

## Senate Judiciary Committee

*Jennifer Horgan 271-3092*

**SB 233-FN**, relative to the legalization and regulation of marijuana and establishing a committee to study the legalization of marijuana.

**Hearing Date:** February 21, 2017

**Time Opened:** 9:53 a.m.

**Time Closed:** 12:02 p.m.

**Members of the Committee Present:** Senators Carson, Lasky, French and Gannon

**Members of the Committee Absent :** Senator Hennessey

**Bill Analysis :** This bill legalizes the personal use of up to one ounce of marijuana by persons 21 years of age or older and establishes a committee to study the legalization and regulation of marijuana.

**Sponsors :**

Sen. Woodburn

Sen. Reagan

Sen. Feltes

Sen. Fuller Clark

Sen. Hennessey

Rep. Cushing

Rep. Murphy

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**Who supports the bill:** Senator Woodburn; Senator Fuller Clark; Senator Reagan; Representative Cushing; Representative Rand; Honorable Burt Cohen; Dan McGuire (NH Liberty Alliance); Richard Van Wickler (Law Enforcement Action Partnership); Daryl Perry (Liberty Lobby LLC); Matt Simon (Marijuana Policy Project); Devon Chaffee (American Civil Liberties Union); Rich Naya (NHNORML); Erica Golter (NHNORML); Joseph Lachance (420insure.com); Heather Brown (NH Cannabis Advocacy and Education); Ian Freeman (NH Liberty Party); Matthew Kipp (MCP); Megan Tomes (MCP); Kathleen Eldridge (MCP); Jeff Vachon (NHNORML); Paul Morrisette (Regal); Bill Alleman; Bonnie Wright; Ned Robinson; Denis Goddard; Carla Mora; Frank Sylvester; Will Anderson; Paul Twomey; Jennifer Letendre; Rick Naya; Casey Brown; Jen St. Laurant; Cheryl Brown; Amy Simmons; Brian Hebert; Cullen James; Bri Mutz; Sonya Martino; Lisa Powers; Ken Hajjar; Daniel Stockwell Jr.; Jen Ball; Rob Gould; Tim Zamis; Tyler Pike

**Who opposes the bill:** Representative Gargas; Lt. John Encarnacao (Department of Safety); Michael Rogers (NH Bureau of Drug and Alcohol); Dan Goodman (AAA); Kate Frey (New Futures); Elizabeth Sargent (Association of Chiefs of Police); Susan Duncan

**Summary of testimony presented in support:**

**Senator Woodburn**

- This will legalize, regulate, and restrict access for children and young people, marijuana.
- Open to any adjustments to the bill except for the effective date.
- NH needs a firm date that sets the process.
- This is a practical bill.
- 25% of people living in the country live in legalized states.
- The government has not been responsive to the desires of their consistency.

- Many states have done referendums, but legislation is the more appropriate way to go.
- In the 'live free or die state' the government should not make good, honest citizens into criminals.
- In the North Country the police have expressed that there is now marijuana laced fentanyl.
- NH should not be a nanny state

#### **Honorable Burt Cohen**

- Has two young daughters and it is very easy for them to get marijuana.
- There are no age restrictions or controls over marijuana currently.
- NH needs to educate people on the dangers of marijuana, just like with alcohol and tobacco.
- Prohibition has not worked.
- Alcohol is under control here and the State makes a lot of money on it.
- Money from the sale of marijuana could be used for education.
- Young men in particular can do too much marijuana, not realizing what it can do to their brains.
- Senator Gannon asked if this is legalized for those over 21 what type of message is that sending to high school students.
  - Sets the same example that is set for alcohol.
- Senator Gannon questioned the issues that have arisen in states that have legalized, especially with increased youth consumption.
  - Hopes NH can learn from their mistakes, which that is why the education factor is so important. Understands that education was not put in place in some states.

