



Cannabis Opportunity and Administration Act — Discussion Draft Marijuana Policy Project Feedback

September 1, 2021

Dear Senators Booker, Schumer, and Wyden:

We are grateful for your leadership to end the devastating federal war on cannabis and appreciate the process of soliciting feedback on the complex issue of federal legalization and equitable regulation.

The Marijuana Policy Project (MPP) is the largest organization in the United States that is focused solely on enacting humane cannabis laws. MPP played a central role in most of the major state-level cannabis policy reforms enacted in the past 20 years. Working hand-in-hand with local advocates and allies, we played a leading role in enacting 11 of the 19 adult-use legalization laws and 14 recent state medical cannabis laws.¹

Federal prohibition urgently needs to end. Every day cannabis is prohibited under federal law, there are real human consequences. Thousands of Americans are arrested every year for federal cannabis offenses.² Legal residents are denied entry and deported for cannabis.³ Struggling families are kicked out of homes they desperately need.⁴ Re-entering citizens on probation or parole are incarcerated for testing positive. And because the enforcement of cannabis laws is staggeringly unequal, the harms — including the life-altering consequences of criminal records — are disproportionately inflicted on Black and Latinx Americans.⁵

¹ See: <https://www.mpp.org/states/>. MPP's count of 19 legalization states includes South Dakota, where voters approved a 2020 initiative that has been enjoined by an appellate court based on a single subject challenge. The state Supreme Court heard an appeal but has not yet issued a ruling as of this writing.

² "Federal Justice Statistics, 2017-2018," U.S. Department of Justice, April 2021, NCJ 254598, Figure 3 (showing that the Drug Enforcement Administration alone made more than 3,000 marijuana arrests in 2018).

³ See: "Secure Communities and ICE Deportation: A Failed Program?," TRAC Immigration, Syracuse University (finding 6,770 ICE deportations in FY 2013 where the most serious offense was marijuana possession and 6,447 in FY 2012); *Prado v. Barr*, No. 17-72914, (9th Cir. 2019) (ruled against a woman who had lived in the U.S. since she was six months old and became a lawful permanent resident in 1980; she had a felony marijuana charge prior to legalization in California).

⁴ Patrick Session, "Public housing tenants still face stiff penalties for pot, even in states where it's legal," *Curbed*, Nov. 13, 2019. "Medical Marijuana Use in Public Housing and Housing Choice Voucher Programs," U.S. Dept. of Housing and Urban Development, Feb. 10, 2011. (New admissions for medical cannabis users are *prohibited*. Housing authorities may terminate assistance for current tenants using cannabis.)

⁵ See: *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform*, ACLU, 2018 (finding nationwide racial disparities in cannabis arrests, with Black individuals about 3.6 times as likely as white individuals to be arrested for possession despite similar use rates); The government data the ACLU used does not include other races or ethnicities, but other data shows disparities in cannabis arrests of Latinx individuals. See: "Racial Disparities Persist in Who's Arrested for Pot Possession", WNYC, Jan 26, 2018.

In addition to the impacts on cannabis consumers, a cloud of illegality hangs over hundreds of thousands of cannabis workers. This results in mostly cash businesses with increased risk of robbery.⁶ Workers are denied mortgages because their industry is illegal,⁷ and bank and retirement accounts are suddenly closed.⁸

All of this harm has been unleashed in a failed effort to stop people from using a plant that is far less toxic, addictive, and harmful to the body than alcohol and many medications.⁹ More than two-thirds of Americans believe cannabis should be legal.¹⁰ And almost every state allows cannabis in at least some form in defiance of federal law.¹¹

We commend your work to finally put an end to federal prohibition and to do away with scarlet letters for convictions that slam the door to a better life. We applaud the CAO Act Discussion Draft for:

- including provisions to ensure a substantial amount of the tax proceeds benefit individuals and communities that have been adversely impacted by the war on drugs;
- removing cannabis from the CSA scheduling and removing federal penalties for up to 10 pounds of cannabis;
- providing that cannabis use and cannabis convictions do not adversely affect immigration, federal public benefits, and eligibility for a security clearance;
- making legalization retroactive, including expungement and re-sentencing, and incentivizing state expungement;
- authorizing the Department of Veterans Affairs and Indian Health Service providers to recommend medical cannabis in accordance with state programs; and
- promoting social equity in licensing and collecting demographic data on cannabis business owners and employees.

