



January 24, 2023

Re: Testimony in support of and urging amendments to SF 73

Dear Chair Latz, Vice Chair Oumou Verbeten, and distinguished members of the committee:

My name is Karen O'Keefe, and I am the director of state policies at the Marijuana Policy Project (MPP), the largest cannabis policy reform organization in the United States. MPP strongly supports legalizing and regulating cannabis for adults 21 and older and doing so in a way that repairs the damage inflicted by criminalization, and its unequal, racially biased enforcement.

MPP has played a leading role in most of the major cannabis policy reforms since 2000, including 15 state medical cannabis laws, several state decriminalization laws, and 12 of the 21 adult-use legalization laws. Our priorities include the expungement of past cannabis convictions, release of cannabis prisoners, promoting diversity and social equity in the industry, reinvesting in communities hard-hit by the war on cannabis, and prioritizing affordable access to medical cannabis.

I am grateful to the Senate Judiciary and Public Safety Committee for considering SF 73, which is a thoughtful piece of legislation to legalize cannabis, with a focus on equity and public health. I am offering testimony to encourage the committee to pass SF 73 and to suggest some amendments, which I believe are consistent with the goals of the legislation.

I. Minnesota should legalize and regulate cannabis

A. Prohibition has clearly failed.

Before discussing SF 73, I'd like to start by pointing out the problems with the current policy of prohibition. One does not have to support cannabis use to recognize that prohibition has not worked. Like alcohol prohibition a century ago, cannabis prohibition has failed — and it has caused tremendous amounts of suffering.

Despite the vast sums spent on hundreds of thousands of cannabis arrests made in the U.S. every year, prohibition hasn't stopped adults or youth from accessing cannabis. Cannabis remains readily available in Minnesota and across the United States.

Prior to any state permitting cannabis sales to adults, 40% of American high schoolers reported that they had a peer who sold marijuana at school, compared with less than 1% who knew a peer selling alcohol in school.¹ Not only do youth have easy access to marijuana under prohibition, but many get enticed into selling it, putting themselves at greater risk of both violence and arrest. And on the illicit market, those selling marijuana often sell other, more addictive and dangerous drugs.

While some were concerned legalization could increase teens' rates of cannabis use, in the 10 years since the first two states legalized there has been ample time to gather before-and-after data. As National Institute on Drug Abuse Director Nora Volkow testified in the U.S. Senate on March 31, 2022, "legalization by some states of marijuana has not been associated with an increase in adolescents' marijuana use."²

Criminalizing the production and distribution of cannabis drives production and sales underground, where they cannot be controlled. Regulation to protect workers, the environment, and consumer safety is only possible in the context of legalization.

B. A path to a better solution — regulation — has already been forged by other states.

As it became increasingly obvious that prohibition was not working, states have begun to choose a more sensible approach — taxing and regulating cannabis similarly to alcohol.

Colorado and Washington voters led the way in November 2012. Since then, 19 other states have followed suit. A total of 21 states — home to 48% of the U.S. population — have legalized cannabis for adults.

SF 73 reflects lessons learned from states that have paved the way. These states also illustrate the benefits of replacing prohibition with taxation and regulation.

Both Denver Mayor Michael Hancock and former Colorado governor (and now U.S. Senator) John Hickenlooper strongly opposed the 2012 initiative that legalized marijuana in their state, and both have concluded they were wrong.³

Hickenlooper said that, while implementation was challenging, it was "also one of the things I'm most proud of."⁴ He also said that from a "35,000-foot level" things in Colorado have gone well, pointing to the fact that health officials have not seen increased teen use or a dramatic increase in overall consumption, and that polls show residents are increasingly

¹ Columbia University, National Center on Addiction and Substance Abuse Survey, 2012.

² Available at: <https://www.youtube.com/watch?v=fAbI3VtTAOI>

³ Thomas Mitchell, "Ten Years Later, Hancock and Hickenlooper Reflect on Marijuana Legalization," Westword, October 12, 2022.

