HOUSE HEALTH SUBCOMMITTEE ON HEALTH CARE AND HOUSE JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

INFORMATIONAL MEETING ON ADULT-USE CANNABIS

Wednesday, March 20th, 2024

9:00 am

Room G-50 Irvis Office Building

Harrisburg, PA

1. Call to Order

2. Attendance

   Panel 1

   Detective Chad Bruckner (Ret.), Law Enforcement Action Partnership

   Panel 2

   Bob Troyer, former U.S. Attorney for the District of Colorado

   Panel 3

   Frank Stiefel, Senior Policy Associate, Last Prisoner Project

   Sharon Dietrich, Litigation Director, Community Legal Services

3. Adjournment

Date: March 20, 2024

Re: Adult-Use Marijuana Legalization

Position: SUPPORT

To: The Pennsylvania House Health Subcommittee on Healthcare and House Judiciary Subcommittee on Crime and Corrections

Distinguished Members of the Committees,

My name is Chad Bruckner and I am here to represent myself as a retired detective, having served 13 years with the Lansdale Police Department, and as a speaker for the Law Enforcement Action Partnership (LEAP). LEAP is a non-profit organization of police, prosecutors, judges, and other criminal justice professionals who speak from firsthand experience. Our mission is to make communities safer by focusing law enforcement resources on the greatest threats to public safety, working toward healing police-community relations, and addressing the root causes of crime.

Thank you for the opportunity to testify today in support of adult-use marijuana legalization, regulation, and control in Pennsylvania. As a retired detective, I believe marijuana legalization would reduce drug trade violence, rebuild police-community trust, free up police to focus on more serious crime, and regulate product quality and safety for responsible adult-use.

First, legalization would reduce drug trade violence. Spending four years in a patrol car, I saw plenty of bar fights and domestic abuse fueled by alcohol. I realized that one cause of violence in my community was marijuana prohibition – not marijuana use, but the fact that marijuana was illegal. Much like the prohibition of alcohol created Al Capone, I saw that the prohibition of marijuana creates violence. Significant profits reward anyone willing to win new turf by force. When police lock up one seller, anyone willing to fight can take over their customers and profits. Legalizing marijuana would reduce prohibition-related violence and restore law and order in our communities.

Second, legalizing marijuana so we can regulate and control it for responsible adult-use would help promote police-community trust. As an undercover officer in the Street Crimes Unit and a coordinator for the Montgomery County Drug Task Force, I saw that in order to solve the most serious crimes, we needed people to talk to us. Across policing, the research underscores that having trust from the people we serve directly impacts public safety because when people don't trust police, they do not report crimes or cooperate with law enforcement. Given the threat of possible arrest, adults who use marijuana are less willing to speak to officers when we come knocking. When we arrest someone for drug use and possession, the community sees us wasting taxpayer resources. Legalization would foster better cooperation of the whole community to protect public safety.

Third, legalizing marijuana would free up police time and resources to focus on more serious crime. In 2022, the FBI reported that police made 303,997 arrests for marijuana possession offenses. Most people arrested for marijuana use and possession are not higher-level drug manufacturers and traffickers. Rather, many of these individuals have little or no prior criminal history. We dedicate critical resources to arrest and jail people who do not pose a significant threat to public safety. If marijuana is legalized, our officers would no longer be burdened with policing marijuana use and possession and targeting communities for low-level offenses. Research shows that law enforcement would have more time to focus their attention on investigating and apprehending perpetrators of violent crime like rape and murder.

Fourth, legalizing marijuana would promote public health and safety by guaranteeing state regulation of marijuana product quality and safety. When a drug is illegal, we have no control over it. Nobody needs a license to sell it, so drug dealers can sell it to young people. There is no regulation or responsibility for product quality or purity. When we move forward with legalization, marijuana products on the legal market will be produced by reputable companies and tested for toxins to ensure safe adult-use.

Marijuana legalization for adult-use has successfully been carried out throughout the country. In 2018, Michigan was the first midwestern state to legalize marijuana for responsible adult-use. Michigan legislators recognized the necessity of legalizing marijuana, to move it out of the illicit drug trade and off the streets into government regulated and licensed dispensaries. The sky has not fallen in Michigan since legalization. Ohio, Virginia, and 21 other states have legalized marijuana for adult-use as well.