While we are enthusiastic about the goals of the CAO Act Discussion Draft, we believe the regulatory aspects need significant clarification and revision to avoid unintended consequences. Our two major areas of concern are: the possible upending of state licensing and regulatory systems — driving sales underground — and the impact on medical cannabis access, including for those under the age of 21. We also urge modifications to

⁶ See: "Without banks, pot dispensaries vulnerable to theft," CBS 8.

www.kgw.com/article/news/local/marijuana/without-banks-pot-dispensaries-vulnerable-to-theft/283-67157771

⁷ See: "Federal Prohibition of Marijuana Restricts Lenders Ability to Issue Loans to Borrowers Employed in Marijuana Industry," JDSupra, April 10, 2018.

⁸ See: Patrick Walker, "Banks close marijuana CEO's accounts," 8 News Now, Aug. 29, 2018. Even though MPP is a non-profit advocacy organization that does not engage in any cannabis commerce, its retirement provider briefly dumped the account and a few banks have suddenly closed MPP's accounts over the years.

⁹ For more details and citations on the health profiles of cannabis compared to alcohol, see www.mpp.org/marijuana-is-safer/. See: "Deaths from Marijuana vs. FDA-Approved Drugs," ProCon.org, last updated July 8, 2009. In 2017, 17,029 Americans died from prescription drug overdose (<https://www.drugabuse.gov/drug-topics/trends-statistics/overdose-death-rates>). In contrast, cannabis has not ever been shown to cause an overdose or an increase in all-cause mortality.

¹⁰ Megan Brenan, "Support for Legal Marijuana Inches Up to New High of 68%," Gallup, Nov. 9, 2020.

¹¹ For the list of states and key details of the laws, see <https://www.mpp.org/assets/pdf/issues/legalization/Review-of-State-Legalization-Laws.pdf> for legalization laws, <https://www.mpp.org/assets/pdf/issues/medical-marijuana/Key-Aspects-of-State-and-DC-MMJ-Laws.pdf> for comprehensive medical laws, and <https://www.mpp.org/issues/medical-marijuana/overview-of-states-flawed-high-cbd-laws> for low-THC or more limited medical laws.

more comprehensively remove the harm the federal government inflicts on cannabis consumers and those with past cannabis convictions, and to increase the amount of revenue dedicated to hard-hit communities.

I. Preserving State Regulatory Systems and Tax Revenues, Protecting Small and Equity Businesses, and Avoiding Driving Sales Back Underground

Since 1996, states have crafted their own laws to allow medical cannabis and later full legalization for adults 21 and older, despite federal prohibition. Medical cannabis states were initially hesitant to issue licenses for commercial cannabis, resulting in unregulated businesses with untested products. After receiving signals that the federal government would not interfere, however, states began crafting cannabis licensing and regulatory systems in 2009.¹² MPP has worked closely with lawmakers and ballot initiative campaign committees to draft many of those laws.

Now, millions of Americans consume cannabis that is produced, lab-tested, and sold at state-licensed, state-regulated businesses.¹³ Consumers have become accustomed to a wide array of product choices, with many finding they respond best to specific strains, products, and preparations.¹⁴

However, if the supply of legal cannabis products is interrupted or prices become uncompetitive, the underground market will step back in to satisfy demand. Because 31 states still prohibit adult-use cannabis, the majority of cannabis in the U.S. is still sold illegally. Even some legalization states — most notably California — continue to see a significant amount of illicit and unregulated cannabis commerce.¹⁵ Illegal cannabis is often grown in sensitive ecological areas and involves diverted water sources and despoiled wildlife areas.¹⁶ It does not have to comply with costly testing, regulatory rules, worker protection laws, and it is untaxed.

In addition to providing regulated access to cannabis, many state cannabis laws seek to promote small businesses and to ensure those individuals and communities most harmed

¹² See: Karen O'Keefe, "State Medical Marijuana Implementation and Federal Policy," 16 J. Health Care L. & Pol'y 39 (2013).

