



SUBMITTED STATEMENT OF  
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BEFORE THE  
**SUBCOMMITTEE ON CIVIL RIGHTS AND CIVIL LIBERTIES**  
**COMMITTEE ON OVERSIGHT AND REFORM**

HEARING ON  
**DEVELOPMENTS IN STATE CANNABIS LAWS AND BIPARTISAN CANNABIS REFORMS AT THE FEDERAL LEVEL**  
NOVEMBER 15, 2022

Chairman Jamie Raskin, Ranking Member Nancy Mace and Members of the Committee:

Thank you for considering my testimony and for the invitation to speak at this hearing. My name is Jillian E. Snider and I am the policy director of criminal justice and civil liberties at the R Street Institute, which is 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 the criminal justice system. That is why today's hearing is of special interest to us.

In addition to my current role, I am also a Lecturer at John Jay College of Criminal Justice and a retired police officer from the New York City Police Department. I am here to speak to you today about the critical nature of and growing bipartisan support for cannabis reform at the federal level.

For more than five decades, the United States has prioritized the war on drugs. In that time, more than one trillion dollars has been spent on attempting to reduce the quantity and use of drugs in the United States.<sup>1</sup> The federal passage of the Controlled Substances Act of 1970 classified marijuana as a Schedule I substance, which subjects law violators to the harshest of drug policy penalties for the use, possession, sale, manufacture or distribution of the substance.<sup>2</sup> The federal prohibition of cannabis has resulted in an overreliance on enforcement, arrests and incarceration—which diverts police resources away from substantial threats to public safety, increases the number of negative police-citizen encounters, sweeps otherwise law-abiding citizens into the criminal justice system, disproportionately impacts Black and Brown men in urban communities, and continues to weaken the police-community relationships that are integral to reducing more serious and violent crime.<sup>3</sup>

As it stands, cannabis is the most widely used illegal substance in the United States.<sup>4</sup> It is estimated that 55 million Americans currently use marijuana, and at least 45 percent of the population have openly admitted to trying marijuana at least once in their lifetime.<sup>5</sup> Cannabis consumption has now exceeded the use of tobacco.<sup>6</sup> Recent polls indicate that more than 90 percent of the American public, Republicans and Democrats alike, support legalization for adult use of medical or recreational cannabis.<sup>7</sup>

After more than a century of prohibition, the United States is at a critical moment in determining the future legal status of cannabis. In the past 10 years, there have been significant advances in state-level

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

<sup>2</sup> 1 USC § 802(6). <https://www.deadiversion.usdoj.gov/schedules>.

<sup>3</sup> Ibid; Amanda Chicago Lewis, "The Half-Legal Cannabis Trap," *Politico*, Feb. 9, 2021.

<https://www.politico.com/news/magazine/2021/02/09/los-angeles-legalization-cannabis-criminalization-467572>; Christopher Ingraham, "Marijuana is literally the least of the nation's drug worries, the police have announced," *The Washington Post*, Nov. 5, 2015. <https://www.washingtonpost.com/news/wonk/wp/2015/11/05/marijuana-is-literally-the-least-of-the-nations-drug-worries-the-police-have-announced>.

<sup>4</sup> National Institute on Drug Abuse, "Cannabis (Marijuana) DrugFacts," National Institutes of Health, December 2019. <https://nida.nih.gov/publications/drugfacts/cannabis-marijuana>.

<sup>5</sup> "Marijuana Addiction: Rates & Usage Statistics," National Center for Drug Abuse Statistics, last accessed May 12, 2022. <https://drugabusestatistics.org/marijuana-addiction>.

<sup>6</sup> Ibid.

