminated, though, so that the exceptions do not become a mechanism for police to inject bias, conscious or subconscious, into the process.

### **Continuing Criminalization of Cannabis**

Senate Bill 888 criminalizes possession of over 2.5 ounces of cannabis for people of any age on a second offense. This is bad policy. First, the 2.5 ounce standard does not appear tied to any rationale since it differs from both the expungement limit of 4 ounces and the legal possession limit of 1.5 ounces. Other states that have legalized cannabis allow possession of higher amounts. For example, our neighbors in Massachusetts allow possession of up to ten ounces.<sup>9</sup> Applying criminal penalties to excessive possession is unacceptable in a bill that legalizes the substance. In addition, this bill criminalizes young people in alarming ways, both for over-limit possession and for a second attempt to purchase cannabis. Young people should not be subject to a lifetime of collateral consequences for youthful mistakes better addressed through non-criminal pathways. Senate Bill 888 also criminalizes growing your own cannabis plant material, suggesting that this bill is more concerned with revenue than with equity. Finally, this bill contemplates imprisonment of up to a year for a person allowing a minor to possess cannabis at the remarkably low level of culpability of criminal negligence. Senate Bill 888 recognizes that cannabis enforcement has disproportionately harmed some groups. If Connecticut does not want to repeat the

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<sup>9</sup> Marijuana in Massachusetts – What’s Legal, *available at* <https://www.mass.gov/info-details/marijuana-in-massachusetts-whats-legal>.

mistakes of its past, it should not apply criminal penalties to simple possession of any type of cannabis in any amount by any person.

### **Equity for People and Communities Harmed by the War on Cannabis**

While Senate Bill 888 makes some moves towards equity for people who have become justice-involved for cannabis offenses, it also confusingly retrenches some of the extrajudicial penalties faced by people with past cannabis convictions. First and foremost, Section 7 of this bill permits the state to deny a license to a person who has a past conviction for cannabis use or possession of four ounces or more. In addition, the requirement that all potential licensees be fingerprinted and subjected to background check, with licensure contingent upon the results, implicitly limits participation in the legal cannabis industry by people living with criminal records. 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.<sup>10</sup> Another form of legalized discrimination allowed by this bill is in Section 74, which allows landlords to freely deny housing to people with convictions for possession of greater than 4 ounces of cannabis. Finally, Senate Bill 888 ends the practice of parole and probations officials holding people in violation of their supervised release for cannabis-related offenses, but it leaves an enormous carve-out for people whose parole or probation explicitly prohibit cannabis offenses. This carveout should be eliminated – cannabis, once more legalized under this bill, should never be the reason anyone returns to incarceration, regardless of the conditions of their release. Overall, this bill does not take enough steps to stop past cannabis convictions from continuing to wreak harm on a person’s life indefinitely.

In addition, Senate Bill 888 creates or permits discrimination against people for their use of cannabis, even after the broadened legalization contemplated by this bill. Possession in excess of the legal limit could be a basis to deny a license after passage

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<sup>10</sup> National Inventory of Collateral Consequences of Conviction, *available at* [https://niccc.csgjusticecenter.org/database/results/?jurisdiction=260&consequence\\_category=&narrow\\_category=&triggering\\_offense\\_category=&consequence\\_type=&duration\\_category=&page\\_number=1](https://niccc.csgjusticecenter.org/database/results/?jurisdiction=260&consequence_category=&narrow_category=&triggering_offense_category=&consequence_type=&duration_category=&page_number=1).

of this bill, even in amounts not criminalized. Employers can fire employees for off-the-clock cannabis use that violates written policy, even if the use is otherwise legal, according to Section 84. Perhaps most troublingly, Section 86 allows the state Department of Children and Families to determine that a child is at risk of harm based on the positive drug test of their parent – for a legal substance. And Section 52 allows the state to conduct “surveillance and review of cannabis consumption and the impacts thereof in the state.” It is unclear what this surveillance consists of, and so, absent further clarity, we must oppose it as violating people’s privacy rights by imposing punitive surveillance on people of this state for using a legal substance.

In short, Senate Bill 888 makes minor efforts to limit the impact of past cannabis-related convictions, but it fails to include enough offenses and to take steps to reduce most harms. 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 or future cannabis use or possession – in any amount – in hiring, housing, higher education, public accommodations, financial products, and proceedings regarding parental rights or child welfare.

### **Due Process and DUI**

While the ACLU-CT agrees that people should not operate vehicles while intoxicated, the procedures amended and created in Senate Bill 888 raise serious due process concerns. First, Section 92 of the bill allows 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.

This bill 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 without requiring expert qualification. 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 888 whether such “experts” are trained on the way that disabilities, neurodivergances, 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 888 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.

According to Sections 92 and 96, 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. 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.

While we support the bill in concept for its moves toward legalization, the lack of due process in the DUI sections of Senate Bill 888 presents 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.

## **Conclusion**

Connecticut can make significant strides toward equity and liberty with a strong and equitable cannabis legalization bill. To make Senate Bill 888 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. Provide mandatory erasure of a broader range of cannabis offenses;
7. Prohibit discrimination for past cannabis-related convictions in employment, housing, financial products, public accommodations, higher education, and court proceedings;
8. Prohibit parole or probation violations for cannabis use, regardless of the initial conditions of release;
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 the bill to clarify that employers cannot restrict their employees' legal consumption of cannabis outside of work; and

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 888 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 888 would be a real step forward to remedying the harm done by the war on cannabis. If – and only if – those amendments are made, the ACLU-CT would support Senate Bill 888.