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Testimony from:

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In SUPPORT of HF 1355 “AN ACT to reduce the penalties for possession of personal amounts of marijuana.”

March 8, 2022

Minnesota House Public Safety Committee

Chairman and members of the committee,

Thank you for considering my testimony. My name is Christi M. Smith; I conduct research in the area of probation, parole/reentry and community corrections for the R Street Institute, a nonprofit, nonpartisan public policy research organization. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government in many areas, including criminal justice reform, and that is why HF 1355 is of special interest to us.

The United States has been waging a war on drugs for more than five decades. In that time, more than one trillion dollars has been spent on reducing the quantity of drugs and drug users in the United States.¹ The federal passage of the Controlled Substances Act of 1970 classified marijuana as a schedule one substance, which subjects law violators to the harshest of drug policy penalties for the use, possession, sale, manufacture or distribution of the substance.² The intent of the legislation was to penalize the two groups most closely associated with its use, the anti-war hippies and African Americans, both of which the president at the time, Richard Nixon, despised.³

The most significant accomplishments of the federal legislation include a sevenfold increase in the prison population, with more people behind bars, serving longer sentences and experiencing the harsh collateral consequences of conviction that make it difficult, if not impossible, to establish a law-abiding life upon release from jail or prison.⁴ Despite the potential penalties, data collected from annual drug trend surveys since 1971 consistently report that marijuana is the most widely used illicit substance.⁵ There has also been a 45 percent increase in past month use among the general population between 2007 and 2014.⁶

In the years that followed drug prohibition at the federal level, state-specific legislation began to emerge as a more effective way to prioritize law enforcement activities and to offer a more proportionate response to marijuana policy. Fifteen states and three U.S. territories have legalized recreational use of marijuana for adults, 27 states and the District of Columbia passed laws to decriminalize certain



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marijuana offenses, 36 states and the District of Columbia have medical marijuana laws and at least four states are establishing their own taxation and revenue structures.⁷

Minnesota was an early adopter of state-based marijuana legislation and efforts to reform Minnesota marijuana laws have increased in recent years. In 1976, Minnesota decriminalized the possession of small amounts of marijuana, less than 42.5 grams, reducing it to a petty misdemeanor.⁸ In 2014, the state passed two statutes approving medical marijuana for qualifying medical conditions and in 2016, via SB 3481, the state modified the threshold amount of marijuana that would trigger certain criminal penalties.⁹ Owing to the restrictive nature of the 2014 medical marijuana legislation, the state legislature approved the use of whole-plant (flower) cannabis for medical use in 2021.¹⁰

Despite the aforementioned reform efforts, §§152.22-152.37 does not sufficiently address inequities in the threshold weights that trigger different penalties by newer types of cannabis products and it contains unnecessary, overly burdensome penalties, like requiring a driver's license revocation and drug education for those caught with small amounts of marijuana. Similarly, the low bar needed to charge someone with a "crime of violence" felony for possessing trace amounts of marijuana in a water bong is deeply concerning. The statutory ban associated with this type of conviction includes a life-long ban on the second amendment right to bear arms, in addition to the collateral consequences that come with being labeled as a violent felon, absent relevant information to the contrary. The disproportionate enforcement of the law on racial and ethnic minorities in Minnesota is also very troubling.

Reps. Aisha Gomez (D-62B), Nolan West (R-37B), Jay Xiong (D-67B), Fue Lee (D-59A), Sydney Jordan (D-60A), Athena Hollins (D-66B), Jamie Long (D-61B) and Pat Garofalo (R-58B) seek to address and redress these concerns by co-sponsoring the proposed bill, HF 1355, which modifies the definitions of small amounts of marijuana possession, authorizes record expungement and ends driver's license suspension for petty marijuana possession citations.

There is a wide variance in the type and weight of cannabis products today. In 1976, the primary type of cannabis was raw cannabis or flower. Today, non-flower products like edibles, vape cartridges, concentrations and topical lotions, are increasingly popular and the existing statute does not account for the different weights of these products as it pertains to personal use. The proposed legislation seeks to bring parity between the various substances so that comparable weights are used to trigger the petty misdemeanor penalties.

The current statute of Minnesota law §§152.027, Subd. 4 requires all persons convicted of petty misdemeanor possession or sale of marijuana to attend a drug education program unless the court enters a finding that the program would be inappropriate.¹¹ Petty misdemeanors in Minnesota are not technically a crime, so the attachment of rehabilitative conditions in addition to a fine encroaches on the



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case being treated more like a misdemeanor conviction. Standard misdemeanor convictions have increased penalties for non-compliance and may impact criminal history scores and federal sentencing guidelines.

Similarly, the current law has provisions that would make simple possession of THC products felony “crimes of violence.” This is not a valuable use of our law enforcement, court, corrections and community supervision resources. The intent of the 1976 legislation was to decriminalize possession of cannabis for personal use by treating it like a traffic offense, not like a felony crime of violence.¹² Maintaining the statutory requirement that requires certain possession of cannabis offenses to be charged as felony crimes of violence is neither in line with the current research nor is it consistent with the effort to decriminalize possession of marijuana in 1976.

