Testimony In Support Of SB1801: An Act To Tax and Regulate the Cannabis Industry

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I thank the members of the Massachusetts Joint Committee on the Judiciary for holding this hearing regarding SB1801, which seeks to tax and regulate the retail production and distribution of marijuana for adults over 21 years of age.

I submit this testimony on behalf of NORML, the National Organization for the Reform of Marijuana Laws, a public-interest lobby representing the interests of the tens of millions of responsible marijuana smokers in America.\(^1\) Since 1965, over twenty million Americans have been arrested on marijuana charges. Nearly 90 percent of these total arrests were for simple possession for personal use.\(^2\)

MARIJUANA LEGALIZATION

NORML supports the adoption of a legally controlled market for marijuana, where adult consumers can obtain marijuana for personal use from a safe legal source. This policy exists on various levels in European nations such as the Netherlands, Switzerland, Italy, Spain and Portugal -- all of which enjoy lower rates of marijuana use than the United States. In 2002 a special select committee of the Canadian Senate\(^3\) endorsed legalizing the possession and distribution of marijuana for anyone over 16 years of age, concluding: "We believe ... that the continued prohibition of cannabis jeopardizes the health and well-being of Canadians much more than does the substance itself or the regulated marketing of the substance."\(^4\)

\(^2\) Federal Bureau of Investigation combined Uniform Crime Reports
\(^3\) Canadian Special Senate Committee on Illegal Drugs. 2002. Cannabis: Our Position for a Canadian Public Policy. Ottawa
\(^4\) Ibid. See specifically Summary Report. p. 45: "In addition, we believe the continued criminalization of cannabis undermines the fundamental values set out in the Canadian Charter of Rights and Freedoms and

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Supporting the Select Committee’s recommendation were the following findings of fact regarding marijuana’s relative safety, particularly when compared to other controlled substances.

1. Marijuana is not a gateway to the use of hard drugs.\(^5\)
2. Marijuana use does not lead to the commission of crime.\(^6\)
3. Marijuana users are unlikely to become dependent\(^7\)
4. Marijuana use alone has little impact on driving.\(^8\)
5. Liberalizing marijuana laws is unlikely to lead to increased use.\(^9\)
6. Marijuana prohibition poses a greater risk to health than marijuana use.\(^10\)

These findings of fact demonstrate that any risk presented by marijuana smoking falls within the ambit of choice we should permit the individual in a free society. Therefore, NORML supports the establishment of a taxed and regulated marijuana market, similar to that which currently exists for alcohol and tobacco.

The enactment of SB1801 would accomplish this goal in Massachusetts.

\(^{5}\) Ibid. See specifically: p. 15, "Cannabis itself is not a cause of other drug use. In this sense, we reject the gateway theory."
\(^{6}\) Ibid. See specifically: p. 15, "Cannabis itself is not a cause of delinquency and crime; and cannabis is not a cause of violence."
\(^{7}\) Ibid. See specifically pp. 16-17: "Most users are not at-risk users ... and most experimenters stop using cannabis. ... Heavy use of cannabis can result in dependence requiring treatment; however, dependence caused by cannabis is less severe and less frequent than dependence on other psychotropic substances, including alcohol and tobacco."
\(^{8}\) Ibid. See specifically p. 18: "Cannabis alone, particularly in low doses, has little effect on the skills involved in automobile driving. Cannabis leads to a more cautious style of driving. [Cannabis does have] a negative impact on decision time and trajectory [however] this in itself does not mean that drivers under the influence of cannabis represent a traffic safety risk.
\(^{9}\) Ibid. See specifically p. 45: "Data from other countries ... indicate that countries ... which have put in place a more liberal approach have not seen their long-term levels of cannabis use rise. ... We have concluded that public policy itself has little effect on cannabis use trends and that other more complex and poorly understood factors play a greater role in explaining the variations."
\(^{10}\) Ibid. See specifically p. 45: "We might wish for a drug-free world, fewer smokers or less alcoholics or less prescription drug dependency, but we all know that we shall never be able to eliminate these problems. More importantly, we should not opt to criminalize them. The Committee believes that the same healthy and respectful approach and attitude should be applied to cannabis."
LEGALIZATION AND ITS IMPACT ON THE CRIMINAL JUSTICE SYSTEM

The argument in favor of a legally regulated adult market for marijuana (with strictly enforced age restrictions) acknowledges certain realities regarding marijuana and its use. If the expressed purpose of any criminal law is to deter or at least significantly discourage behavior, then by this standard alone, America's marijuana laws have been a categorical failure. Notwithstanding more than seven decades of federal prohibition, marijuana remains the third most popular recreational drug in America (behind only alcohol and tobacco), and has been used by over 100 million Americans.\(^{11}\) According to government surveys, some 26 million Americans (ten percent of the population) have smoked marijuana in the past year, and more than 15 million do so regularly despite harsh laws against its use.\(^{12}\) Our public policies should reflect this cultural reality, not deny or denounce it.