¹³ Around 5.4 million Americans are state-legal medical cannabis patients. See: <https://www.mpp.org/issues/medical-marijuana/state-by-state-medical-marijuana-laws/medical-marijuana-patient-numbers/>. Meanwhile, approximately 12 million adults are legally using cannabis in legalization states, including some of the 5.4 million medical patients. (U.S. Census data shows that over 145 million Americans live in legalization jurisdictions. Around 70% percent of Americans are 21 or older, meaning there are about 101 million adults in legalization states. More than 12% of Americans admit to Gallup they "smoke marijuana," which would translate to 12.18 million cannabis consumers who are 21 or older in legalization states.) Jeffrey Jones, "Nearly Half of U.S. Adults Have Tried Marijuana," Gallup, Aug. 17, 2021.

¹⁴ See, i.e., Shunaha Kim-Fine, et al., "Cannabinoids and bladder symptoms in multiple sclerosis," *Multiple Sclerosis and Related Disorders*, Volume 54, September 2021. ("The most common modes of cannabis consumption were oral-edible (69.0%) and smoked (57.1%), while 59.3% used more than one mode of consumption, and 2.6% used five different modes.")

¹⁵ See: Josh Haskell, "The battle against the lucrative business of illegal marijuana dispensaries in California," ABC 7, October 8, 2019.

¹⁶ Jaclyn Cosgrove, Louis Sahagún, "Illegal pot invades California's deserts, bringing violence, fear, ecological destruction," *The Los Angeles Times*, July 11, 2021.

by prohibition benefit from the economic opportunities created by legalization.¹⁷ While those programs have not delivered nearly as much diversity in the industry as was hoped, many of the social equity programs are brand new or have recently been expanded. The limited gains for diversity and equity in cannabis ownership must be preserved, and the new programs must be given an opportunity to deliver a more equitable industry. Federal legalization is key to helping these equity efforts bear fruit — including by opening the door to loans and by removing the cloud of federal illegality that may deter over-policed communities' participation.¹⁸

We are concerned that a sudden imposition of complex federal regulations could wipe out much of the existing state-legal markets, including equity businesses, and drive cannabis sales back underground. Upon federal legalization, unless federal law creates an explicit exception to it, the Dormant Commerce Clause would likely force states to suddenly allow interstate commerce, which would compound the risks to small and social equity businesses.¹⁹

In addition to concerns about equity and other small businesses that are just getting established, forcing states to allow cannabis imports from other states would upend state tax structures, decimating many states' cannabis revenues. Eight of the 19 legalization states impose at least some taxes at the cultivation or wholesale level.²⁰ These tax structures are not workable in the context of interstate commerce. For example, Alaska only taxes cannabis at the point of sale from an Alaska-licensed cultivator. If Alaska were required to allow imports of cannabis products produced from cannabis grown in other states, it would presumably collect no tax revenue on those products. Alaska cultivators and manufacturers could be expected to fail because of their untaxed, out-of-state competition.

Similarly, most state cannabis laws only remove criminal penalties from *intrastate* cannabis businesses. These laws would need significant rewrites to adapt to federal regulation and even more changes if they must open their doors to interstate commerce. Many state cannabis laws were enacted by ballot initiative, and some must return to voters to be modified. This process could take years.

¹⁷ See: "Social Equity Policies in Adult-Use Legalization Laws," MPP, available at

<https://www.mpp.org/issues/legalization/social-equity-policies-in-adult-use-legalization-laws/>.

¹⁸ See: "Even With Programs in Place, Social Equity Potpreneurs Still Need Funding," *Westword*, Dec. 6, 2020. (Denver Excise and Licenses Executive Director Ashley Kilroy notes, "We know from all the work we have done and what other states have done, we can build a great equity program, but the number-one thing we [for successful social equity] need is access to capital"); Aaron Schachter, "Growing Marijuana Industry Struggles To Attract Employees Of Color," *NPR*, Feb. 21, 2019 (quoting cannabis activist Sieh Samura, "They're scared of the government, man.").

¹⁹ See: Robert Mikos and Scott Bloomberg, "Legalization Without Disruption: Why Congress Should Let States Restrict Interstate Commerce in Marijuana," August 23, 2021, Vanderbilt Law Research Paper No. 21-33. Available at SSRN: <https://ssrn.com/abstract=3909972> or <http://dx.doi.org/10.2139/ssrn.3909972>.

²⁰ Details available at: <https://www.mpp.org/issues/legalization/breakdown-taxes-adult-use-states/>.

