

## TESTIMONY ON 2019 H-5151, ARTICLE 20 – MARIJUANA

The ACLU of Rhode Island has long been a supporter of the state's medical marijuana law and program. We similarly have been a strong proponent of marijuana legalization. In both instances, we also believe it is important that basic civil liberties principles are followed in implementing these programs. It is through this lens that we have examined Article 20.

This budget article is long, complex and covers a lot of ground. We realize that it will likely be subject to a fair amount of revision before moving forward in any way. We cannot list all the issues, questions and concerns we have about Article 20, so the following testimony should not be considered a complete analysis of the bill. Instead, we wish to highlight some of the issues that have prompted our attention and warrant heightened review.

### Medical Marijuana

A number of changes being made to the medical marijuana program are of deep concern to us. As the state considers legalizing the use of marijuana for all, we fear that those who have a true need for marijuana for medical purposes are facing unfair strictures that will make their continued participation in the program more difficult. We cite a few examples below:

- **21-28.6-4(a)(3)** (Article 20, page 23, lines 15-18; H 5151, page 436, lines 30-33): In order for a patient to act as their own caregiver, the patient must demonstrate an undefined "need" to the department of business regulation.
- **21-28.6-4(p)** (Article 20, page 27, lines 16-21; H 5151, page 440, lines 33-4): Patients would no longer be allowed to share excess medical marijuana with other patients, thus imposing potentially significant burdens on some patients.
- **21-28.6-6(g)(3)** (Article 20, page 31, lines 12-15; H 5151, page 444, lines 31-34): A caregiver can have only one patient except for family members.
- **21-28.6-6(g)(8)** (Article 20, page 32, lines 15-23; H 5151, page 445, lines 1-8): This language preserves criminal record restrictions for caregivers, including felony drug offenses. We believe that a more comprehensive and individualized approach should be adopted, which takes into consideration the elapsed time since the offense and any proof of rehabilitation by the applying caregiver. This restriction is particularly unfair when the Article proposes the legalization of the drug that may have formed the basis for their criminal record.

- **21-28.6-16(k)** (Article 20, page 59, lines 25-34, page 60, lines 1-9; H 5151, page 473, lines 23-34, page 474, lines 1-7). **21-28.6-16.1(j)** (Article 20, page 65, lines 1-12; H 5151, page 479, lines 1-12): For similar reasons, we oppose the continued and new disqualifying provisions for drug offenders in the law governing medical marijuana cultivators and processor applicants.
- **21-28.6-6(l)** (Article 20, page 35, lines 10-19; H 5151, page 448-449, lines 30-6): This provision gives DBR and DOH overly broad authority to share patient information with police, including whether the patient is compliant with any and all administrative regulations of the program.
- **21-28.6-9(d)** (Article 20, page 38, lines 31-34; H 5151, page 452, lines 20-23): This section authorizes arrest for a violation of *any* of the regulations promulgated within the chapter, however technical or administrative those regulations may be. Clearly, within this chapter there are regulations which, if violated, do not necessarily necessitate or authorize police intervention. For instance, if a cardholder notifies the issuing department of a lost card 11 days after it is lost, rather than the 10-day window put in place by this chapter (21-28.6-6(i)(6)), the cardholder could be subject to arrest. **21-28.6-16.1(e)** (Article 20, page 64, lines 17-19; H 5151, page 478, lines 16-18) contains a similar provision for medical marijuana processors.
- **21-28.6-9(f)** (Article 20, page 39, lines 22-27; H 5151, page 453, lines 11-16): This new language authorizes the seizure of contraband goods without a warrant. Because caregivers and home growers are authorized to operate out of their private housing, it is enormously concerning that this legislation would permit the entrance and seizure of goods from a private residence without critical elements of due process.
- **21-28.6-16.1(h)** (Article 20, page 64, lines 30-31; H 5151, page 478, lines 30-31): This language subjects medical marijuana processors to local ordinances. However, we are concerned that the ability of municipalities to more strictly regulate medical marijuana processors could result in greater, more expansive criminal background checks and denials of licenses to highly suitable candidates.

### **Adult Use of Marijuana Act**

As noted above, the ACLU of RI supports this Article 20's proposal to legalize and regulate the recreational use of marijuana – as a supplement, not alternative, to the current medical marijuana program. Here, too, however, there are numerous civil liberties issues that should be considered in establishing this legalization scheme. Some of those are cited below.

- **21-28.10-4(1)(ii)** (Article 20, page 71, lines 31-34; H 5151, page 486, lines 1-7): The ACLU understands the intention of child safety in requiring that all marijuana in a private residence must be kept in a locked and secure area. However, there are no

laws that mandate similar conditions for the possession of other substances in a primary residence, such as alcohol or prescription drugs that can be much more dangerous to ingest. Given the potentially steep consequences of violating this provision (which could include arrest, per 21-28.11-8(b)), and the absence of equivalent regulations for other controlled substances, we urge that this provision be seriously revised or removed.