⁴ Alicia Wallace, "Colorado gov's weed advice for California: Focus on edibles, home grows, pesticides," *The Cannabist*, *Denver Post*, February 14, 2017. Available at <http://www.thecannabist.co/2017/02/14/colorado-marijuana-advice-california-governor-john-hickenlooper/73656/>.

in favor of continued legalization.⁵

In October 2022, the former governor said, "I'm a convert today. I was wrong ten years ago. We can do this right, and we can do this responsibly,"

In Colorado, more than \$390 million in adult-use cannabis tax revenue was collected in 2021.⁶ As of January 2022, Colorado had 38,000 cannabis jobs.⁷ Meanwhile, Washington State brought in more than \$630 million in cannabis tax revenue in 2021.⁸

Cannabis tax revenue has been used to fund numerous programs improving the lives and health of the states' residents. Colorado devotes much of its cannabis tax revenue to school construction, and state education officials have used marijuana taxes to give \$6 million dollars to 71 schools since 2016 to fund anti-bullying education. Meanwhile, in 2020, Washington used \$213 million of its cannabis tax revenue to help pay for its share of Medicaid, which insures nearly 1.8 million low-income Washington residents.

SF 73 would create several grant-funded programs to reinvest in hard-hit communities, fund substance abuse education and treatment, and foster an equitable industry.

C. Taxing and regulating cannabis will replace the illicit market with a tightly regulated system.

More than eight decades of prohibition has not stopped demand for cannabis. All it has done is derail lives, torn families apart, and put consumers and those selling cannabis at risk. Allowing legal businesses to meet that demand will eliminate most illicit market sales and lead to safer outcomes for communities and consumers. Cannabis users and sellers face dangers due to prohibition.⁹ As with alcohol prohibition in the 1920s, since drug-related disputes can't be solved lawfully, violence is inevitable.

Replacing prohibition with sensible regulation is also far better for workers. In the underground market, workers are vulnerable to exploitation and violence and, of course, they are at risk of felony convictions and prison time.¹⁰ A regulated market offers important protections to workers, from health and safety regulations to unemployment insurance and

⁵ *Ibid.*

⁶ <https://cdor.colorado.gov/data-and-reports/marijuana-data/marijuana-tax-reports> (The listed "Tax Revenue" by calendar year is higher because it includes the 2.9% sales tax on medical sales. Breakdowns are available at the Historical Report Excel.)

⁷ Leafly Jobs Report, 2022. Available at <https://leafly-cms-production.imgix.net/wp-content/uploads/2022/02/22132544/LeaflyJobsReport2022.pdf>.

⁸ <https://www.mpp.org/issues/legalization/cannabis-tax-revenue-states-regulate-cannabis-adult-use/>

⁹ See: "Second man charged in St. Paul marijuana deal turned deadly," Pioneer Press, May 3, 2022; Sarah Horner, "Drug deal gone bad results in death of recent Minn. high school graduate," Inforum, June 27, 2017. Sarah Horner, "18-year-old charged with murder in St. Paul marijuana deal gone bad, charges say," January 27, 2020; "Jury convicts man of murder in drug deal gone wrong" <https://www.hennepinattorney.org/news/news/2018/March/burdunice-3-9-2018>;

¹⁰ See Shoshana Walter, "In secretive marijuana industry, whispers of abuse and trafficking," *The Center for Investigative Reporting*, September 8, 2016.

social security, in addition to all the advantages of working in a legal industry instead of a criminal market.

Finally, prohibition guarantees cannabis won't undergo quality control testing, resulting in possible contamination by pesticides, fertilizers, molds, bacteria, or the lacing of cannabis with other drugs — unnecessarily putting consumers at risk. SF 73, if passed, provides requirements for testing to ensure quality control, including by ensuring that cannabis and cannabis-infused products are accurately labeled for potency.