<sup>7</sup> Ted Van Green, "Americans overwhelmingly say marijuana should be legal for recreational or medical use," Pew Research Center, April 16, 2021. <https://www.pewresearch.org/fact-tank/2021/04/16/americans-overwhelmingly-say-marijuana-should-be-legal-for-recreational-or-medical-use>.

cannabis legalization, and local jurisdictions have pushed to decriminalize the substance. To date, 19 states, the District of Columbia and two territories have enacted legislation to regulate recreational cannabis use; medicinal use is now permitted in 38 states, the District of Columbia and three territories.<sup>8</sup> Additionally, a number of states have passed or are in the process of considering legislation to expunge criminal convictions for marijuana-related offenses, and just last month, President Joe Biden signed an executive order granting pardons to all current U.S. citizens and lawful permanent residents who committed the offense of simple possession of marijuana under federal law.<sup>9</sup>

Although we have seen considerable expansion of state-level cannabis legislation, cannabis remains a Schedule I prohibited substance—in the same category as heroin and LSD—at the federal level, thereby identifying it as more harmful and penalized more aggressively than cocaine.<sup>10</sup>

Proposed federal legislation indicates increased support for alternatives to federal cannabis prohibition, and this increased support is critical to provide clarity on the overall legal status of cannabis, as the current situation presents inconsistency and a quasi-legal conundrum: The substance may be legal in one state and decriminalized in another, but because it is still prohibited at the federal level, users or possessors of the substance are subject to criminal penalty.<sup>11</sup>

This dual legality is problematic. It not only confuses the average citizen, but it also results in extremely varied approaches to the types and quantities of cannabis that can be cultivated or consumed; different standards for quality control; discrepancies in retail and consumer eligibility and related processes; widely varied taxation models; and a lack of consensus on the superseding status of the substance that places all of the stakeholders, including criminal justice professionals, in a gray area of compliance confusion.<sup>12</sup> These issues have contributed to cannabis' upsurge on the illegal market, which will continue unless federal legislation is passed that provides minimal, uniform standards for product, price and taxation regulation; standard licensing and operating procedures for consumers and retailers; clearly articulated circumstances for criminal or civil penalties; and mechanisms for the remediation of past penalties.<sup>13</sup>

### **The Role of Overcriminalization**

While engaging in cannabis use is not without risk, there have been no reported overdose fatalities related to cannabis alone, and—other than arrest for possession or sale of the substance—it is not

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<sup>8</sup> Michael Hartman, "Cannabis Overview," National Conference of State Legislatures, May 31, 2022. <https://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>; "Deep Dive Marijuana," National Conference of State Legislators, last accessed May 12, 2022.

<sup>9</sup> "A Proclamation on Granting Pardon for the Offense of Simple Possession of Marijuana," The White House, Oct. 6, 2022. <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/10/06/granting-pardon-for-the-offense-of-simple-possession-of-marijuana>.

<sup>10</sup> Diversion Control Division, "Controlled Substance Schedules," Drug Enforcement Administration, last accessed Nov. 9, 2022. <https://www.deadiversion.usdoj.gov/schedules/index.html#define>.

<sup>11</sup> H.R. 5977 States Reform Act, Nov. 15, 2021. <https://www.congress.gov/bill/117th-congress/house-bill/5977>.

<sup>12</sup> Rebecca Haffajee and Amanda Mauri, "Cannabis Liberalization in the US: The Policy Landscape," *Health Affairs Health Policy Brief* (July 2021), pp. 1-7. <https://www.healthaffairs.org/doi/10.1377/hpb20210518.36548/full/health-affairs-brief-cannabis-policy-haffajee.pdf>.

<sup>13</sup> Lewis. <https://www.politico.com/news/magazine/2021/02/09/los-angeles-legalization-cannabis-criminalization-467572>.

associated with significant crime.<sup>14</sup> An astonishing 90 percent of all cannabis-related drug arrests are for simple possession.<sup>15</sup>

Overcriminalization, which is generally described as the process in which the criminal law is overused or misused to respond to social issues, has enormous fiscal, social and public safety costs.<sup>16</sup> The overcriminalization and over-policing of cannabis needlessly ensnares people in the criminal justice system and is a waste of taxpayer dollars that would be better invested in the community.<sup>17</sup> In addition, excessive law enforcement practices erode public trust and weaken officers' ability to work collaboratively with their community to gather intelligence to prevent and respond to serious and violent crime.<sup>18</sup>

