



...working to legalize responsible adult use...

National Organization for the Reform of Marijuana Laws

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Testimony of Tyler McFadden, NE Political Associate National Organization for the Reform of Marijuana Laws (NORML)

In Regards to: B23-0309, the "Medical Marijuana Program Patient Employment Protection Amendment Act of 2019"

My name is Tyler McFadden and I am the Northeast Political Associate at the National Organization for the Reform of Marijuana Laws (NORML). I wish to thank the members of this Committee for the opportunity to testify on behalf of B23-0309, the "Medical Marijuana Program Patient Employment Protection Amendment Act of 2019", which seeks to expand workplace protections for medical marijuana patients in the District of Columbia. I would like to note that I will be testifying in person as well.

Voters in the District of Columbia and throughout this nation have declared that it is time to rethink cannabis criminalization policies. NORML believes that it's also time to rethink workplace practices surrounding drug screening for the off-the-job use of cannabis.

Urinalysis drug screening, which was largely popularized during the 'war on drugs' zeitgeist of the 1980s, is unnecessary and ineffective.

It is unnecessary because those employees who consume cannabis while away from the job do not present any greater safety risk compared to non-users. Writing in the journal *Addiction*, investigators at the University of Victoria in British Columbia reviewed 20 years of published literature regarding the efficacy of workplace drug testing, with a special emphasis on cannabis. They concluded: "[I]t is not clear that heavy cannabis users represent a meaningful job safety risk unless using before work or on the job. Urinalysis testing is not recommended as a diagnostic tool to identify employees who represent a job safety risk from cannabis use."<sup>1</sup>

Similarly, a 2014 study published in the *Journal of Addictive Diseases* concluded that employees who test positive for cannabis in workplace drug tests are no more likely to be involved in occupational accidents as compared to those who test negative. "This study fell

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<sup>1</sup> Macdonald et al. 2010. Testing for cannabis in the work-place: A review of the evidence. *Addiction* 105: 408-16.

<https://www.ncbi.nlm.nih.gov/pubmed/20402984>

short of finding an association between marijuana use and involvement of workplace accidents," the authors determined.<sup>2</sup>

Most recently, an exhaustive review of over 10,000 peer-reviewed studies by investigators with the National Academies of Sciences, Engineering and Medicine concluded, "There is no or insufficient evidence to support ... a statistical association between cannabis use and ... occupational accidents or injuries."<sup>3</sup>

In addition to the fact that suspicionless drug screenings for off-the-job cannabis use are unnecessary, they are also woefully ineffective. This is because the test itself does not possess the ability to detect active controlled substances, only their inactive metabolites – inert compounds that are produced well after the acute psychotropic effects of the drug have already worn off.

For cannabis, this situation is highly problematic because its primary metabolite, carboxy-THC, may be identified in urine for weeks or even months post-abstinence. Examples in the peer-reviewed literature identify subjects testing positive for THC metabolites for as many as 110 days after ceasing their use of it.<sup>4</sup> By contrast, the acute effects on behavior associated with cannabis inhalation are typically strongest within the first hour and then begin to dissipate quickly soon after.<sup>5</sup> This is why the US National Highway Traffic Safety Administration (NHTSA), and other experts in the field, conclude, "It is ... currently impossible to predict specific effects based on THC-COOH (carboxy-THC metabolite) concentrations."<sup>6</sup> A briefing document issued by the US Department of Justice similarly concludes, "A positive [urine drug screen] test result, even when confirmed, only indicates that a particular substance is present in the test subject's body tissue. It does not indicate abuse or addiction; recency, frequency, or amount of use; or impairment."<sup>7</sup>

The imposition of such workplace policies is discriminatory toward those who use cannabis in their off-hours, particularly those who do so in compliance with medical cannabis access laws. Those consuming the substance to treat symptoms of a chronic condition will consistently test positive for its presence, no differently than would someone regularly using any other conventional medication. But this positive result does not mean that a subject was under its influence at the time of the test. Additionally, reviews of the relevant literature conclude that

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<sup>2</sup> J Price. 2014. Marijuana and workplace safety: An examination of urine drug test results. *Journal of Addictive Diseases* 33: 24-7

<https://www.ncbi.nlm.nih.gov/pubmed/24467478>

<sup>3</sup> National Academies of Sciences, Engineering and Medicine. *The Health Effects of Cannabis and Cannabinoids*. 2017.

<sup>4</sup> Musshoff and Madea. 2006. Review of biological matrices as indicators of recent or ongoing cannabis use. *Therapeutic Drug Monitoring* 28: 155-63.