D. Legalizing cannabis would improve the fairness and efficiency of the criminal justice system.

While white and Black Minnesotans consume cannabis at similar rates, the same cannot be said of the rate at which they are arrested and cited. Nationwide, Black Americans are 3.5 times more likely to be arrested for cannabis than their white counterparts.¹¹ Even though Minnesota decriminalized cannabis back in 1976, Black Minnesotans are 5.4 times as likely to be arrested for cannabis possession than white individuals — the eighth worst disparity in the nation.¹² As a result of this disparity, Black Minnesotans are far more likely to be plagued with an arrest record and conviction for cannabis, which makes it harder to get jobs, housing, an education, professional licensing, and other opportunities.¹³

The way cannabis prohibition is enforced erodes trust between police and minority communities at a time when such trust is sorely lacking. As Washington, D.C.'s former police chief bluntly put it: "All these [marijuana] arrests do is make people hate us." In addition to being valuable in itself, positive police/community relationships improve public safety. A Department of Justice study found that trusting relationships with the local community was one of the most important factors in whether police were effective in solving violent crimes.¹⁴

Unsurprisingly, legalizing cannabis has significantly reduced the number of searches and arrests for cannabis in legalization states among people of all races.

Data analyzed by the Stanford Open Policing Project found in the first two legalization states — Colorado and Washington — there have been dramatic decreases in traffic searches, which are disproportionately performed on cars with Black or Latino drivers.¹⁵

¹¹ "A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform," *ACLU*, 2020.

¹² *Ibid.*

¹³ Rebecca Vallas, "Should a Criminal Record Be a Life Sentence to Poverty?," *The Nation*, March 11, 2015. (Nearly nine in 10 employers and four in five landlords conduct background checks.) See also, the American Bar Association's National Inventory of the Collateral Consequences of Conviction, www.americanbar.org/groups/criminal_justice/niccc/ (cataloging over 45,000 federal and state statutes and regulations that impose collateral consequences on persons convicted of crimes.)

¹⁴ See "Getting Away with Murder," *The Economist*, July 4, 2015.

¹⁵ Phillip Smith, "States that legalized marijuana see dramatic drop in police traffic searches," *Alternet*, April 1, 2019. (Before legalization, 1.3% of Black drivers were subject to traffic searches in Colorado. After legalization, the rate was under 0.2%. Among Hispanic drivers, the rate dropped from 1% to 0.1%. Among whites, the rate of searches dropped from 0.4% to 0.1%. Thus, Black drivers went from being 6.5 times as

Traffic stop interactions have led to violence and even death for Black Americans.¹⁶ The data compiled by Stanford researchers shows searches dropped by about half in Washington and Colorado since legalization. Racial disparities have decreased but have not been eliminated.

Passing SF 73 will save hundreds of Minnesotans from being searched, arrested, and cited for cannabis.

Ending prohibition will also help police solve violent crimes in another way — by freeing up time and resources currently wasted on prosecuting adults for cannabis offenses.

II. Suggested revisions to SF 73

SF 73 includes many commendable provisions, and seeks to put equity, public health, and education at the forefront of legalization. We are grateful that it includes a state-initiated expungement and resentencing process, and employment protections for workers.

While MPP is supportive of the bill, we do recommend reconsidering some of the details.

A. Making the licensing process more equitable including by removing the requirement of property upfront

SF 73 envisions a licensing process that is a similar system to Illinois' competitive licensing system, which has been beset by litigation, delays, and concerns that it is not adequately benefiting Black and Brown communities hardest hit by the war on marijuana.

It would entail a limited number of licenses of each type being issued, with the Office of Cannabis Management determining that number and scoring applications to decide which applicants are licensed. We are concerned about this process.

"Merit-based" applications require vast amounts of capital simply to throw one's hat in the ring. Only the top scoring applicants are licensed, so everyone else who applies will have wasted what can often amount to tens to hundreds of thousands of dollars — sometimes one's entire life savings.

SF 73 goes even further than Illinois in the burden to applicants by requiring them to demonstrate legal possession of the premises where the business will operate and by requiring a labor peace agreement at the time of application — before the business even exists. Several plans are also required during the application.

likely to be searched as whites to twice as likely, and the total likelihood of Black drivers being subject to a traffic search dropped eightfold.)

¹⁶ Tanvi Misra, "Uncovering Disparities in Policing by Analyzing Traffic Stop Data," *Pacific Standard*, June 7, 2018.

We recommend avoiding a numerical limit on business types and instead licensing every qualified applicant, though possibly with a limit for the total square feet of utilized cultivation canopy. That would avoid the state picking winners and losers and the litigation and other issues doing so creates. Social equity applicants could be given a head start.

