



**Written Testimony of Monica L. Reid, Senior Director of Advocacy  
on behalf of the  
National Association of Criminal Defense Lawyers (NACDL)  
To the Delaware House Health and Human Development Committee  
In Support of HB 371  
May 3, 2022**

I write on behalf of the National Association of Criminal Defense Lawyers (NACDL) to express support for House Bill 371, which would legalize the use and possession of small amounts of cannabis for adults 21 and older.

NACDL is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. NACDL's nearly 10,000 members (40,000 with state affiliate members) include private criminal defense lawyers, public defenders, military defense counsel, law professors and judges committed to preserving fairness and promoting a rational and humane criminal legal system. Critical to this mission are NACDL's efforts to identify and reform flaws and inequities in the criminal legal system, and specifically address systemic racism and its impact on the administration of justice. NACDL supports ending the failed War on Drugs and urges the state to treat drug use as a public health issue rather than a criminal matter.

The United States incarcerates more individuals per capita than any other nation.<sup>1</sup> This phenomenon is due largely to the War on Drugs, which has served, and continues to serve, as a powerful mechanism of mass incarceration in America. First declared in the 1970s, the War on Drugs sought to combat the illegal drug trade in the U.S. through policies intended to discourage distribution and consumption of illegal drugs. However, the War on Drugs and the harsh sentencing policies that followed only swelled the nation's prison population, disproportionately targeting communities of color. The number of Americans imprisoned for violating drug laws increased from roughly 41,000 to 431,000 between 1980 and 2019.<sup>2</sup>

American taxpayers spend billions of dollars every year on the arrest and prosecution of cannabis consumers. The ACLU found that in 2010, Delaware ranked among the top states in the country for spending per capita on cannabis possession enforcement, costing taxpayers millions in police, judicial, and correctional expenditures annually. From 2001 to 2010, cannabis possession arrests rates in Delaware

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<sup>1</sup> Prison Policy Initiative, 2021. *States of Incarceration: The Global Context 2021*.  
<https://www.prisonpolicy.org/global/2021.html>

<sup>2</sup> The Sentencing Project, 2021. *Trends in U.S. Corrections*.  
<https://www.sentencingproject.org/publications/trends-in-u-s-corrections/>



also increased by over 100 percent.<sup>3</sup> Cannabis legalization will allow law enforcement to redirect resources toward addressing more serious crimes, while providing the state the ability to reallocate scarce funds to other budget priorities. Data have shown that following cannabis legalization in Oregon,<sup>4</sup> Colorado, and Washington, clearance rates for violent crime increased.<sup>5</sup> As more states move toward legalizing cannabis for adults, the FBI reported that arrests for cannabis law violations dropped by more than 30 percent in 2020 to about 350,000, down more than 50 percent from its peak in 2008 when over 800,000 cannabis arrests were made prior to any state enacting legalization policies.<sup>6</sup>

At every stage of the criminal legal process—from the geographical distribution of police, to stops and searches, to arrest, to pretrial detention, to sentencing, to post-conviction, to collateral consequences—communities of color disproportionately bear the brunt of the War on Drugs and the criminalization of cannabis. A report from the ACLU analyzing cannabis arrests and race from 2010-2018 found that despite the increasing liberalization of cannabis laws across the country, black people are still 3.6 times more likely to be arrested for cannabis possession than white people, despite similar rates of use.<sup>7</sup> Following similar trends, in Delaware, black people are more than four times as likely to be arrested for cannabis law violations than white people, ranking 15th in the nation for the largest racial disparities in arrests. In 2018, over 1,100 Delawareans were arrested for cannabis law violations, 90 percent of which were for simple possession only. And while arrests generally declined after Delaware decriminalized low-level cannabis possession in 2015, racial disparities in enforcement persist.<sup>8</sup>

Recognizing the impact of the failed policy of cannabis prohibition, 18 states and Washington, D.C. have enacted laws legalizing and regulating cannabis for adults, including neighboring New Jersey. Maryland voters will also have the opportunity to decide on cannabis legalization in this year's election. It's time Delaware followed suit. According to statewide polling data,<sup>9</sup> 61 percent of Delawareans support the legalization of cannabis for adults.

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<sup>3</sup> ACLU, 2020. *The War on Marijuana in Black and White*. <https://www.aclu.org/files/assets/1114413-mj-report-rfs-rel1.pdf#77>

<sup>4</sup> Wu, Guangzhen, et al., 2020. *Effects of recreational marijuana legalization on clearance rates for violent crimes: Evidence from Oregon*. *International Journal of Drug Policy*. <https://www.sciencedirect.com/science/article/abs/pii/S0955395921004461>

<sup>5</sup> Makin, David A., et al. *Marijuana Legalization and Crime Clearance Rates: Testing Proponent Assertions in Colorado and Washington State*. Sage Journals, 2018. <https://journals.sagepub.com/doi/full/10.1177/1098611118786255>

<sup>6</sup> FBI Uniform Crime Reporting System, 2020. [https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2020-crime-statistics?link\\_id=1&can\\_id=6df8e59d6c0912ce253354a49e07a707](https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2020-crime-statistics?link_id=1&can_id=6df8e59d6c0912ce253354a49e07a707)

<sup>7</sup> ACLU, 2020. *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform*. <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>

<sup>8</sup> ACLU, 2020. *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform*. <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>

<sup>9</sup> University of Delaware Poll, October 2018. <https://www.cpc.udel.edu/content-sub-site/Documents/CPC%20poll%2010-17-18%20FINAL%20FOR%20CPC.pdf>



It is critical that any adult use legalization policy focuses on ensuring strong protections for individuals, and most importantly, marginalized communities who have borne the most harm as a result of the War on Drugs.

Prohibiting law enforcement from using the odor of cannabis as justification for pedestrian and vehicle stops, searches, arrests, and seizures is a critical component of legalization. This practice, which facilitates pretextual stops, leads to unnecessary encounters between members of the community and law enforcement and disproportionately targets black and brown individuals.<sup>10</sup>

Further, the Delaware Supreme Court issued a ruling in 2021 affirming that police cannot use the odor of cannabis as the sole reason to arrest an individual without a warrant:

*“Simply put, the authority the State has cited does not support its contention that the odor of marijuana, and nothing more, justifies a full custodial arrest for marijuana possession thus clearing the way for a strip search incident to that arrest to determine if the officer’s suspicion is well founded.”<sup>11</sup>*

This holding must be codified into state law when Delaware enacts cannabis legalization policies.

As the state considers cannabis legalization, it is essential to prioritize policies that alleviate the harmful impact of criminalization while addressing historic and current racial disparities, including the over-policing of communities of color and the discriminatory enforcement of cannabis laws.

For these reasons, NACDL urges Chairman Bentz and members of the committee to vote in favor of House Bill 371 to end cannabis prohibition in Delaware. Thank you.

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<sup>10</sup> Driving while Black: ABC News analysis of traffic stops reveals racial disparities in several US cities.

<https://abcnews.go.com/US/driving-black-abc-news-analysis-traffic-stops-reveals/story?id=72891419>

<sup>11</sup> *Heather Juliano v. State of Delaware*, 2019. <https://courts.delaware.gov/Opinions/Download.aspx?id=324220>

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