That said, while *forcing* states to allow interstate commerce without ample transition time would create problems, some states — such as Oregon — would welcome the ability to allow the export of cannabis to other states.²¹

Federal regulation should include significant deference to state systems. However, there are areas where a federal role and uniformity would be beneficial. The Environmental Protection Agency should be responsible for approving pesticides, as it does for all other crops. It also makes sense for federal authorities to establish uniform labeling rules, along with lists of permissible and prohibited additives. However, sufficient transition time is needed to harmonize state laws and regulations and to allow time for small businesses to adapt.

To preserve state regulatory systems and avoid driving cannabis commerce back underground, we urge the following:

- **The FDA should not be a lead regulatory agency.** The FDA's role should be precisely defined and narrow in scope. The track record of the FDA²² suggests it having a significant role would lead to a very restrictive market, with rapid consolidation into a handful of large players and the resurgence of the underground market. Only large businesses would be able to compete with complex FDA regulations, leading to the demise of small and social equity businesses. As the lead agency for alcohol, the Tax and Trade Bureau is the appropriate lead federal agency.
- **The vast majority of cannabis products should not require individual approval from a federal agency.** The FDA must not be authorized to require costly pre-market approvals for flower cannabis, edible products, or other product types that are already available in state markets. Doing so would surely disrupt the state-regulated market, drive sales underground, and tilt the scales in favor of very large, deep-pocketed corporations.
- **Any new federal regulations must include significant notice and transition time during which businesses can operate under state laws without running afoul of federal law or regulations.** Colorado allowed for a significant transition period when it moved from an unregulated, unlicensed system of dispensaries to regulation beginning in 2010. This type of transition — which should be at least 1.5 years — is essential to preserving the systems states have carefully crafted and avoiding driving sales underground.

²¹ See: Kyle Jaeger, "Oregon Governor Signs Bill To Allow Interstate Marijuana Imports And Exports," *Marijuana Moment*, June 25, 2019.

²² See: Jill Wechsler, "Biosimilars Move to Center Stage," *PharmExec.com*, August 12, 2021. (FDA has approved only 30 biosimilars since Congress enacted the Biologics Price Competition and Innovation Act, which was intended to expand access to less costly biotech therapies.); Tiffany Kary, "FDA Objects to CBD as Diet Supplement, Extending Uncertainty," *Bloomberg*, August 11, 2021; See: Jason Millman, "Does it really cost \$2.6 billion to develop a new drug?," *The Washington Post*, November 18, 2014.

- **The states should continue to serve as primary licensing authorities.** As is the case with alcohol, states should continue to serve as the primary licensing authorities for cannabis business.
- **Any federal taxes and fees should be reasonable and modest.** There is no federal fee to operate a TTB-regulated alcohol or tobacco business.²³ In contrast, in addition to taxes, the CAO Act Discussion Draft would require a “reasonable permit fee in an amount ... sufficient over time to offset the cost of implementing and overseeing all aspects of [federal] cannabis regulation.” Given that cannabis is the less harmful product, which is also subject to an excise tax, there should also not be federal permit fees for cannabis. In addition, the eventual 25% tax rate is far too high, particularly when it is coupled with existing state taxes that can total more than 50% of the retail price.²⁴
- **States should be allowed to decide to what extent they want to allow interstate commerce and on what timeline.** If states will be required to allow interstate commerce, they will need at least a few years to change their laws, licensing, tax laws and collection procedures, and regulatory systems. The CAO Act should unambiguously override the Dormant Commerce Clause, at least to allow plenty of time for a transition after eight decades of federal prohibition.

Before any state legalized cannabis for non-medical use, illicit cannabis sales in the U.S. totaled well over \$10 billion per year,²⁵ despite eight decades of prohibition. Moving from complete federal illegality and intra-state regulation must be done very carefully, with plenty of time for transition and feedback on individual regulatory proposals. Regulatory burdens that prevent access to the type of products that consumers want or hefty taxes and onerous regulations that drive up prices will only cause more sales to be pushed underground.

II. Protecting Medical Cannabis

Another essential priority in federal legalization and regulation is preserving and enhancing access to medical cannabis and avoiding price increases. Thirty-six states²⁶ have what MPP considers comprehensive medical cannabis laws (including all 19 legalization states), and another three allow the production and sale of lower-THC cannabis products that exceed the 0.3% THC limit in the federal hemp law.²⁷ All of the medical cannabis states allow minors to qualify for and use medical cannabis.