If there must be licensing caps and a scored application system, we recommend two stages: First, a conditional license, which would not require property and other costly aspects of the application. The second step would be securing property and other more costly and onerous aspects of the application, which would be required for final approval.

We also recommend considering a “qualifying lottery” instead of a merit-based, scored system if there must be licensing caps. SF 73’s licensing process may result in only those scoring perfectly getting licensed, as happened in Illinois. There is a huge incentive for rejected applicants to litigate, as we have seen in other states, particularly given the expenditures that would be required to apply.

SF 73 also includes veteran status as one of the scored factors. This may well result in *only* veterans being licensed, which increases the risk of successful litigation and leaves all other social equity applicants behind — who will have had to waste vast sums applying. In Illinois applications, only perfectly scored applications made it into the first lottery, which were thus all owned by veterans.¹⁷ Unsuccessful applicants sued on several grounds, including that the veteran requirement is discriminatory because LGBTQ members could not serve openly until 2011.¹⁸

If there must be a scored application system, rather than only entering applicants who *tie* into a lottery, it would be more prudent to allow any applicant scoring over a certain threshold to be entered into a lottery. This would create less pressure to have a perfect application, which is extraordinarily costly and thus contrary to equity goals. This can also reduce the chance of litigation over minor differences in scores for similar applications. A very significant percent of the licenses could be reserved for social equity applicants and/or those who were directly impacted by prohibition, and another specific percent could be reserved for veterans.

Also of note, some courts¹⁹ have found residency requirements, which SF 73 includes unconstitutional. And there has been litigation challenging social equity definitions based on a geographic area (or arrest) *within* the licensing state instead of nationwide.²⁰

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<https://grownin.com/2021/07/26/all-40-il-craft-grow-licenses-are-veteran-led-says-state-no-scores-until-dec/>

¹⁸ Mike Fourcher, "Illinois lawsuit argues dispensary application process discriminates against LGBTQ+" GrownIn, Oc. 21, 2022.

¹⁹ See: "Federal judge nullifies Maine residency requirement for cannabis owners," MJBizDaily, August 18, 2022.

²⁰ See: Ashley Southall "Judge Blocks Licenses for Some Cannabis Dispensaries in New York," New York Times, Nov. 11, 2022

If SF 73 remains as-introduced, applicants will likely bleed even more capital sitting on property they cannot use as they wait for litigation to be resolved.

B. Timeline and Volume of Assistance

While SF 73 includes some excellent ideas for programs to provide start-up funding and technical assistance to cannabis businesses, it is not clear if applicants will receive grants in time to complete their applications, which is especially daunting given that property is required at the time of application. Minnesota should have technical assistance programs and grants in place in time to help applicants. We also recommend ensuring some licenses are issued on a continual basis to ensure some licenses are issued after the funds are available.

In addition, the maximum amounts for grants pale compared to the amount it costs to open brick-and-mortar cannabis businesses, which is typically well over \$500,000, and more often well over \$1 million. Consider increasing the caps and shifting more funds to assistance, especially in the first two to three years.

C. Clarifying ownership thresholds for social equity and vertical integration bar

It is unclear what threshold of investment is required to be a social equity applicant. It is also unclear what threshold of investment triggers the bars on vertical integration. These thresholds should be clarified.

It is important that social equity applicants have actual ownership and control, and not be mere figureheads who do not receive the economic benefits of the business. At the same time, difficulty accessing capital due to disparities in wealth is one of the biggest challenges to creating a diverse cannabis industry. It is also important that social equity applicants be able to raise capital, and the bill should carefully reflect these needs.

Turning to vertical integration, if someone invests 51% but isn't the applicant, it is unclear if they can own both a cultivation facility and a retailer. This would seem to undermine the intent of the bar. Any restrictions on vertical integration should presumably apply to anyone with a significant interest, which should be defined — probably as 5% or 10%.

D. Requiring third-party transporters with two staff is onerous and unnecessary.

We suggest removing the requirement that cannabis businesses utilize a separate transporter. (See 48.22-48.32). Prohibiting cannabis businesses from transporting their own cannabis will drive up costs and almost surely results in greater impact regarding pollution and greenhouse gas emissions. California's legal cannabis businesses are having trouble competing with the illicit market, and a similar requirement is one of the factors that is driving up costs.