Decriminalization frees up valuable time and resources for already overburdened criminal justice professionals. Prioritizing more serious crime is a better approach for public safety. Moreover, HF 1355 includes provisions for retroactive expungement of felony convictions that would no longer be classified as felonies if the proposed bill becomes a law and it offers first time felony offenders a chance to be charged with a gross misdemeanor if the amount of cannabis in possession is less than twice the amount of what Minnesota law considers “a small amount of marijuana.”

Needlessly labeling an individual as a felon or a violent crime felon produces collateral consequences that can increase recidivism, decrease public safety and jeopardize the person’s ability to establish or maintain fiscal, residential and employment security.¹³ The persistent barriers to stability are reflected in the disproportionately higher rates of unemployment, poverty and homelessness found in convicted populations.¹⁴

Aside from the noted deficiencies in the current law’s ability to respond proportionately to the newer forms of cannabis products and in consideration of the encompassed provisions that are overly broad, unnecessarily punitive and exceedingly burdensome for simple possession of marijuana charges, efforts to reform the law will, hopefully, reduce the disproportionate rates at which racial minorities are arrested, charged and convicted of cannabis-related offenses. According to the American Civil Liberties Union of Minnesota, “Black people are 5.4 times more likely than white people to be arrested for marijuana possession in Minnesota, despite comparable usage rates.”¹⁵ The disparities are even more pronounced in five of Minnesota’s counties and only seven states boast larger racial disparities in marijuana possession arrests.¹⁶ Treating all comparable simple possession of marijuana charges as petty misdemeanors disincentivizes disparate enforcement of the law.



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The federal legislation that targeted African American marijuana users in the 1970s is alive and well in state-level laws that provide loopholes to escalate penalties that are unrelated to drug distribution or public safety. We can no longer afford to adhere to the current status quo in maintaining §§152.22-152.37. The marijuana market has expanded significantly since the 1970s. It is high time that Minnesota's law evolves as well.

For all of the reasons articulating herein, we support the passage of HF 1355 and we urge you to do the same.

Thank you for your time,

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¹ Betsy Pearl, "Ending the war on drugs: By the numbers," Center for American Progress, June 27, 2018. <https://www.americanprogress.org/article/ending-war-drugs-numbers>.

² 21 USC § 802(6). <https://www.deadiversion.usdoj.gov/schedules>.

³ Robert Solomon, "Racism and Its Effect on Cannabis Research," *Cannabis and Cannabinoid Research* 5:1 (Feb. 27, 2020). <https://www.liebertpub.com/doi/10.1089/can.2019.0063>.

⁴ "Mass Incarceration: An Animated Series," American Civil Liberties Union, last accessed March 8, 2022. <https://www.aclu.org/issues/smart-justice/mass-incarceration/mass-incarceration-animated-series>.

⁵ Substance Abuse and Mental Health Services Administration, "Key Substance Use and Mental Health Indicators In the United States: Results from the 2020 National Survey on Drug Use and Health," U.S. Department of Health and Human Services, October 2021.

<https://www.samhsa.gov/data/sites/default/files/reports/rpt35325/NSDUHFFR1PDFFWHTMLFiles2020/2020NSDUHFFR1PDFFW102121.pdf>.

⁶ National Academies of Sciences, Engineering, and Medicine, *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research*, (National Academies Press, Jan. 12, 2017). <https://www.ncbi.nlm.nih.gov/books/NBK425763>.

⁷ "Deep Dive: Marijuana," National Conference of State Legislatures, last accessed March 8, 2022. <https://www.ncsl.org/bookstore/state-legislatures-magazine/marijuana-deep-dive.aspx>.

⁸ Minnesota Legislative Reference Library, "Minnesota Issues Resource Guides: Cannabis," Minnesota Legislature, March 2022. <https://www.lrl.mn.gov/guides/guides?issue=cannabis>.

⁹ §§152.22-152.37. <https://www.revisor.mn.gov/statutes/cite/152/full>.

¹⁰ Michael Hartman, "Cannabis Overview," National Council of State Legislators, July 6, 2021. <https://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx#Decriminalization>.



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¹¹ §§152.22-152.37. <https://www.revisor.mn.gov/statutes/cite/152/full>.

¹² “Minnesota Medical Marijuana Law Overview,” Marijuana Policy Project, last accessed March 8, 2022.

<https://www.mpp.org/states/minnesota/minnesota-medical-marijuana-law-overview>.

¹³ National Inventory of Collateral Consequences, “What are collateral consequences?” The National Reentry Resource Center, last accessed March 8, 2022.

<https://niccc.nationalreentryresourcecenter.org/#:~:text=What%20are%20collateral%20consequences%3F,righ%2C%20benefits%2C%20and%20opportunities>.

¹⁴ Rebecca Vallas and Sharon Dietrich, “One Strike and You’re Out,” Center for American Progress, Dec. 2, 2014.

<https://www.americanprogress.org/article/one-strike-and-youre-out>.

¹⁵ Minnesota American Civil Liberties Union, “Black People Five Times More Likely to Get Arrested for Marijuana in Minnesota,” American Civil Liberties Union, April 20, 2020. <https://www.aclu-mn.org/en/press-releases/black-people-five-times-more-likely-get-arrested-marijuana-minnesota#:~:text=The%20American%20Civil%20Liberties%20Union,Minnesota%2C%20despite%20comparable%20usage%20rates>.

¹⁶ Ibid.