²³ <https://www.ttb.gov/applications>

²⁴ See: <https://www.mpp.org/issues/legalization/breakdown-taxes-adult-use-states/>

²⁵ See: Ariel Nelson, "How Big Is The Marijuana Market?," CNBC.com, April 19, 2010.

²⁶ A 37th law, in Mississippi, was overturned by the state Supreme Court based on a challenge about signature requirements. The legislature is expected to replace the law. Here is the full list of medical states and some details of the laws: www.mpp.org/assets/pdf/issues/medical-marijuana/Key-Aspects-of-State-and-DC-MMJ-Laws.pdf.

²⁷ Those three states are Georgia, Iowa, and Texas.

Because of federal prohibition, state medical cannabis laws have also been crafted with wholly intrastate systems of access. Instead of prescriptions, they rely on medical practitioners' certifications or recommendations. Millions of patients depend on medical cannabis programs for the products that work best for them. Many of these patients find that inhaled botanical cannabis provides the most relief, while others respond best to edibles, concentrates, or some mix of products.

To preserve medical cannabis access and avoid price increases:

- **It is essential that the same level of access and product availability be preserved after federal legalization and regulation.** If it were given broad regulatory authority, the FDA would almost surely impose regulatory burdens that limit medical cannabis products, drive up costs, and decimate small businesses. As was noted in the prior section, it should not be the lead agency, and there should be no pre-market approval required.
- **Federal regulations must continue to allow minors who are state-legal medical cannabis patients to access cannabis.** The CAO Act Discussion Draft, Sec. 502 (b)(6)(fff), would prohibit “the sale or distribution of cannabis product to any person younger than 21 years of age.” This needs to be deleted or revised to exclude medical cannabis patients. It would shut off access for patients under the age of 21, including veterans and other young adults living independently. Similarly, Sec. 1105 directs the Secretary to craft regulations for remote sales to prevent distribution to “individuals who have not attained the age of 21.” That, too, needs to be deleted or revised.
 - On the other hand, Section 112 appropriately removes federal penalties for possession regardless of age. States can then continue to penalize possession for those under the age of 21 — ideally with a civil, not criminal, offense — with exceptions for medical cannabis.
- **Federal law and rules must allow accurate information to be conveyed about cannabis' medical benefits.** Despite the U.S. government's obstruction of large-scale research, there have been dozens of studies establishing cannabis' and cannabinoids' medical benefits, including related to chronic pain, spasms, and nausea and appetite loss. Patients rely on being able to receive accurate information about cannabis, and federal legalization and regulation must not hinder or prohibit such labels.
- **Any federal tax on cannabis must not be levied on medical cannabis.** It is wrong to tax medicine. However, the taxes imposed by the CAO Act do not include an exception for cannabis sold through state medical programs. The burden is compounded because medical cannabis is already not covered by insurance. In addition, the same cannabis products can be used for medical use as adult use, so a wholesale tax may not be workable.

- **The “personal and family use” exception to taxes in Sec. 5902 should include caregivers.** About half of medical cannabis programs allow a designated “caregiver” to grow cannabis for medical cannabis patients.²⁸ This is an important means of reducing costs for many patients. However, caregivers would seemingly not be exempt from the CAO Act’s taxes if they are not family members. They should be exempted, along with medical cannabis from dispensaries. In addition, it should be clear that adults growing for personal use are not subject to the tax if they share (rather than sell) their cannabis with other adults.

III. Reducing the Harms Inflicted on Cannabis Consumers and Disproportionately Impacted Communities

The CAO Act includes several provisions that reduce the harms the federal government inflicts on cannabis consumers. But it retains others, which disproportionately harm people of color. We strongly urge you to go further to stop destroying lives over cannabis, including to:

- **Expedite federal re-sentencing and release and make re-sentencing and release automatic instead of by petition.** The CAO Act Discussion Draft allows for petitions for re-sentencing for conduct that is federally legalized by the act. It should go further. Upon federal legalization, *all* federal cannabis sentences should be *automatically* reviewed, and most or all offenders should be released from prison and probation without being required to find a lawyer or prove indigence to receive free counsel. The process should begin immediately and be completed as soon as possible.
- **End the practice of federal workplace drug testing and federally mandated drug testing — at least for cannabis.** Sec. 101 (e) and (f) allow for continued cannabis testing of federal employees, along with other federally mandated drug testing. Cannabis users can test positive for metabolites 30 days after past use. This provision would take away the livelihood of federal employees and others who enjoy cannabis instead of wine or beer on the weekend or at night. The federal government should not fire or otherwise penalize employees for off-hours, off-duty cannabis use.
- **Remove the vague qualifier that any expunged cannabis offense be “non-violent.”** The CAO Act Discussion Draft allows expungement and release for “non-violent” cannabis offenses that are federally legalized. It is unclear what this means. The CAO Act does not expunge non-cannabis offenses. If the person also had a charge for a violent offense, the CAO Act would not expunge or re-sentence that offense. Including this vague language could lead to confusion and slow the process down. It should be removed.

²⁸ See: www.mpp.org/assets/pdf/issues/medical-marijuana/Key-Aspects-of-State-and-DC-MMJ-Laws.pdf for the states.

- **Including ancillary cannabis-related conduct in expungement and re-sentencing.** Because of cannabis' illegality, cannabis-related conduct can also be prosecuted under a number of additional statutes. For example, concealing cannabis proceeds is "money laundering." Other charges can include racketeering, operating drug-related premises within 1,000 feet of a school, and conspiracy. Individuals have been prosecuted for these cannabis-related offenses, including related to *state-legal* medical cannabis businesses.²⁹ They, too, should be released if their sentence has not been completed, and their records should be expunged.
- **Remove expungement prohibition for 3B.1(a) sentences.** The CAO Act Discussion Draft prohibits expungements for those who received aggravating role adjustments under U.S. Sentencing Guidelines § 3B1.1. The provision allows for an increase in offense level based on a defendant being deemed "the organizer, leader, manager, or supervisor of one or more other participants" in the commission of an illegal act. The rationale that persons who exercise a supervisory or managerial role in the commission of an offense tend to present a greater danger to the public and/or are more likely to recidivate has been proven unfounded with respect to cannabis offenses. In fact, these persons may possess skills that would be useful in a legal regulated market. Additionally, no state contains a similar prohibition for expungement of cannabis-related convictions.
- **Provide that parole, probation, and pre-trial release cannot be revoked for cannabis use or other cannabis-related conduct.** To stop sending people to prison for cannabis, refraining from cannabis-related activity must be removed as a cause for revocation of pre-trial release, probation, or parole. There could be a limited exception for cases where there is an *individualized* basis for finding that the person's cannabis use would pose a danger (such as if the person blamed their violence on cannabis intoxication).
- **The CAO Act should not disqualify people with recent drug felonies from getting a cannabis license.** Sec. 302 would prohibit people with recent state or federal cannabis felonies, after the enactment of the CAO Act, from participating in the cannabis industry. It allows for waivers upon demonstrated rehabilitation, but the general rule would have a chilling effect on launching businesses and financing. Most states will likely continue to prohibit cannabis after the federal enactment of the CAO Act, and their laws will continue to be disproportionately enforced against people of color. Other parts of the CAO Act acknowledge that those who have been most harmed by cannabis prohibition should have an opportunity to rebuild their lives in the

²⁹ See: Rory Carroll and Noah Smith, "Pot entrepreneur and ex-felon fights for black role in California's budding industry," *The Guardian*, Jan. 15, 2018. (Virgil Grant was sentenced to six years after being indicted for drug conspiracy, money laundering, and operating drug-related premises within 1,000 feet of a school.)

legal cannabis industry. At a minimum, this exception should be narrowed to only apply to states that have also legalized cannabis.

- **The overwhelming majority of tax revenue should be used to support communities and individuals harmed by racism and the war on cannabis.** While we were encouraged to see that some of the tax proceeds are dedicated to community reinvestment and re-entry, we urge revisions to ensure that the cannabis taxes are truly used to repair harms inflicted by mass incarceration, not to perpetuate it. Sixty percent of the Opportunity Trust Fund would be dedicated to carrying out section 3052(a) and b of part 00 of the Omnibus Crime Control and Safe Streets Act of 1968. Those sections appear to be the Crisis Stabilization and Community Reentry Program. While the name of the program seems in alignment with reparative justice, the provision appears to allow for allocation to include local criminal and juvenile justice agencies and programs for individuals “during pre-trial detention and incarceration.”