Allowing a third-party transporter makes sense — in many cases it will be the most efficient way to transport cannabis and cannabis products. But every cannabis licensee should be

allowed to transport their own cannabis if they comply with reasonable security requirements.

The unnecessary cost is further increased by an onerous requirement that each vehicle have two staffers (line 64.23-64.29) This drives up costs and makes it harder to compete with the illicit market. Postal trucks, which deliver prescriptions, and those transporting cannabis in most states have no such requirement, nor does alcohol delivery.

E. Expanding expungement and resentencing and expediting relief

We were very glad to see the state-initiated expungement process for possession offenses but would love to see the bill go further in this vital area of reparative justice.

Sentences should be reduced — ideally to time-served — for sales, too, not just possession. People sentenced to years and decades for the same conduct that will be legal (selling cannabis) should be released in almost all cases. The Cannabis Expungement Board should consider if it's in the interest of justice, with a presumption in favor of it, to reduce all cannabis sentences to the sentence already served. This should apply not just to incarceration, but also supervisions and outstanding fines/fees.

SF 73 also allows the Cannabis Expungement Board to take until 2028 to review cases and act on them. Many current inmates' sentences may be completed before the board gets to their case. We urge that anyone currently sentenced for cannabis also be allowed to proactively petition for resentencing — and ideally release — while they wait for the board to get to their case. We also urge a shorter deadline (perhaps six months) for the board-initiated review of sentences for those incarcerated or under supervision.

Finally, we encourage the bill to be amended to provide that pending charges for legalized conduct must be dismissed, as New Jersey did.

F. More Completely Protecting Cannabis Consumers from Discrimination

It is great to see provisions to protect cannabis consumers from employment discrimination and several other state sanctions. We would love to see this language strengthened further.

Several states provide that a person's professional or occupational license may not be revoked and they may not be subjected to discipline because they provide cannabis-related advice or services or for other state-legal cannabis activities.

We also urge that SF 73 provide that a person could not be denied organ transplants, medical care, child custody, or any state benefits, based on state-legal, responsible cannabis conduct. In Minnesota, most of these protections already apply to medical cannabis. (lines 98.21 -98.24, 99.6 -99.16) They should be extended to all cannabis consumers.

It appears that the bill would allow a landlord (the property owner) to completely prohibit tenants from using cannabis. (lines 157.9-157.11) All adults should be allowed to use cannabis at home — at a minimum by non-smoked means. This should be revised.

G. Miscellaneous recommendations

We have several miscellaneous recommendations as well:

- The requirement of board approval for each cannabis product seems overbroad and could cause significant delays in product roll-out. (See line 21.24- 21.25) This could make functioning extremely difficult for small businesses, especially product manufacturers. If pre-approval is required, we urge it include a specific, reasonable timeframe for approval or notice of reasons for rejection, such as 21 days.
- We urge that all adult-use cannabis licensees be also allowed to engage in the same conduct for medical cannabis, if they abide by any medical specific rules. For example, adult-use retailers should be allowed to get a medical endorsement if they follow requirements related to pharmacists, separating the counters, and any other medical-specific rules. The products used for adult-use consumers and those participating in the medical program are often the same. In many cases, adult-use consumers are using cannabis as an over-the-counter medicine. Requiring separate licenses may make medical-only businesses noncompetitive and may force patients to drive longer distances. It also could lead to shortages if there is not enough medical supply. Also, adult-use cannabis patients would benefit from being able to speak to a knowledgeable pharmacist, and that should be made possible with combined locations.
- We urge removing the ban on drive-through windows. (line 59.13). Even conservative Utah allows drive-throughs. Drive-through windows allow safer access in times of pandemic(s), and they're used for more dangerous prescription drugs. Many adult-use and medical customers will be immunocompromised and may not feel comfortable physically going into a store. Parking, entering and exiting a car, and walking can also be a painful challenge for the disabled.
- We suggest rewording references to pregnant and breastfeeding "women" as "people" or "individuals." (lines 20.15-20.17, 181.5, 181.16- 181.18, 240.27) There is no need to reference gender. Some non-binary people and transgender men get pregnant.
- We would like to see language included to specify the odor of cannabis isn't grounds for a search. The actual or imagined smell of cannabis is an incredibly common pretext for stops and searches and results in thousands of unnecessary, traumatic, and sometimes dangerous police-civilian encounters. While a court would likely eventually rule such searches are not allowed, spelling it out in statute will help ensure police department policies and training clearly prohibit such searches. We

can recommend language that makes it clear it doesn't prevent a DUI field sobriety exam that would otherwise be warranted.