#### **Honorable Dan McGuire** (provided written testimony)

- Provided a chart with data from the Department of Corrections showing the number of incarcerations from 1812 to present day.
- There is something seriously wrong with the criminal justice system.
- In 1980 NH had 287 inmates and today there are 2,631.
- If this increase was strictly based on the increase in population there would only be 415 inmates.
- Thinks this increase is a result of the war on drugs.
- Does not think that the people of NH are more criminally minded than they were 40 years ago.
- The cost of incarcerating an extra 2,000 people is around \$80 million a year.
- The state is also spending money on prosecutors and cops to deal with this.
- NH needs to stop going up this slope and start going down it.
- This bill is the first step.
- Marijuana is the mildest of the illegal drugs and this bill only allows for a small amount.
- Senator French asked of the 2,000 people incarcerated, how many are there on drug charges.
  - Doesn't know specifically. Often it is things related to drugs, like burglary connected with drug use.
- Senator French questioned if changing the marijuana laws would not change these incarcerations, as they are only drug related and not solely on drug charges.
  - Doesn't think that all of the sudden those 2,000 will walk out, but this will start to turn the corner to treat addiction as the medical problem it is and not a

criminal one.

- Senator Gannon asked if marijuana is at the bottom of dangerous drugs, would legalizing it not lower the bar for legalizing the next least dangerous.
  - In general, no. There was a similar policy during prohibition with alcohol. That policy was recognized to increase crime and to have a lot of negative consequences. The government has gone much further with the drug prohibition than with alcohol.

**Matt Simon** (Marijuana Policy Project) (provided written testimony)

- Eight other states have already legalized marijuana; seven of them allow cultivation.
- States are free under federal law to do this even though it remains illegal under federal law.
- Voters want NH to do this.
- A Granite State poll taken on July 19, 2016, was the third consecutive statewide poll that found 60% or greater support legalization and 32% opposed.
- If it is legal, 69% believe it should be sold at licensed outlets and taxed, 26% oppose that.
- 48% prefer legalized and taxed, 24% support decriminalization, 24% prefer to keep the laws as they are now.
- The Rand Corporation did a study for Vermont, which determined that 80,000 Vermonters use marijuana regularly and they spend about \$175million a year buying it. NH has similar rate of use and about twice the population, which means roughly \$350million a year going to illicit drug dealers.
- This is an opportunity to move funds away from illicit drug dealers.
- There are public health and safety questions and under a regulated system those questions could be better addressed.
- The data shows that teen usage does not increase dramatically in states that legalize.
- The National Survey of Drug Use and Health showed there was an increase from '12/'13 to '13/'14, which the Substance Abuse and Mental Health Administration statistician said was statistically insignificant.
- Colorado sold \$1.3billion worth of marijuana last year and collected \$100million in taxes.
- There were some missteps in Colorado, but overall it has been successful.
- The opioid problem is severe in NH, but in terms of the medical cannabis, states with legalized medical marijuana laws have a 25% lower fatal overdose rate than those without.
- This will allow people who are unable to qualify for medical marijuana to use it to treat their illness.
- On the 'gateway drug' theory, overall research does not support that including research from the DEA.
- In 1999 the Institute of Medicine reported that there is no evidence that marijuana serves as a gateway.
- The gateway affect is the fact that they are buying from an illicit drug dealer who introduces them to other drugs.
- Colorado's Governor was originally opposed to legalization and is now relatively supportive of it.
- Pew Research did a survey of 8,000 police officers last year and 32% support legalization.
- The Rocky Mountain Report is one of the most cited sources of misinformation and

their reports have been contradicted by Colorado officials.

- High Intensity Drug Trafficking Areas (HIDTA) is not a state-level agency. They are a federally funded taskforce through the Drug Czar's Office.
- The Drug Czar's Office is required by law to oppose the legalization of marijuana or any other Schedule 1 substance.
- The Rocky Mountain Reports contradict their Executive Summaries with a footnote that explains why it is correlational and not causal.
- Senator Lasky asked if Colorado puts aside a percentage of their revenue for research.
  - Not entirely sure. Knows some of it has been spent on research, but is not sure if that is required.
- Senator Lasky stated that there has not been a lot of definitive research and asked if it is possible to dedicate a certain amount of money to go to research.
  - That would be an option and the study committee could look at. In one sense there has not been enough research, but on the other hand there has been a tremendous amount of research. Sanjay Gupta stated that 93% of the studies he found are looking for harms and only 7% are looking at benefits. That produces a dramatically distorted picture. Certainly agrees that heavy use by adolescents is problematic, but it has never caused a fatal overdose. Alcohol kills 2,200 a year through alcohol poisoning alone and 37,000 from the health effects. Tobacco kills just short of a half million people a year. The CDC does not even have a category for deaths caused by marijuana.
- Senator Lasky asked if alcohol is as much of a gateway drug as marijuana.
  - Research he has read states that most addiction researchers believe that addiction is less about one chemical or another and more about a response. Anything with a dopamine reaction can become addictive.