Fifty years after President Nixon declared drugs to be public enemy number one, it is past time to correct the wrongs of marijuana prohibition. Marijuana legalization can reduce drug trade violence, rebuild police-community trust, free up police to focus on more serious crime, and regulate product quality and safety for responsible adult-use. Other states have shown that legalization is not a doomsday scenario; it is common sense and responsible legislation that time is showing to be successful.

Thank you for the opportunity to share my experience in support of adult-use marijuana legalization.

Respectfully,

Detective Chad Bruckner (Ret.)
Lansdale Police Department, PA
Speaker, Law Enforcement Action Partnership

LAW ENFORCEMENT ACTION PARTNERSHIP

ADVANCING JUSTICE AND PUBLIC SAFETY SOLUTIONS

Detective Chad Bruckner (Ret.)
Lansdale Police Department, Pennsylvania
Breignigsville, PA

Chad Bruckner began his career in the US Army in 1998. In his 8 years in the Army, he rose to the rank of staff sergeant in the Infantry branch and served overseas. He was designated the Battalion Non-commissioned Officer of the Year twice throughout his military career. In 2008, Bruckner joined the Lansdale Police Department in Montgomery County, Pennsylvania.

After four years as a patrol officer, Chad Bruckner was promoted to the rank of detective. In addition, Bruckner has served as a senior field training officer, a squad leader, an undercover officer, and a coordinator for the Montgomery County Drug Task Force. Detective Bruckner created an undercover Street Crimes Unit that investigated homicides, shootings, and drug delivery cases. In 2012-2015, the unit was responsible for a 40% reduction in crime and solved all shootings and robberies within the agency's jurisdiction. After 13 years in law enforcement, Detective Chad Bruckner retired in 2021. Since his certification in 2018, Bruckner instructs cadets on various topics at Montgomery County Municipal Police Academy in Pennsylvania. Bruckner owns and oversees a private investigation firm, Intercounty Investigations & Solutions, Inc.

Detective Bruckner received a MA in Digital Forensics from DeSales University. Chad Bruckner continues to serve his community as a part of the Montgomery County Crisis Intervention Stress Management team, and he is a certified Mental Health Peer Advocate.

Written Testimony of Bob Troyer, Former U.S. Attorney in Colorado

I was the First Assistant U.S. Attorney and then the U.S. Attorney in Colorado during the entire first 7 years of Colorado's commercialization of marijuana (2012 through 2018). Based on that experience, I detail below the law enforcement/criminal consequences we experienced in Colorado during that period. Before I do that, please understand that it is as frustrating to law enforcement as it is to legislators and policymakers that several factors make precise data and causation proof extremely difficult to produce when looking at the crime impacts of commercialization.

Black Market

According to the Rocky Mountain High Intensity Drug Trafficking Area organization, the black market in Colorado is approximately 30% of the overall marijuana market. Sources for the black market are (1) international drug-trafficking organizations (from China, Mexico, eastern Europe, Australia) for which Colorado became a "theater of operations" with massive outdoor grows on public lands and networks of indoor grows operated in gutted/renovated residential housing (HIDTA estimates more than 50% of the black market is sourced from illegal grows); (2) licensed growers and retailers who divert excess product to the black market; and (3) individuals who sell on the black market the product they trim from their permitted number of homegrown plants.

Violent Crime

Murders, aggravated assaults, robbery, and burglary increased in Colorado after commercialization. It's impossible to say what percentages of the increases were provably caused by commercialization, or state the precise numbers of marijuana-related murders, etc. (because law enforcement does not keep data on the motive/object of a shooting, murder, etc.). However, we saw many cases of assaults, shootings, robberies, and burglaries related to both legal and illegal marijuana operations. We also saw some surprising new crimes like armed hold-ups of US Postal mail carriers to steal their mailbox keys so the thieves could steal packages containing marijuana from those mailboxes.

DUI

Marijuana-related traffic deaths in Colorado have increased 138% from 2013-2023, while non-marijuana-related traffic deaths have increased 29%.

White Collar Crime

Investment fraud, tax fraud, securities fraud, bank fraud, public corruption, and money laundering related to marijuana blossomed in Colorado after commercialization, especially in the "wild west, gold rush, snake oil sales" early years. Environmental crimes also increased (use of banned pesticides and illegal discharges from both licensed and unlicensed operations).