- **21-28.10-9(b)** (Article 20, page 78, lines 12-19; H 5151, page 492, lines 18-25): We support this section, which explicitly protect employees from disciplinary action based solely on their lawful use of marijuana while off-the-clock. While employers have every right to ensure that their employees are not impaired while on the job – whether it is from alcohol, marijuana, or prescription drugs – it makes no sense to legalize marijuana and then bar users from hundreds of jobs because of their recreational use that has no effect on their work. A state court opinion has recognized that the medical marijuana law provides similar protections, but we would urge that the language in the law be strengthened to avoid any continued disputes over that protection.
- **21-28.10-10(a)** (Article 20, page 78, lines 21-32; H 5151, page 492-493, lines 27-4): This provision authorizes landlords to ban the use or transfer of marijuana in private property. We find this problematic for two reasons. First, we believe it gives landlords too much authority, by not requiring evidence of any harm (e.g., odor). There is no reason a person using consumable marijuana in accordance with the law should be barred from an apartment complex. Just as importantly, this section highlights a problem with various parts of this budget article – it does not adequately address the interplay of this law with the medical marijuana law. As worded, this section could be read to apply to medical marijuana patients as well as those using marijuana recreationally. It is important that this part of the bill make clear that it does not affect the medical marijuana law in any of its particulars.
- **21-28.10-11(c)** (Article 20, page 79, lines 19-26; H 5151, page 493, lines 25-32): Under the language within this section, students who illegally use or possess marijuana could be subject to expulsion, suspension, or other disciplinary actions even if the use or possession does not take place during school hours or on school property. We believe this is an inappropriate blurring of disciplinary responsibility, as schools simply should not be able to punish actions which occur outside of their jurisdiction. Under no circumstances should a 16-year-old's education be disrupted because they may have smoked marijuana, and it is a huge overreach of this legislation to give schools that power.
- **21-28.10-12(b)** (Article 20, page 79, lines 31-34, page 80, line 1; H 5151, page 494, lines 3-7): The imposition of a \$10,000 violation fine for transporting or furnishing marijuana to an underage individual, especially because the section does not contain a scienter requirement, is unreasonably high. For a similar violation of furnishing alcohol, the maximum fine for a first-time violation is \$500.

- **21-28.10-12(c)** (Article 20, page 80, lines 2-5; H 5151, page 494, lines 8-11): Not only would violators of this section be subjected to a fine of \$10,000 per violation but they would additionally be guilty of a felony. For a 21-year-old who gives their 20-year-old friend one hit of a joint, this is a disproportionate and inappropriate punishment.
- **21-28.11-5(e)** (Article 20, page 86, lines 7-19; H 5151, page 500, lines 17-29): Any person who has an ownership, equity, controlling, or managing stake in a marijuana establishment license cannot have been convicted of a felony drug charge. We urge reconsideration of this restriction, as it would disproportionately affect the communities who have previously been the target of over-policing on the drug laws. Across the country, states considering the legalization of marijuana are recognizing, and addressing, the social justice impact of restrictions like these.
- **21-28.11-5(u)** (Article 20, page 89, lines 13-16; H 5151, page 503, lines 26-29): The legislation allows for the rejection of an application for a marijuana establishment license if a background check of certain individuals “reveals past offenses or actions that the office of cannabis regulation deems to be disqualifying.” We are concerned about the lack of specific disqualifying offenses and seemingly indiscriminate ability for the office of cannabis regulation to reject applications for arbitrary reasons.
- **21-28.11-8(d)** (Article 20, page 91, lines 33-34; H 5151, page 506, lines 14-17): We are again concerned about the allowance for seizure of contraband without a warrant. There simply should not be authorization for entering a private home to retrieve legally obtained material, whether or not it violates another statute or exceeds possession limits, without critical elements of due process in place.
- **21-28.11-8(e)** (Article 20, page 92, lines 4-10; H 5151, page 506, lines 19-25): There is a lack of specific, restrictive language for which information or records that the office of cannabis regulation can make available to the police.
- **21-28.11-10(a)(i)** (Article 20, page 97, lines 15-20; H 5151, page 511, line 34, page 512, lines 1-5): While this section generally prohibits municipalities from restricting the presence of marijuana establishments, this appears to be in conflict with the language in 21-28.11-6(2) and (3), which appears to allow municipalities to ban marijuana retailers.
- **21-28.11-15(a)(1)** (Article 20, page 100, lines 20-24; H 5151, page 515, lines 6-10): While specifying that 25% of the marijuana trust fund will be distributed to the departments of business regulation, health, revenue, or public safety, the section does not limit how much can be dispersed to “public safety” as opposed to health.

We hope these initial suggestions will be helpful to the Committee as it considers this important and complex issue.