Despite increasing public, police and legislative support for legalizing the medicinal and recreational use of cannabis in recent years, the enforcement of marijuana laws — at both the federal and state levels — continues to distract from law enforcement priorities; perpetuates clogged courts and overcrowded correctional facilities; and contributes to a tremendous misallocation of funds that would be better used to bolster violent crime interventions, education and public health.<sup>19</sup>

To date, the war on drugs has cost the federal government more than \$1 trillion.<sup>20</sup> The social costs, however, are even more substantial. Federal prohibition and related enforcement efforts have intensified racial disparities; produced an associated distrust of the police; clogged court dockets that expanded prosecutorial discretion and plea-bargaining; contributed to mass incarceration; devastated communities and families; and proliferated an illegal drug market that became so violent that some cities struggle to contain it. The collateral consequences associated with enforcement and potential, subsequent convictions are so ubiquitous that, on average, one in three Americans has a criminal record. The associated lack of access to employment translates to an \$87 billion annual loss to the national economy.<sup>21</sup>

## **Benefits of Legalization**

Of course, the legalization of cannabis alone cannot resolve all of these issues, but the potential benefits of smart, federal legalization policy would outweigh the established consequences of prohibition. Legislation that extricates police oversight to the greatest extent possible and that regulates the sale of cannabis products responsibly has the potential to reduce existing illegal markets, decrease the number

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<sup>14</sup> Ibid, p. 2.

<sup>15</sup> Ibid, p. 2.

<sup>16</sup> Jeremiah Mosteller, "The Criminalization of Everything," Stand Together Trust, Aug. 14, 2019.

<https://standtogethertrust.org/stories/the-criminalization-of-everything>.

<sup>17</sup> Ibid.

<sup>18</sup> "In Pursuit of Peace: Building Police-Community Trust to Break the Cycle of Violence," Giffords Law Center, Sept. 9, 2021. <https://giffords.org/lawcenter/report/in-pursuit-of-peace-building-police-community-trust-to-break-the-cycle-of-violence>.

<sup>19</sup> "The Drug War, Mass Incarceration and Race," Drug Policy Alliance, January 2018, p. 1.

[https://drugpolicy.org/sites/default/files/drug-war-mass-incarceration-and-race\\_01\\_18\\_0.pdf](https://drugpolicy.org/sites/default/files/drug-war-mass-incarceration-and-race_01_18_0.pdf); "Making Economic Sense," Drug Policy Alliance, last accessed May 12, 2022. <https://drugpolicy.org/issues/making-economic-sense>.

<sup>20</sup> Pearl. <https://www.americanprogress.org/article/ending-war-drugs-numbers>.

<sup>21</sup> Cherrie Bucknor and Alan Barber, "The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies," Center for Economic and Policy Research, June 2016, p. 1.

<https://cepr.net/images/stories/reports/employment-prisoners-felonies-2016-06.pdf?v=5>.

of negative police-citizen encounters and improve the police-community relationships that are critical to reducing the recent surge in violent crime. In addition, the reallocation of fiscal and personnel resources in police departments to address high-crime priorities more effectively would enhance police legitimacy, reduce potential physical injuries to law enforcement officers and better address the recent spike in homicide rates.<sup>22</sup>

The legalization and regulation of cannabis can disrupt and dissolve illegal-market access to cannabis and has the ability to reduce the potential exposure to drug trade violence by novice cannabis consumers. The degree to which cannabis legalization can reduce illegal market supply directly depends on the fiscal structure that regulates access. As seen in certain states, if the product is legally offered at a higher price than the alternative, the illegal market will continue to thrive.<sup>23</sup> With states creating their own piecemeal versions of legalization and decriminalization laws for a substance with a well-established, national demand, the ability to drive out the illegal market requires time and practical, standard product costs and business operations. The federal government is therefore best positioned to set minimum standards for the legalization and regulation of cannabis products. In such a scenario, although states would still be the primary authority over cannabis regulation, financial incentives, interstate regulation and federal land use would be influenced by federal policy.<sup>24</sup>