IV. Additional Feedback

A. Study on the “impacts” of legalization confuses correlation with causation

While research on both cannabis and legalization is worthwhile, Sec. 201’s envisioned study on the impacts of legalization seems all but certain to create a misperception rather than clarity on the actual impacts of legalization.

The study would require data analysis every year on an array of issues that are influenced by a myriad of factors, only one of which may be legalization. In doing so, the study design confuses correlation with causation.

The potential for a distorted perception is compounded because we have been grappling with a global pandemic for the past 1.5 years, which has caused trauma, short- and long-term health impacts, and an incredible disruption to in-person activities, which are particularly detrimental to at-risk youth. The pandemic has almost surely had a significant impact on many of the factors listed in the study: sick days reported to employers, worker’s compensation claims, federal welfare assistance applications, violent crime, and high school dropout. But the CAO Act Discussion Draft suggests all data outcomes will be considered “impacts of legalization.”

In addition, the study does not require an examination of most of the harms done by cannabis prohibition or how they are impacted by legalization. A true study on cannabis legalization’s impacts should include funding for qualitative research to include a fuller picture of the reality before and after legalization. A study of the impacts of legalization should include:

- before-and-after data on demeaning searches and stops, many of which are based on the supposed smell of cannabis;³⁰
- before-and-after arrest numbers for adults for cannabis;
- before-and-after incarceration numbers (including jails) for cannabis and parole/probation revocation based on cannabis;
- an examination of the psychological and other impacts of marijuana arrests and criminalization;
- an examination of the harms done in relation to jobs, housing, and benefits lost due to cannabis use and convictions;
- the experience of individuals who buy and sell cannabis before and after legalization, including changes in their vulnerability to arrest, robbery, and exploitation;
- the prevalence of minors using and selling cannabis before and after legalization; and
- the experience of consumers using cannabis as both over-the-counter or doctor-recommended medicine, including reports of the reduced need to use other medications.

B. Specifically including plants in legal amounts of federal cannabis and excluding the weight of other ingredients.

Most legalization states and about half of medical cannabis states allow personal cultivation.³¹ Oregon’s medical program allows 24 plants, six of which can be mature. The CAO Act Discussion Draft removes federal penalties for under 10 pounds of cannabis and defines cannabis as including growing plants. Because plants can weigh significantly over a pound each, state-legal personal cultivation could still be a federal crime. To avoid this injustice, federal penalties should also be explicitly removed for at least 100 plants.

In addition, Sec. 502’s definition of cannabis seems to include the weight of other ingredients. The weight of non-cannabis ingredients should be excluded from the 10-pound threshold.

³⁰ Phillip Smith, “States that legalized marijuana see dramatic drop in police traffic searches,” *Alternet*, Apr. 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 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.); See: Frank R. Baumgartner, et al., *Suspect Citizens: What 20 Million Traffic Stops Tell Us About Policing And Race*, Cambridge University Press (2018) (which analyzed North Carolina traffic stop data and found that Blacks and Latinos were more likely to be searched than whites, even though searches of whites were more likely to turn up contraband).

³¹ See: <https://www.mpp.org/assets/pdf/issues/medical-marijuana/Key-Aspects-of-State-and-DC-MMJ-Laws.pdf> and <https://www.mpp.org/assets/pdf/issues/legalization/Review-of-State-Legalization-Laws.pdf>.

Conclusion

We are grateful to the Sponsoring Offices for their work on this important civil rights issue and for their collaborative process of soliciting input.

While the CAO Act Discussion Draft includes numerous important provisions to address the devastating consequences of our country's decades-long war on cannabis, we urge revisions to further reduce those harms and to ensure federal legalization does not inadvertently derail the equity businesses it seeks to support.

Cannabis is a unique product with a unique background. It is a plant that is both used for health reasons and for fun, as an intoxicant. Unlike alcohol and many medications, it has never been shown to cause a fatal overdose. Despite decades of prohibition, around half of all Americans, including past presidents, have used cannabis. And it is openly sold from licensed businesses in dozens of states, even while distribution remains a federal felony.

Federal legalization and regulation must start with a framework of deference to states and include a slow transition. It must also avoid burdens that will drive the market for some or all types of cannabis products back underground. And it must stop destroying lives — disproportionately those of Black and Brown Americans — over a plant that is safer than alcohol.

Sincerely,

A handwritten signature in black ink that reads "Karen O'Keefe". The signature is written in a cursive, flowing style.

Karen O'Keefe
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