Property crime, juvenile crime, probation/parole violations

Theft from parked cars and the like increased in urban areas after commercialization. Juvenile marijuana use increased (all of which is illegal even after commercialization). Probation and parole violations for marijuana use increased, especially among juveniles.

Degraded Law Enforcement Relationships, Resources, and Trust

Law enforcement resources were strained by the increases described above, leading to less enforcement, bitterness, conflict, and greater tension/reduced community trust when it fell entirely to law enforcement to fix these problems with no help from woefully under-funded marijuana regulators.

Bob Troyer
Former United States Attorney
District of Colorado

Bob Troyer was the United States Attorney in Colorado from 2016 to 2018. He was the First Assistant U.S. Attorney for six years before that, and in the early 2000s he was a line criminal prosecutor in that office's drug and violent-crime units. Bob spent the other 15 years of his legal career in private practice conducting internal investigations and litigating civil cases. While U.S. Attorney Bob received the PSN Outstanding Contribution Award from the U.S. Attorney General for helping develop and deploy an innovative, forensic-intelligence violent crime prevention strategy in Colorado. Bob also served from 2016 to 2018 as a member of the National Crime Gun Intelligence Governing Board. He has conducted countless trainings for law enforcement, prosecutors, community leaders, and public officials on the use of forensic intelligence to prevent gun violence. Over the last four years, Bob has worked with numerous policing agencies in Colorado on policy issues, and he has conducted a number of independent investigations including one involving the Colorado Supreme Court and two into the history of Catholic clergy child sex abuse in Colorado. Bob currently serves on Colorado's PSN Board. Before he went to law school, Bob was a high-school English teacher and a commercial fisherman in Alaska.

Testimony from Frank Stiefel
Senior Policy Associate
Last Prisoner Project

RE: Criminal justice implications of adult-use cannabis legalization

March 20, 2024

Dear Members of the Health Subcommittee on Health Care and Judiciary Subcommittee on Crime and Corrections,

The inclusion of criminal justice reform policies has become the standard for states that have sought to legalize cannabis. Since 2018, 13 of the 14 states that have legalized cannabis have included record clearance policies, and since 2021, they have all been state-initiated. While resentencing policies have been slower to take hold, they are also growing in importance and have been included in more than half of the legalization bills since 2020. In fact, this year Last Prisoner Project (LPP) worked with legislators in the Virginia General Assembly to pass a cannabis resentencing bill that is now sitting on Governor Youngkin's desk.

As the first state in the nation to develop and implement "Clean Slate" record clearance, Pennsylvania is uniquely positioned to implement these government-initiated retroactive relief processes successfully. Pennsylvania's Clean Slate record clearance process is already inclusive of cannabis offenses. However, cannabis offenses adhere to the same eligibility criteria and limitations that govern the record clearance process for other criminal convictions. It is important to note that the Clean Slate process allows for the sealing of a cannabis record, which means that an individual's record is still accessible to certain stakeholders including law enforcement. When a state decides to legalize adult-use cannabis, they are explicitly acknowledging that once-proscribed conduct is not inherently criminal. Therefore, cannabis records should be put through a separate state-initiated expungement process that would allow for the full erasure of an individual's record and all barriers to relief (e.g., waiting periods) should be eliminated.

LPP has been pleased to see that many of the legalization bills that have been introduced in Pennsylvania acknowledge that cannabis criminal records should be treated differently in light of legalization and should include provisions that would allow for the expungement of cannabis records. Nevertheless, there are improvements that could be made to these legalization bills to ensure record clearance relief for every individual who has a cannabis criminal record while

simultaneously setting up a state-initiated resentencing process for those who are incarcerated or under supervision for a cannabis-related sentence.

Since the start of this year, LPP has been working with Community Legal Services (CLS) to brainstorm what an effective record clearance process might look like for individuals with cannabis criminal records. Based on our work with CLS, we would recommend that any adult-use cannabis legalization bill include the following record clearance provisions:

- Using an automated process, expunge by automation all "small amount of marijuana" cases under the Controlled Substance Act;
- Require the Pennsylvania State Police to identify and expunge "small amount of marijuana" charges in its database that are not expunged through the court-initiated automated process;
- Allow expungement of marijuana cases by a simplified petition process in all other sections of the Controlled Substance Act when the petitioner alleges that the only substance was marijuana, and the sentence has been completed;
- Allow any case that can be expunged by automation to also be expunged by petition;
- Waive all financial obligations connected to these expunged cases; and
- Provide for broad notice of both the automated and petition-based remedies.