Nevertheless, federal and state drug law enforcement efforts continue to disproportionately target marijuana and minor marijuana offenders. In fact, data compiled by the Federal Bureau of Investigation (FBI) reports that half (49.8\%) of all drug arrests in America are for marijuana only.\(^{13}\)

In 2008, the last year for which statistics are available, law enforcement arrested an estimated 847,864 persons for marijuana violations.\(^{14}\) This total far exceeds the total number of arrests for all violent crimes combined, including murder, manslaughter, forcible rape, robbery, and aggravated assault. Today, it is estimated that taxpayers spend between $7.5 and $10 billion dollars annually arresting and prosecuting individuals for marijuana violations\(^{15}\) - money that would be far better served targeting violent crime, including terrorism.

Marijuana legalization would remove this behemoth financial burden from the criminal justice system, freeing up criminal justice resources to target other more serious criminal activities, and allowing law enforcement to focus on the highest echelons of hard-drug trafficking enterprises rather than on minor marijuana offenders who present little -- if any -- threat to public safety.

Such a regulated system would also -- and equally importantly -- remove the individual


\(^{12}\) Ibid.


\(^{14}\) Ibid

marijuana smoker from the clutches of the criminal justice system.

Approximately 47% of the adult population in this country has smoked marijuana.\footnote{CNN/Time poll conducted October 23-24, 2002} The overwhelming majority of these people are upstanding, hardworking, productive, tax-paying citizens. Some, like President Barack Obama, former President Bill Clinton, former Vice President Al Gore, former Speaker of the House Newt Gingrich, California Governor Arnold Schwarzenegger, and, closer to home, Senator John Kerry and Governor Deval Patrick, have succeeded in achieving high political office. These people are not criminals, yet the criminal law continues to treat them as such.

And regardless of whether marijuana offenders ultimately serve jail time, a marijuana arrest alone has potentially severe and long-lasting repercussions, including but not limited to the following:

1. probation and mandatory drug testing;
2. loss of driving privileges;
3. loss of federal college student aid;
4. asset forfeiture;
5. loss of certain welfare benefits such as food stamps;
6. removal from public housing;
7. loss of child custody; and
8. loss of employment.

Marijuana legalization would conclusively remove the responsible adult marijuana smoker from the threat of arrest and incarceration, and would put an end to the needless destruction of the lives and careers of hundreds of thousands of otherwise law-abiding citizens whose only "crime" is that they prefer cannabis to relax, rather than alcohol. The Commonwealth of Massachusetts has taken a significant step in this direction when the voters overwhelmingly approved the elimination of criminal penalties for the possession of up to one ounce of marijuana a year ago. But more needs to be done.

There is still the question of where the consumer will obtain his marijuana, and the reality that it is only with a legally regulated market that the government can enforce age controls, assure quality control and eliminate the crime, corruption and violence associated with any black market.
The importance of permitting consumers the option to grow their own cannabis

Finally, it is important that any system of legalizing, regulating and taxing marijuana also include the right of responsible consumers to cultivate their own marijuana.

In this country, alcohol consumers have the legal right to create their own home brew, free from government interference. Although the vast majority of alcohol drinkers never utilize this freedom, and prefer the convenience of purchasing alcohol at a retail outlet, that option remains available to those who wish to use it. Similar regulations should govern the non-commercial production of cannabis,

Allowing for the legal, personal cultivation of cannabis provides consumers with the option to grow their own product should commercially available sources offer cannabis that fails to meet the consumers’ needs because it is excessively expensive, too heavily taxed, or of inferior quality. The mere threat of consumers exercising this option should be sufficient to assure that the legal market for cannabis will be responsive to the needs of consumers, and will not be exploitive.

We must insist on this provision in any state or federal legislation to legalize marijuana, or we trade away our leverage to keep the big corporations, and the government, responsive to cannabis consumers.

We are pleased that SB1801 includes provisions allowing for the non-commercial cultivation of marijuana by adults.