#### **Paul Twomey**

- Is the former legal counsel for the House and has worked as a criminal defense lawyer.
- In course of career, asked people about what got them to where they are and never heard one person say marijuana got them there.
- Asked police officers if they had ever been in a fight with someone solely on marijuana and they said it never happens, but it happens all the time with those under the influence of alcohol.
- The most important thing in this bill is the fiscal note where the Department of Justice says it won't need any extra money because they will just shift their money to focus on other drugs.
- Represented a Vietnam vet who had a 20 year service connected injury. Did not want to become a zombie from painkillers, so started to use marijuana; got busted with an 8<sup>th</sup> of an oz.
- There were a number of officers, lab technicians, prosecutors, etc. involved in this vet's case and it was a huge expenditure of funds that could have been spent in a much better way.

#### **Richard Van Wickler** (Law Enforcement Action Partnership) (provided written testimony)

- The war on drugs is a significant failure.
- Being an advocate for drug policy reform/legalization is not being an advocate for use.
- A report from the Center on Juvenile Justice from 2014 covered five states where marijuana was legalized. The conclusion of the Report was the efficient and

responsible way to manage the use of marijuana in our society was to pursue legalization and harm reduction.

- There are states other than Colorado that have legalized successfully and they should be looked at.
- We need to make sure our sources are accurate and keep our own perspectives in check when looking at this.

#### **Ned Robinson**

- Shared his personal experience with Cohn's disease where he struggled with the extreme side effects of medications, but found the only medication that works is marijuana.
- Marijuana helps him deal with pain, nausea, and diarrhea.
- Without marijuana cannot eat at all.
- Moved here from Colorado last March and a lot of the horror stories did not come true in Colorado.
- The dispensaries in Colorado are really good neighbors, as they know they are facing a stigma, so they adopt high ways, run food drives, etc.
- Colorado has been able to isolate different strains and vaporize marijuana to help with different illnesses.
- In NH, an individual has to establish a relationship with a doctor and then wait three months. Insurance won't cover it and many doctors won't prescribe it.
- Does not want to be a criminal.
- Finds that marijuana is a gate-out drug not a gateway
- Colorado did have issues with edibles, but that has been resolved.
- Marijuana does not cure illnesses, but it makes life manageable and allows people to be off the dole and be productive members of society.
- This is for adult use and at the dispensaries in Colorado they do check all IDs.
- Senator French asked if he has access to medical marijuana now.
  - Has access to it just like everyone does.
- Senator Lasky asked about dispensaries here in NH.
  - Did go to dispensaries in Colorado and could go to Keene.

#### **Denis Goddard**

- Shared his personal experience using marijuana and how it did not affect his ability to be successful in college or in his career.
- Has a tough time attracting the top talent to his business because NH is a prohibitionist state.
- Senator Gannon asked if his company drug tests.
  - No.
- Senator Gannon asked if he is aware that SIG, Foss Manufacturing, Wheeling Enterprises, US postal services, and dozens of other NH companies do drug test.
  - Yes, but they are not going to attract the top individuals, particularly at more technologically inclined companies.

#### **Heather Brown (NH Cannabis Advocacy and Education)**

- The only real accurate way to determine if there is active THC is a blood test.
- There is a huge difference between active THC and inactive TCH.
- Even doing a blood test cannot pinpoint the exact date and time of usage.
- Significant other was arrested for marijuana possession and had to take weekly urine tests. He failed the urine test repeatedly even though he was not using. Blood testing was the only way he could prove he was not using and stay out of jail.
- Spoke of her personal experience using cannabis to help with her illness and

allowed her to become pregnant.

- If an individual drinks and smokes cigarettes they are a poly user
- NH is missing out on a wonderful opportunity and putting the State at risk of losing citizens.
- Missing out on tourism revenue as neighboring states legalize.
- Thinks the effective date is unrealistic and that this could be enacted much sooner
- The Colorado Department of Public Health and Environment do a survey approximately every two years and the most recent one indicated approximately a 1% spike in teen use from the year prior to legalization to the time it was sold retail. Other than that there has been no significant uprising.
- Study reported on by Channel 13 that indicated that there was a decrease in traffic incidents involving cannabis users.
- When a person consumes cannabis, normally they are not thinking about driving, they are thinking about what kind of snacks are in the fridge or what is on the TV.
- People think they are fine to drive under the influence of alcohol, but under cannabis people retain their wits.
- Asked the Committee to fact check the data they have received.