In addition to these record clearance provisions, LPP would like to submit its own recommendations for the creation of a state-initiated resentencing process. LPP would recommend that the following resentencing provisions be included in any adult-use cannabis legalization bill:

- The release from incarceration for individuals with marijuana possession convictions;
- The creation of a court-initiated process to schedule sentence reviews for all individuals serving periods of incarceration or supervision for a marijuana-related conviction;
- Ensuring that fair sentence reviews are provided for eligible individuals and deliberated over with limited discretion from stakeholders other than the judge; and
- Ensuring that eligible individuals receive resentencing hearings and decisions in a timely manner.

We hope that the Pennsylvania General Assembly will take our recommendations seriously to ensure that no one continues to suffer the most harmful consequence of cannabis prohibition.

About Last Prisoner Project
The Last Prisoner Project, 501(c)(3), is a national nonpartisan, nonprofit organization focused on the intersection of cannabis and criminal justice reform. Through policy campaigns, direct intervention, and advocacy, LPP's team of policy experts works to redress the past and continuing harms of unjust cannabis laws. We are committed to offering our technical expertise to ensure a successful and justice-informed pathway to cannabis legalization in Pennsylvania.

Designing an Expungement Mechanism in Marijuana Legalization
Sharon M. Dietrich, Litigation Director, Community Legal Services, Inc.

Joint Informational Meeting of
The House Health Subcommittee on Healthcare and
The House Judiciary Committee on Crime and Corrections
On the Criminal Justice Implications of Adult-Use Cannabis Legalization
March 20, 2024

Good morning. My name is Sharon Dietrich. I am the Litigation Director at Community Legal Services, Inc. (CLS) in Philadelphia. My mission today is to present our thoughts about how to design a broad expungement mechanism in marijuana legalization legislation.

This testimony is also presented on behalf of the Last Prisoner Project, a national non-profit organization working to mitigate the collateral consequences of marijuana cases after the underlying conduct has been legalized.

I have been an employment lawyer for CLS since 1987. Over that time, problems connected to criminal records have become, by far, the most common reason our low-income clients seek our employment-relates services. Last year, for instance, we handled 1,168 criminal record cases, out of a total of 1,938 employment cases of all sorts. Quite simply, criminal records has become the most intractable barrier to employment over the last several decades.

After decades of work to mitigate criminal record barriers, CLS proposed legislation to seal criminal records by automation, known as Clean Slate. We remain proud that Pennsylvania became the first state to not only consider a Clean Slate bill, but to enact it into law, with strong bipartisan support, as Act 56 of 2018. As a result, almost 46 million cases have been sealed in part or in their entirety to date. Another dozen states have since enacted Clean Slate laws, with dozens more considering legislative proposals. Moreover, this legislature expanded Clean Slate to sealing felony convictions in Act 36 of 2023.

We understand and support a goal in the forthcoming bill of expunging marijuana-related arrests and convictions as broadly as possible. We understand that cannabis legalization bills adopted in other states typically have included such broad expungement provisions.

While Clean Slate provides for sealing, we agree that for marijuana legalization, expungement is more appropriate. Sealing maintains records for use by law enforcement and a few other designated parties, while expungement provides for the elimination of case records. Marijuana legalization will remove all legal prohibitions, so it makes sense to expunge the cases that were premised on conduct that no longer is illegal.

Based on my experience with Clean Slate, my testimony today focuses primarily on the process by which marijuana legalization legislation can most broadly expunge such cases in Pennsylvania. Broad expungement of marijuana cases is easier said than done, because the drug cases for virtually all substances are prosecuted under the Controlled Substance Act (35 P.S. § 780-113), and criminal record data generally does not indicate whether marijuana or another drug was the substance involved in such a case. In many cases, to confirm that marijuana was the substance involved in the offense, documentation from the court file must be examined. This limitation presents a challenge for designing a robust Clean Slate-like automated process.