I urge this Committee to support SB1801 for the following reasons:

1. Passage of SB1801 will raise tens of millions of dollars in annual tax revenue for the state of Massachusetts.

According to a 2007 economic analysis by George Mason University professor Jon Gettman, Ph.D., the retail value of the U.S. marijuana market now stands at approximately $113 billion per year. Using standard tax percentages obtained from the Office of Management and Budget, Gettman calculates that the diversion of $113 billion from the taxable economy into the illicit economy deprives taxpayers of $31.1 billion annually.17


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Locally, Massachusetts is losing tens of millions of dollars annually by not enacting SB1801. According to a 2003 study by Harvard economist Jeffrey A. Miron, state taxpayers spend some $120 million annually on state, local, and judicial marijuana law enforcement costs. Passage of HB 2929/SB1801 would significantly reduce these expenditures while raising additional revenues via the establishment of excise taxes on the retail sales of cannabis, as well as upon its licensed commercial production.

2. Passage of SB1801 will restrict access to marijuana to those under 21 years of age.

Marijuana prohibition presently provides unfettered marijuana access to young people. Enacting SB1801 will significantly limit teen’s access to marijuana -- providing for the improved health and safety of our young people and our communities.

According to the University of Michigan, which has been surveying youth access to cannabis since 1975, nearly 85 percent of teens now report having "easy" access to marijuana. In fact, an August 2009 study released by the National Center on Addiction and Substance Abuse at Columbia University reported that 25 percent of teens between the ages of 12 and 17 say that they can obtain marijuana within an hour, and a majority of them now say that they have more ready access to marijuana than they do to alcohol.

According to the U.S. government's most recent Survey on Drug Use and Health, 15 percent of those ages 14 to 15 have tried marijuana (including 12 percent in the past year), as have 31 percent of those ages 16 to 17 (a quarter of which have done so in the past year). By age 20, 45 percent of adolescents have tried marijuana, and nearly a third of those ages 18 to 20 have done so in the past year.

SB1801 seeks to limit children's access to marijuana by restricting its sale to state licensed retail outlets and imposing strict age controls on those who may purchase it legally. This proposal will remove marijuana from our street corners (and out of the hands of illicit drug sellers) and school yards and put it behind the counter -- where it belongs.

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3. Passage of SB1801 will improve public safety by redirecting law enforcement efforts to focus on more serious offenses.

Law enforcement resource allocation is a zero-sum gain. Every hour -- or to be more accurate, hours -- that a police officer spends arresting and processing minor marijuana offenders is time when he or she is not out on the streets protecting the public from more significant criminal activity.

One notable study by Florida State University economists Bruce Benson and David Rasmussen determined that serious crimes, such as robbery and assault, increase proportionally when police focus their attention on drug law enforcement, particularly marijuana prohibition. Analyzing Florida state crime statistics, they reported that every one percent increase in drug arrests leads to an 18 percent increase in serious crimes.22

In short, allocating police resources toward marijuana law enforcement inevitably decreases resources that would have otherwise been dedicated to combating other crimes. Passage of SB1801 will enable law enforcement, prosecutors, and the courts to re-allocate their existing resources toward activities that will more effectively target serious criminal behavior and keep the public safe.

4) Passage of SB1801 will institute reasonable regulation consistent with the state and federal constitution.

Marijuana is not a harmless substance. But this fact is precisely why its commercial production and distribution ought to be controlled and regulated by the state in a manner similar to the licensed distribution of alcohol and cigarettes

-- two legal substances that cause far greater harm to the individual user and to society as a whole than cannabis ever could.23 Taxing and regulating marijuana in a manner similar to alcohol, as is proposed by SB1801, will bring long-overdue state oversight to a market that is presently unregulated, uncontrolled, and monopolized by criminal entrepreneurs. While this alternative may not entirely eliminate the black market demand for marijuana, it would certainly be preferable to today’s blanket, though thoroughly ineffective, expensive and impotent, criminal prohibition.

5) The public backs the trend towards legalizing marijuana.

Voters nationwide\textsuperscript{24}, and in Massachusetts in particular, support ending the criminal prohibition of marijuana. Last November 65 percent of Massachusetts voters endorsed a statewide initiative reclassifying minor marijuana possession offenses as a fine-only offense under state law. To date, this law appears to be functioning as voters intended, and has not had an adverse impact on marijuana use by young people\textsuperscript{25} nor has it jeopardized public safety.

Passage of SB1801 would give greater control to Massachusetts law enforcement officials and regulators by imposing proper state restrictions and regulations on this existing and widespread marijuana market.

In closing, SB1801 is a fiscally conservative, common sense proposal that will raise revenue, promote public safety, and limit the access that young people have to marijuana. It seeks to bring control to Massachusetts' untaxed, unregulated marijuana market by treating cannabis in a manner similar to alcohol.

I urge this Committee to vote 'yes' on SB1801.

\textsuperscript{24} April 2009 Zogby poll commissioned by the O'Leary Report has found 52 percent voter support nationwide for treating marijuana as a legal, taxed, regulated substance. Available online at http://norml.org/index.cfm?Group_ID=7867.