While it is impossible to predict the degree to which the illegal market would be disrupted or even potentially eradicated by cannabis legalization at the state or federal level, evidence of the potential benefits of federal regulation is reflected in the 100 years of experience the nation has with the repeal of alcohol prohibition.<sup>25</sup> In fact, federal legislation has been postulated as the only solution to dissolving the illegal market reliance on access to marijuana.<sup>26</sup>

## The Dangers of Prohibition

Cannabis prohibition intrinsically increases police-citizen contact, which has produced disastrous outcomes for community members and the police departments that serve them. The widespread use of marijuana in the United States and its distinct, lingering odor makes the substance especially prone to initiating police contact. While sometimes the suspicion of marijuana possession can uncover a more serious offense, the fact remains that the vast majority of non-public safety stops do not result in the seizure of serious drugs or weapons.<sup>27</sup>

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<sup>22</sup> Crime Data Explorer, "Trend of Violent Crime from 2011 to 2021," Federal Bureau of Investigation, last accessed Nov. 10, 2022. <https://crime-data-explorer.fr.cloud.gov/pages/explorer/crime/crime-trend>.

<sup>23</sup> Joseph Detrano, "Cannabis Black Market Thrives Despite Legalization," Rutgers Center of Alcohol & Substance Use Studies, last accessed Nov. 9, 2022. <https://alcoholstudies.rutgers.edu/cannabis-black-market-thrives-despite-legalization>.

<sup>24</sup> Alcohol Policy Information System, "About Alcohol Policy," National Institute on Alcohol Abuse and Alcoholism, last accessed Nov. 9, 2022. <https://alcoholpolicy.niaaa.nih.gov/about-apis>.

<sup>25</sup> Jack S. Blocker Jr., "Did Prohibition Really Work? Alcohol Prohibition as a Public Health Innovation," *American Journal of Public Health* 96:2 (February 2006), pp. 233-243. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1470475>.

<sup>26</sup> Matthew Walsh, "The State of the Marijuana Black Market," *Brown Political Review*, Jan. 8, 2020. <https://brownpoliticalreview.org/2020/01/the-state-of-the-marijuana-black-market>.

<sup>27</sup> David Rudovsky and David A. Harris, "Terry Stops-and-Frisks: The Troubling Use of Common Sense in a World of Empirical Data," *Ohio State Law Journal* 79:3 (2018). [https://kb.osu.edu/bitstream/handle/1811/86395/OSLJ\\_V79N3\\_0501.pdf](https://kb.osu.edu/bitstream/handle/1811/86395/OSLJ_V79N3_0501.pdf)

As with national alcohol prohibition, the enforcement of cannabis prohibition exacerbates violence in communities, necessitating increased police intervention in highly dangerous situations — the continued cycle of which elevates the frustrations of the police and the people they serve.<sup>28</sup> Thus, the legalization of cannabis has the potential to reduce negative police-citizen interactions, which benefits both groups and facilitates public safety.

The overwhelming and aggressive law enforcement tactics associated with cannabis prohibition contribute to a lack of trust in law enforcement that makes law-abiding citizens hesitant to report crime or cooperate with law enforcement.<sup>29</sup> In addition, a recent report found that this distrust reduces officers' ability to be effective in deterring and investigating crime. As violence escalates, this ineffectiveness can lead to street-level justice being preferred over police intervention. When community members arm themselves so as to not become victims, both citizens and the police grow increasingly concerned about each other's intentions, resulting in toxic stress and an increased likelihood of violent interactions between the two groups.<sup>30</sup>