<https://www.ncbi.nlm.nih.gov/pubmed/16628124>

<sup>5</sup> United States National Highway Traffic Safety Administration. *State of Knowledge of Drug-Impaired Driving: Final Report*. 2003. See specifically page 55: "Experimental research on the effects of cannabis ... indicate that any effects ... dissipate quickly after one hour."

<sup>6</sup> United States National Highway Traffic Safety Administration. *Drugs and Human Performance Fact Sheets: Cannabis/Marijuana (Delta-9-THC)*.

<sup>7</sup> United States Department of Justice. *Drugs, Crime, and the Justice System*. 1992. See specifically pages 118-119: "How do drug tests work?"

such habitual consumers are far less likely to suffer from cannabis-induced impairment – even in the short-term. A 2018 peer-review article in the journal *Neuroscience and Behavioral Review*, entitled “Cannabis use and the development of tolerance: A systematic review of human evidence,” concludes: “Studies of repeated cannabinoid administration more consistently suggest less prominent effects upon repeated exposure. Cognitive function is the domain showing the highest degree of tolerance, with some evidence of complete absence of acute effect (full tolerance).”<sup>8</sup>

Patients should never have to choose between their medicine and maintaining gainful employment. That is why 15 states – Arizona, Arkansas, Connecticut, Delaware, Illinois, Maine, Massachusetts, Minnesota,<sup>9</sup> Nevada, New Jersey, New York, Oklahoma, Pennsylvania, Rhode Island, and West Virginia, currently impose various workplace protections for qualified medical cannabis patients. The imposition of these protections has not compromised workplace productivity or safety. A 2018 study published in the *International Journal of Drug Policy* determined, “Five years after coming into effect, MMLs (medical marijuana laws) were associated with a 33.7 percent reduction in the expected number of workplace fatalities.”<sup>10</sup> Other studies have reported an association between the enactment of medical cannabis access programs and increases in labor supply<sup>11</sup> and a decrease in workplace absences due to sickness.<sup>12</sup>

Most recently, three jurisdictions – Maine, Nevada, and New York City – have enacted statutes explicitly protecting the rights of employees who consume cannabis away from the workplace – regardless of whether or not they are using it for medical or recreational purposes. The Maine statute reads: “Employers may not refuse to employ or otherwise penalize a person solely for that person consuming marijuana outside of the employer’s property.”<sup>13</sup> Nevada’s statute makes it “unlawful for any employer to fail or refuse to hire a prospective employee because the prospective employee submitted to a screening test and the results of the screening test indicate the presence of marijuana.”<sup>14</sup> New York City’s law states, “[I]t shall be an unlawful discriminatory practice for an employer ... to require a prospective employee to submit to testing

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<sup>8</sup> Colizzi and Bhattacharyya. 2018. Cannabis use and the development of tolerance: A systematic review of the human evidence. *Neuroscience and Biobehavioral Reviews* 93: 1-25.

<https://www.ncbi.nlm.nih.gov/pubmed/30056176>

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<https://www.canorml.org/employment/state-laws-protecting-medical-marijuana-patients-employment-rights/>

<sup>10</sup> Anderson et al. 2018. Medical marijuana laws and workplace fatalities in the United States. *International Journal of Drug Policy* 60: 33-39.

<https://www.ncbi.nlm.nih.gov/pubmed/30092547>

<sup>11</sup> Nicholas and Maclean. The effect of medical marijuana laws on the health and labor supply of older adults: Evidence from the Health and Retirement Study. National Bureau of Economic Research. 2018.

<https://www.nber.org/papers/w22688>

<sup>12</sup> D Ullman. 2016. The effect of medical marijuana on sickness absence. *Health Economics*.

<https://onlinelibrary.wiley.com/doi/full/10.1002/hec.3390>

<sup>13</sup>

<https://norml.org/news/2018/02/08/maine-newly-enacted-provisions-protect-employees-off-the-job-cannabis-use>

<sup>14</sup> <https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6191/Overview>

for the presence of any tetrahydrocannabinols or marijuana in such prospective employee's system as a condition of employment."<sup>15</sup>

In short, conventional drug test screening for cannabis is an artifact of a bygone era. NORML recommends that employers and lawmakers cease their reliance on these ineffective procedures and instead institute alternative, performance-based testing – such as AlertMeter<sup>16</sup> or DRUID<sup>17</sup> – in instances where there exists reasonable suspicion of an employee's impairment while in the workplace. Please take this testimony into consideration for any other legislation relating to drug testing, employment, and the workplace.

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<https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3860393&GUID=7040463F-8170-471C-97EC-A61AE7B1AA2F&Options=ID%7CText%7C&Search=1445>

<sup>16</sup> <https://vimeo.com/253068230>

<sup>17</sup> <https://druidapp.com/>