



**Laura Subin, director, Vermont Coalition to Regulate Marijuana,
Testimony on S. 294, House Judiciary Committee, 8/26/20**

I'm an attorney and I direct the Vermont Coalition to Regulate Marijuana (the Coalition) — a group of thousands of individuals and organizations that have been working to reform Vermont's cannabis policies for many years. I'm also the director of the Pennywise Foundation which partnered with the Vermont Law School's Center for Justice Reform, Vermont Legal Aid (VLA) and individual State's Attorney's offices in developing and implementing expungement clinics around Vermont in 2018 and 2019 — some of which were specifically offered for expunging eligible cannabis misdemeanors.

Expungement has long been a key goal for the Coalition, and we would like to offer our strong support for the cannabis-related provisions of S.294. This legislation would be a critical component of a movement towards racial justice in cannabis policy that recognizes and aims to repair the horrific legacy of racism in the enforcement of cannabis prohibition laws. It is also fair, common sense legislation that will create economic opportunities and help break cycles of poverty and criminality.

The data is clear that stops and searches for cannabis, cannabis arrests, and subsequent convictions in Vermont and across the country have dramatically disproportionately impacted Black people and other people of color. We know, for example, that in general Vermont police stop and ticket Black and Brown Vermonters at a much higher rate than white Vermonters;¹ that Black Vermonters make up only 1% of Vermont's population but 10% of Vermont's prison population;² and that in Burlington, Vermont's largest city, black residents are arrested at 3.7x the rate of white residents. Drug-related arrests are one of four categories of arrests that make up this disparity.³

¹ https://www.uvm.edu/qjee/pdfs/SeguinoBrooks_PoliceRace_2017.pdf

² <https://www.vpr.org/post/why-are-there-so-many-african-americans-incarcerated-vermont#stream/0>

³ https://www.burlingtonvt.gov/sites/default/files/tiles/City%20of%20Burlington%202019%20EQUITY%20REPORT_FINAL.pdf

As these rates relate specifically to cannabis, a 2013 ACLU report documented that, as of 2010, Black Vermonters were arrested for cannabis possession at a rate nearly 4.5x the rate of white Vermonters. This was a higher disparity than the national average (a rate of 3.73%) and in some Vermont counties the disparity was shown to be much worse, rising to 9.6x in Windham County and a staggering 16.8x in Rutland County.⁴ Despite both the decriminalization and the legalization of cannabis grown at home, Black Vermonters continue to be arrested for possession of cannabis at more than 6x the rate of white Vermonters.⁵ These disparities persist in spite of the fact that use rates are consistently very similar.

As I know this Committee has heard before, criminal convictions, including misdemeanor convictions, can have a broad array of serious collateral consequences. Some of these include loss of access to public housing, loss of access to Supplemental Nutrition Assistance and similar social service programs; loss of student loans, preclusion from participation in the military, or children's services becoming involved with a family. And it is, of course, those that have the least that depend on these types of services the most. People with criminal convictions — especially people of color who are already confronting endemic systemic racism — also face discrimination in areas such as employment, housing, and professional licensing.

Anecdotal evidence gathered by Vermont Legal Aid at expungement clinics in 2018 and 2019 indicate that the harms generally associated with the collateral consequences of conviction are very real in Vermont. According to VLA, “the most common reasons [their] clients seek expungement are housing and employment-related issues that arise from having a criminal record. Many note that they have been denied employment expressly because of their criminal records.” VLA also indicated that over 50% of their clinic clients had children and that “countless clients have told [them] that their records impact their children in a myriad of ways.” Examples ranged from lost wages to being precluded from coaching or chaperoning school-aged kids. Legal Aid also said that, “participants frequently mention the stigma associated with their criminal record stating the psychological distress they experience by having a record that follows them everywhere.”

People struggle with the impacts of these convictions for low-level offenses, including cannabis possession, for decades. A lot of people. According to data supplied by the Vermont Crime Information Center, there were nearly 5,000 cannabis-related convictions between 2007 and 2017. This average of about 500 people per year means that there are tens of thousands of Vermonters who carry criminal convictions on their records for behavior that is now mostly legal and widely accepted as posing little or no public safety risk.

Increasingly states around the country are recognizing that expunging cannabis convictions is an essential component of creating cannabis policy that responsibly addresses racial and social justice. Seven of the ten states that have legalized cannabis also have some type of cannabis-specific expungement or sealing. Illinois, California and parts of Colorado provide for the type of

⁴ https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-rel1.pdf.

⁵ <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>

automatic expungement that is envisioned in S.294. A number of states that have decriminalized cannabis are also reforming expungement laws, including New York where minor cannabis laws are now automatically expunged. Vermont can and should join the leaders in this critical policy reform.

Automatic expungement — that is expungement of all eligible convictions through court processes, without fees, rather than individual petitions — is key. Many individuals, particularly racial minorities, justifiably distrust the criminal legal system and will not willingly interact with it. Others may simply not realize they are eligible for expungement. Since there have historically been costs associated with expungement including, until very recently, cannabis expungement in Vermont, individuals may assume they could not afford this type of relief even if they were entitled to it. Many people lack the resources to hire an attorney who could navigate these issues for them. This means that even a simple petition process is often still too complex to achieve the goal of greater equity for those held back by previous cannabis offenses on their records. Again, these broad concerns were demonstrated to be present in Vermont. Many expungement clinic participants shared that they were unaware of Vermont's expungement law, their eligibility, or the expungement process prior to extensive, targeted outreach regarding the clinics. Applications-based systems unfairly place the onus of removing a cannabis offense, and all of the associated stigma, on the individual rather than on the government which created that stigma and the undue burden of a criminal record.

S.294 would also decriminalize possession of cannabis in amounts that are slightly above the legal threshold (up to two ounces and four mature plants). This provision has a clear practical purpose. It will enable the court system to expunge records quickly and cost effectively — as many of the state's low-level cannabis convictions did not distinguish between 1-2 ounces. It will also protect Vermonters who may inadvertently be in possession of just over the legal limit from criminal liability, traumatic arrests, and possible incarceration. Finally, expanding decriminalization slightly is another modest, incremental step moving cannabis policy towards equity.

Automatic, cost-free, expungement of minor cannabis convictions is the right policy and now is the right time for it. We must ensure that we prioritize responding to the harms caused by cannabis prohibition as we move towards fairer more responsible cannabis policies.