

LAST PRISONER PROJECT

Testimony from Frank Stiefel
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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.