

STATEMENT ON H.F.100

Minnesota House of Representatives Public Safety Finance and Policy Committee, March 2, 2023 hearing.
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To the Hon. Kelley Moller, Chair, and members of the committee:

H.F. 100 could become an historic first step towards rectifying a decades-long policy of prohibition of cannabis. That policy was initiated on the heels of the failure of alcohol prohibition and in the course of time has resulted in the same unintended consequences that alcohol prohibition led to: the rise of violent clandestine markets; vicious criminal gangs; corruption; tainted products; overcrowded courts and prisons; pervasive tax evasion; violation of citizens' rights; and a public sense of cynical disrespect for laws in general.

Law enforcement fails to eradicate the appetite for and the consumption of the prohibited substances – despite the passage of draconian laws – by 1999, there were fifteen states where growing a single cannabis plant could be punished by a sentence of imprisonment for life!

Saturation anti-marijuana propaganda, high-tech surveillance, mass incarceration, an entire industry of urinalysis for drug detection, and the systematic cancellation of civil liberties, all failed to suppress the outlawed plant.

Furthermore, the anti-cannabis legislation was overtly racist in its origins and indisputably discriminatory as implemented. Anti-“marijuana” laws have formed the keystone of the so-called “war on drugs,” a perversion of our criminal justice apparatus that has been memorably labelled by Professor Michelle Alexander as “the new Jim Crow.”

That phrase describes the policy of covert, ostensibly “color blind” legal perpetuation of historic patterns of racial caste oppression. As Professor Alexander stated: “Ninety percent of those admitted to prison for drug offenses in many states were black or Latino, yet the mass incarceration of communities of color was explained in race-neutral terms, an adaptation to the needs and demands of the current political climate. The New Jim Crow was born.”

What today’s policy makers need to understand is that the “new Jim Crow” isn’t new. Our drug prohibition laws are the residual statutory legacy that directly traces back to the era of the “old Jim Crow” – when overt racial discrimination was enshrined under the legal fiction of “separate but equal.” Passage of laws against so-called “marijuana” or “marihuana” in the 1920’s and 1930’s didn’t rely on scientific evidence or medical studies, but on undisguised racial and ethnic prejudice.

Behavior that consisted of petty vices or social habits associated with a small percentage of members of powerless racial or ethnic minority groups, was first demonized in the press and then criminalized by the politicians. That criminalization provided a convenient way to exert control over an entire lower-caste group by deploying law enforcement supposedly aimed at the drug-indulging elements.

In the 1970’s and 1980’s, the Nixon and Reagan regimes exploited those racially-rooted anti-marijuana laws for their own crass political purposes. As Nixon’s one-time aide John Ehrlichman admitted many years later: “Did we know we were lying about the drugs? Of course we did.”

Today’s lawmakers need to understand that background to realize why the expungement or erasure of past convictions for marijuana offenses is such an important part of HF 100.

The laws criminalizing cannabis not only have been ineffective and counterproductive on their own terms, but they have always been rooted in bigotry and the spirit of persecution. They have been unjustified – and unjust – since their inception.

The American people have rejected cannabis prohibition. Voters in fourteen states and the District of Columbia have passed re-legalization laws by popular votes. Only three states have voted otherwise.

There is no valid social or legal reason to perpetuate a legacy of institutionalized injustice, by saddling the victims of those laws with criminal records for the rest of their lives.

I would advocate that HF100 be improved with certain specific changes. For example, the section in Article 5 establishing a Cannabis Expungement Board should be expanded to include two persons who had been convicted of “marijuana” offenses in a state or federal judicial proceeding and who have each served a sentence in which they had been actually incarcerated for at least five years.

Also, I point out that in several places in Article 4, the bill shows signs of hasty drafting, in that quantities of cannabis are indicated both in metric system measurement terms and in the English (avoirdupois) measurement terminology.

Finally, nearly all the licensing categories – and therefore the sections of Article 4 ascribing penalties for their violation – manifestly conflict the plain language of Article XIII, Section 7, of the Minnesota Constitution. Although casuistic court decisions, reached under what is widely known as “the drug war exception to the Constitution,” attempt to evade this contradiction – to square the circle – it is never wise to sacrifice clearly-defined rights for the sake of short-term political calculation.

Thank you for your attention. HF 100 is flawed but it would be preferable to existing statutes.