### **Police and Law Enforcement Perceptions**

Continued cannabis prohibition has contributed to the evisceration of community confidence in police. A 2020 poll found that, for the first time in 27 years, the majority of Americans do not trust the police.<sup>31</sup> When citizens lack faith that the police departments — and the criminal justice agencies that serve them — are able to protect and keep them safe, forms of vigilante justice emerge. As distrust escalates, public safety is threatened. In neighborhoods where shootings and homicide are a common occurrence, these events often go unreported, owing in part to the belief that the police either do not care or are not capable of doing anything.<sup>32</sup>

Equally as concerning is the wealth of research that has found that communities of color have been the primary target for the enforcement of marijuana prohibition, despite similar usage rates among white and nonwhite individuals. It is approximated that Black people are nearly four times more likely to be arrested for possession of marijuana than their white counterparts.<sup>33</sup> This disparate treatment has had a considerable effect on the community's level of trust in the police. Polls have shown that Black people expressed 40 percent less confidence in law enforcement than white people.<sup>34</sup>

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<sup>28</sup> Scott Jacques and Andrea Allen, "Drug Market Violence: Virtual Anarchy, Police Pressure, Predation, and Retaliation," *Criminal Justice Review* 40:1 (Oct. 7, 2014), pp. 187-199. <https://journals.sagepub.com/doi/10.1177/0734016814553266>.

<sup>29</sup> Greg St. Martin, "Do More Broken Windows Mean More Crime?" *News@Northeastern*, May 15, 2019. <https://news.northeastern.edu/2019/05/15/northeastern-university-researchers-find-little-evidence-for-broken-windows-theory-say-neighborhood-disorder-doesnt-cause-crime>.

<sup>30</sup> "Policing and Community Trust: The Corrosive Cycle of Distrust and Violence," Giffords Law Center, September 2021, pp. 1-3. <https://giffords.org/wp-content/uploads/2021/09/Giffords-Law-Center-Policing-and-Community-Trust-Factsheet-1.pdf>.

<sup>31</sup> Aimee Ortiz, "Confidence in Police Is at Record Low, Gallup Survey Finds," *The New York Times*, Aug. 12, 2020. <https://www.nytimes.com/2020/08/12/us/gallup-poll-police.html>.

<sup>32</sup> Ibid.

<sup>33</sup> John Hudak, "Marijuana's racist history shows the needs for comprehensive drug reform," *Brookings*, June 23, 2020. <https://www.brookings.edu/blog/how-we-rise/2020/06/23/marijuanas-racist-history-shows-the-need-for-comprehensive-drug-reform>.

<sup>34</sup> Task Force on Policing, "Policing by the Numbers," Council on Criminal Justice, last accessed Nov. 9, 2022. <https://counciloncj.foleon.com/policing/assessing-the-evidence/policing-by-the-numbers>

Compounding the issue of low levels of community trust is the diminishing view of police legitimacy. The enforcement efforts of so-called “victimless crimes” and the extent to which they distract from more serious crimes in the same communities, jeopardizes police legitimacy. Police legitimacy refers to the public’s support for their officers’ authority to manage and resolve conflicts in their communities.<sup>35</sup> The core principle of this mutual relationship is that the people have trust and confidence that the officers are honest and working diligently to keep them safe. If the police have the support of the public, citizens are more willing to defer to the authority of the police and believe that their actions are “morally justified and appropriate to the circumstance.”<sup>36</sup>

As previously mentioned, cannabis prohibition has not only been ineffective in reducing cannabis use and sales, but the pressure put on police to enforce these laws has contributed to an increase in negative police-citizen interactions, poor police-community relationship and decreased police legitimacy. These issues have created an environment in which law enforcement officers, too, have new fears. In the largest national sample study to date, 93 percent of the 8,000 officers surveyed reported feeling worried about their personal safety in the wake of protests against officer-involved fatalities.<sup>37</sup> These survey results are a byproduct of the high rate of negative encounters between police and citizens around cannabis enforcement. These negative encounters can result in potentially violent outbursts from community members who feel distrustful and ostracized by the harshness of police reactions to cannabis-related issues.<sup>38</sup> Changing the way police interact with the community has the potential to reduce the negative perceptions of the police, which can reduce the likelihood of officer injury.

