

February 6, 2019

The Senate Committee on Judiciary
Sen. Dick Sears, Jr., Chair
Sen. Alice W. Nitka, Vice Chair
Sen. Jeanette K. White
Sen. Joe Benning
Sen. Philip Baruth

Vermont State House
115 State Street
Room 1
Montpelier, VT 05633

Re: S.54 – Focusing on Equity

Dear Senators:

The initial draft of S.54, the latest Senate effort to regulate and tax the production and sale of cannabis, makes laudable efforts towards encouraging equity in the nascent cannabis market. We commend you for taking social and racial justice into serious consideration in this bill. This letter suggests three discrete areas for improving upon the solid foundation you've already built, while furthering the broader goal of criminal justice reform which lies at the heart of the cannabis legalization movement.

1. Expungement of All Prior Cannabis Convictions

According to data supplied by the Vermont Crime Information Center, Vermont's state and county prosecutors obtained nearly 5,000 cannabis-related convictions between 2007 and 2017 – during a decade of supposed liberalization of our cannabis laws. Due to antiquated computer systems, data was not readily available for prior years, but it logically flows from this that there are tens of thousands of Vermonters who carry criminal convictions on their records since the War on Drugs was ramped up by the Nixon Administration and its allies in the 1970's.

To make matters worse, we now know – objectively and without reservation — that the War on Drugs has disproportionately impacted people of color and others at the lower end of the economic spectrum. Whether by design or implementation, we know that, as recently as 2013, black Vermonters were over four times as likely to be arrested for cannabis possession than their white neighbors, despite identical usage rates across race. Black and brown Vermonters continue to be stopped and searched at alarmingly disproportionate rates. And, worse still, black Vermonters are over-represented in Vermont's prisons by a factor of more than 10x their share of the general population.

This committee has taken hours of powerful testimony on the collateral consequences of conviction, and the daily discrimination faced by people with criminal histories in areas as diverse as housing, education, financial services, employment, and professional licensing. People who decades ago "repaid their debt to society" still struggle with the impact of this legal discrimination, which keeps them in a cycle of poverty without the tools to move on and move up.

As a first step towards repairing the damage of the failed War on Drugs, it is imperative that Vermont's laws be changed so that all prior cannabis-related convictions become eligible for immediate and automatic expungement, without filing fees. By freeing tens of thousands of Vermonters, disproportionately minorities and the poor, from the shackles of their criminal background check results, you will unleash economic opportunity not only within the cannabis industry, but across the wider economy. We urge you to include expungement reform in your deliberations.

2. Criminal History Disqualification

In several instances throughout the draft bill¹, the Cannabis Control Board is directed to consider a person's criminal history to determine his or her qualification for a license or employment with a licensee. In each instance, you've directed the Board to not "automatically disqualify" an applicant due to prior "non-violent drug offenses".

The systemic biases within Vermont's criminal justice system which have led to the over-policing, over-prosecution, and over-incarceration of Vermonters of color have never been limited to "non-violent drug offenses". While allowing those with such prior offenses to fairly participate in the cannabis market is a matter of great importance, this bill would still leave too many out of the legal cannabis marketplace, with the negative impacts again being felt disproportionately by minorities and other disempowered groups, who would again be relegated to the parallel illicit market, and subjected to the very biases which worked to disproportionately lock them out of the legal marketplace in the first place. We must end this vicious cycle of criminalization.

We urge you to revise these provisions to specify that no prior criminal history will *automatically* disqualify a candidate; rather, the Board should be directed to articulate a set of clear and comprehensive rules for determining under what circumstances past illicit activity should disqualify an applicant for a business license or employment with a licensee, including factors such as the length of time since the offense took place, and whether the applicant maintains ties to organized crime or otherwise poses a present threat to public safety or the proper functioning of the regulated marketplace.

3. Broadening the Equity Mandate

We were particularly pleased to read §903(a)(4) of the draft bill, mandating the Cannabis Control Board to give priority to applicants who "would foster social justice and equity in the cannabis industry". The communities most negatively impacted by prohibition rightly belong at the forefront of the legal cannabis industry, and enshrining that principle in law is wise, just, and commendable.

We urge you to broaden the Board's equity mandate beyond application preferences, using Massachusetts' existing equity program as a model². The Board's broad equity mandate could encompass, among other things, developing training programs for all level of industry participation, from rank-and-file employees to entrepreneurs seeking to launch small businesses of their own; developing and promoting business opportunities for qualifying individuals in ancillary fields supporting the cannabis industry, such as the skilled trades; providing underrepresented entrepreneurs with assistance in navigating the private equity marketplace; and regularly coordinating with impacted

¹ §883(b) on pg. 23; §884(b)(2) on pg. 24; §975(b) on pg. 46; and §976(b)(2) on pg. 47.

² See, e.g., <https://mass-cannabis-control.com/equityprograms/>

communities, so that representatives of impacted communities have a genuine seat at the table and are being heard, not just talked to.

The Board's equity mandate should further expressly include improving economic opportunities for Vermonters with a history of criminal convictions, especially those who are re-entering society after incarceration, or who are under current criminal justice supervision. To ensure that diverse voices are truly heard, one of the Governor's two appointed positions on the Board should be reserved for a member of a community disproportionately impacted by cannabis prohibition.

Thank you for your leadership on these important matters.

Sincerely,

Dave Silberman, Esq., Middlebury, Vt.

Tom Dalton, Executive Director, Vermonters for Criminal
Justice Reform

ACLU of Vermont

Rachel Siegel, Executive Director, Peace & Justice Center

SURJ (Showing Up for Racial Justice) – Middlebury Chapter

Black Lives Matter of Greater Burlington

Mairead C. O'Reilly, Staff Attorney, Vermont Legal Aid

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