For that reason, we propose a methodology that would combine automated expungement where possible with a simple petition-based process in situations where documentation of the substance involved in the offense must be sought.

Automated Process

Because of the unique challenges of culling marijuana cases from other substances covered by the Controlled Substances Act, our thoughts on what might be the broadest automated marijuana expungement may continue to evolve as we explore whether digitized data that currently not used in Clean Slate might exist to help identify marijuana cases. But here are our initial thoughts on an automated process.

1) **Using an automated process, expunge by automation all "small amount of marijuana" cases under §31 of the Controlled Substance Act.** Offenses arising under this section by definition involve only marijuana, not other controlled substances.

2) **Require the Pennsylvania State Police (PSP) to identify and expunge §31 charges in its database that are not expunged through the court-initiated automated process.** Such charges are usually in cases where the person was arrested but not prosecuted by the District Attorney (which might be especially common in small amount of marijuana cases). They remain in the PSP database until a person needs a PSP or FBI background check. They are especially prejudicial because the report will show no disposition, typically leading the entity obtaining the background check to worry that the person was convicted or that the case is still unresolved. These cases can be identified and expunged through automation.

Petition-Based Process

Automation of record clearing is vastly preferable to a petition-based process, because it can be done at scale and produces more effective results for a larger percentage of eligible people. Petition-based expungement and sealing are generally limited by lack of knowledge by eligible individuals, lack of resources for legal representation, filing fees, and many other barriers. However, there is a role for petition-based expungement of marijuana cases, especially if the usual expungement petition process is modified to ameliorate the barriers.

3) **Allow expungement of marijuana cases by a simplified petition process in all other sections of the Controlled Substances Act when the petitioner alleges that the only substance was marijuana, and the sentence has been completed.** The most important charges to include are:

   a. §16 – knowing and intentional possession (misdemeanor)
   b. §30 – possession with intent to deliver (felony)
   c. §32 – use or possession with intent to use drug paraphernalia

The petition form and the process should be simplified, so that it can be used by lay people who know that their case concerned marijuana and only marijuana, without need for a lawyer. No filing fee should be required or permitted.

Many of these cases already may be sealed under Clean Slate, especially when Act 36 is implemented for drug felonies by this June. This proposal would both make them expungable (rather than sealable) and would eliminate waiting periods and other obstacles if marijuana was the substance.

4) **Allow any case that can be expunged by automation to also be expunged by petition.** This allows expungement where there are technical or data impediments to automation.

Provisions for Both Processes

5) **Waive all financial obligations connected to these expunged cases.** This recommendation not only flows from the policy goal that animates the broad expungement imperative, that Pennsylvania is undoing marijuana prosecutions because the underlying conduction is being legalized. Waiver of all remaining financial obligations also facilitates expungement, because the courts keep records of the debt through their automated case record system. That is to say, sealing allows fines and costs records to be retained (and the debt still collected); expungement does not. When the record is expunged, the ability to collect is eliminated.

6) **Provide for broad notice of both the automated and petition-based remedies.** Because many offenses concerning marijuana will require petitions for expungement, the public must be broadly informed of the fact and method of this remedy. Moreover, such public information will help persons who have obtained automated expungements learn that they have benefited. Such affirmative steps will help effectuate widespread access to these remedies.

I am happy to entertain any questions related to my testimony. Thank you for considering my remarks.

Sharon M. Dietrich

Ms. Dietrich has been an attorney with the Employment Unit of Community Legal Services, Philadelphia, since 1987. She currently serves as its Litigation Director.

A focus of Ms. Dietrich's work has been issues involving the employment of people with criminal records. She has represented thousands of people who have been denied employment because of their criminal records. Among her areas of expertise is criminal record expungement and sealing.

Ms. Dietrich was one of the architects of Pennsylvania's innovative Clean Slate law (Act 56 of 2018), which seals minor criminal records by automation. Almost 46 million cases have been sealed in Pennsylvania to date. She also was a leader in the campaign in Pennsylvania to expand Clean Slate to drug felonies (Act 36 of 2023). In addition to facilitating the legislation and implementation of Pennsylvania's Clean Slate law, she speaks widely about automated sealing and provides technical assistance in other states looking to adopt and implement Clean Slate.