When police and the communities they serve collaborate, citizens are more willing to cooperate in efforts to prevent and respond to crime.<sup>39</sup> This dynamic has the capacity to reduce neighborhood levels of crime and decrease opportunities for potential harm to police. The value of the police-community partnership is essential as participation from members of the public is a critical resource in preventing gun violence.<sup>40</sup> On Oct. 5, 2022, official Federal Bureau of Investigation (FBI) statistics confirmed that all violent crime is still higher than it has been in decades.<sup>41</sup> And while this year’s revised FBI Crime Report was incomplete due to lower-than-average reporting rates, the estimations provided are still concerning.<sup>42</sup> In light of recent crime trends, the United States must prioritize violent crime reduction in lieu of the emphasis on low-level cannabis enforcement to improve public safety.

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<sup>35</sup> “Procedural Justice and Police Legitimacy,” Commission on Peace Officer Standards and Training, Oct. 22, 2020. <https://post.ca.gov/procedural-justice-and-police-legitimacy>.

<sup>36</sup> Ibid.

<sup>37</sup> Rich Morin et al., “Police Views, Public Views,” Pew Research Center, Jan. 11, 2017, pp. 1-97. <https://www.pewresearch.org/social-trends/2017/01/11/police-views-public-views>.

<sup>38</sup> Micheal Esposito et al., “Aggressive Policing, Health, and Health Equity,” HealthAffairs Health Policy Brief, April 2021. <https://www.healthaffairs.org/doi/10.1377/hpb20210412.997570/full/health-affairs-brief-aggressive-policing-health-equity-esposito.pdf>.

<sup>39</sup> Kyle Peyton et al., “A field experiment on community policing and police legitimacy,” *Proceedings of the National Academy of Sciences* 116:40 (Oct. 1, 2019), pp. 19894-19898. <https://www.pnas.org/doi/pdf/10.1073/pnas.1910157116>.

<sup>40</sup> “In Pursuit of Peace: Building Police-Community.” <https://giffords.org/lawcenter/report/in-pursuit-of-peace-building-police-community-trust-to-break-the-cycle-of-violence>.

<sup>41</sup> Josiah Bates, “These Major Cities Reported the Highest Homicide Rates in 2021,” *Time*, Oct. 19, 2022. <https://time.com/6223217/homicide-rates-us-cities-2021>.

<sup>42</sup> Ibid.

To match existing public opinion about cannabis and prioritize public safety, focusing on anything other than violent crime is a distraction of law enforcement priorities. Therefore, smart, thoughtful cannabis legalization that is attuned to the demands of the market and the needs of the people has the capacity to revolutionize our communities and their interactions with law enforcement.

### **Ending the War on Cannabis**

The federal government has the opportunity to end America's longest war: the war on cannabis. As evidenced by our experience with alcohol, national prohibition produces disastrous outcomes, including rising crime and violence, underground markets, unregulated products and continued demand for the substance. Further, the harms associated with marijuana prohibition far exceed the benefits in nearly all ways that can be measured. To solve this issue, the public needs to respect the law, and the systems that enforce the law need to act with integrity, transparency and accountability.<sup>43</sup>

Ending cannabis prohibition can disrupt illegal drug markets; reduce violence; enhance public safety; lessen negative police-citizen interactions while restoring police legitimacy; and allow for reallocation of resources to quell the recent surge in homicides and other serious, violent crime. Regardless of personal or moral perspectives, the federal prohibition of cannabis is bad public policy.

Thank you to the Subcommittee on Civil Rights and Civil Liberties for holding this hearing. If I can be of any assistance to members of the Committee, please feel free to contact me or my colleagues at the R Street Institute.

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<sup>43</sup> Jeremy Waldron, "The Rule of Law," *The Stanford Encyclopedia of Philosophy* (June 22, 2016). <https://plato.stanford.edu/archives/sum2020/entries/rule-of-law>.