- Adults should be allowed to use cannabis in parked motor vehicles. Under SF 73, they cannot use cannabis in any motor vehicle. (lines 25.17-25.18) The ban should only be for using cannabis in a *moving* vehicle. Reasons adults may need to use cannabis in a parked vehicle include if they live in HUD housing where they can be evicted for using cannabis, if they have a child in a small home and don't want to smoke around them, if they're homeless and live in their car, if they're visiting family who don't want them to smoke in their residence, if they stay in a nursing home that doesn't allow it, and many more.
- We urge removal of the ban on individuals with non-cannabis drug felonies owning or working at a cannabis business, unless five years have passed since the sentence or they get a waiver. (line 42.1-42.6; 42.32-43.2) They are unlikely to be hired with the ban, even if there's a possible waiver, which would take time. Once time is served, individuals should not be stigmatized and denied a second chance. This is particularly a concern given the disparate enforcement of drug laws.
- We urge exceptions be added so individuals can enter restricted premises cannabis businesses if they are EMTs, firefighters, or any other all first responders performing official duties or contractors performing work that doesn't involve touching cannabis. (lines 44.7-44.9, 69.12)
- We would encourage some medical cannabis improvements while the sections are being recodified, including:
 - Patient registrations shouldn't expire for at least 3 years. If it can't be the case for all of them, there should at least be this option if the physician certifies they have a chronic or incurable condition. (lines 94.17-94.20, and other places)
 - The \$40 patient fee should be removed or reduced to \$15 (lines 91.3-91.4)
 - The prohibition on possessing cannabis at school, on a school bus, at childcare should be removed. (lines 95.8 – 95.26)
- SF 73 is not entirely clear if a parole, supervised release, or conditional release can be revoked based on a positive test for cannabis metabolites. We urge it be clarified to explicitly prevent revocation for testing positive for THC or metabolites. (lines 160.1- 160.12)
- Regarding the pilot program intended to determine the efficacy of oral fluid testing (Starting at line 163.21) these tests may show cannabis was used many, many hours or even days after last use. There should be a required study as well on how long after last-use a person may test positive, to study if this may result in flagging sober drivers long after impairment wore off. It is important that it studies regular users of all types of cannabis, not just occasional or infrequent users.

- We were glad to see some firearms protections but urge deletion of the language regarding when a person can't carry a gun (lines 206.14-17). The language is overbroad, vague, and unnecessary. It provides a person can't carry a gun or ammo "when the person is enrolled as a patient in the registry program, uses medical cannabis flower or medical cannabinoid products, and knows or has reason to know that the medical cannabis flower or medical cannabinoid products used by the person has the capacity to cause impairment." This language is unnecessary as there is already an exception for if one is "under the influence of" a controlled substance, which cannabis would remain. The additional language suggests it is a broader standard and could apply to a medical cannabis patient even when they are not under the influence.
- SF 73 should provide that cannabis-related contracts that are legal under state law are enforceable, as several other states do.
- SF 73 provides: "License holders may petition the office to adjust the tier of a license issued within a license category provided that the license holder meets all applicable requirements" but it does not reference tiers anywhere else. (lines 29.22- 29.23) This language should be clarified. It should allow licensed cultivators to move from a craft to a bulk grower as long as there isn't an oversupply and they meet any requirements.

Please don't hesitate to reach out to me at the below email or phone number if there is any information I can provide as you consider replacing cannabis prohibition with sensible regulation. I would also be most happy to assist with bill language if you would like to make amendments based on any of the above input.

Sincerely,



Karen O'Keefe
Director of State Policies
Marijuana Policy Project
323-568-1078
kokeefe@mpp.org