**Ian Freeman** (NH Liberty Party)

- NH should be the first state to pass this through the legislature.
- It should be effective upon passage.
- The police will continue to enforce prohibition until the very last moment and no one else needs to go to jail for this.
- 18 year olds are able to join the military.
- 16 is the age of consent and so, the legal age for marijuana should be 16.
- It is easier for teens to get marijuana than alcohol.
- Takes issue with the prohibition on public consumption, as there is no difference between smoking tobacco in public and smoking marijuana.
- Marijuana related traffic accidents could refer to the passenger having marijuana in their system and not the driver.
- In terms of the heroin crisis, had a roommate who used cannabis to get off of heroin.
- Washington State news channel had volunteers come in a drive around a track, half of them were drinking and half were smoking cannabis. The cannabis individuals said they did not feel they should be driving after a bit, while the alcohol individuals wanted to keep driving.
- A cannabis user is able to determine that they are impaired.

**Rick Naya**

- Cannabis does not work the same way as gateway drugs, like drinking.
- NH does a lot of things first.
- His children do not use because they understand the dangers and are educated about it.
- Prices are already starting to go down.
- Marijuana is going to be part of everyday life in Colorado soon.
- Losing young people to opportunities in other states and economic resources.
- NH needs to be a newer NH.
- This has done nothing but affect our children's opportunities.

**Cullen James**

- Doesn't think the government should regulate how much someone can possess or how many plants they can have.
- The best thing to do is pass the bill and further legislation can fix problems that arise.

- A marijuana maintenance program is effective in helping to quit other drugs.

#### **Ken Hajjar**

- Laws should be respected and thousands of people do not respect this law.
- Has had 25 years of productive experience in his community on various committees, while smoking pot every day and no one knows the difference.
- Has had two car accidents and they were both while under the influence of alcohol.
- NH is a drug dealer with alcohol and tobacco.
- Unless the Legislature is going to pass legislation to ban tobacco and alcohol, there is no reason to not pass this bill.
- Senator Lasky asked about a person who says NH is in the middle of a drug crisis.
  - There is no connection between the drug crisis and marijuana. It is the legal pharmaceutical companies that don't want the competition.
- Senator Lasky asked if marijuana is a gateway drug.
  - No.
- Senator French asked about the difference between getting high on marijuana vs. opioids.
  - Only experience with opioids was from an injury and was aware of the potential for addiction and thinks that is the way most people are. People who are hopeless are going to turn to something.

#### **Lisa Powers**

- Son has epilepsy and proceeded to go through the medical marijuana process here in NH, and the process was difficult and lengthy.
- Went to the dispensary and they did not have anything for him and he is only allowed to go to that one dispensary.
- Thinks this should be legalized.
- Went through a different network.

#### **Summary of testimony presented in opposition :**

##### **Lt. John Encarnacao (Department of Safety)**

- The cart is being put before the horse by legalizing and then creating a committee.
- Would support a committee to look at what other states have done and make sure NH would not make the same mistakes.
- NH followed a slower process with medical marijuana and did not end up with some of the problems other states have had.
- NH has a drug crisis and studies have shown that NH residents have a high incidence of addiction.
- The question is 'will this make things better or make it worse?'
- It will certainly make things more complicated.
- In terms of gateway drugs, during a 24 year law enforcement career, has spoken with many individuals, and although not every marijuana users became a heroin addict, all heroin addicts started with marijuana.
- Senator Gannon asked if a typical user in NH is a poly user who uses a mix of drugs.
  - There are poly drug users in NH and a lot of individuals with addiction problems will use a wide variety of illicit narcotics. Then there are those that simply use one drug.
- Senator Lasky asked if it is possible that drug users start with marijuana because it is the most accessible.
  - It could be. Kids look at what is accessible and what is dangerous. They start with those on the lower level.

- Senator Lasky pointed out that prohibition has not been working and asked where does legalizing and taking away the severe penalties cause it to be more taboo.
  - Has seen kids look at marijuana as not too bad/harmless and NH needs to send the message that it is illegal and not common place, similar to alcohol.

**Kate Frye** (New Futures) (provided written testimony)

- Legalization means all components of marijuana business process will be legal and it will enable and promote a commercial enterprise for marijuana.
- This enterprise will operate with a profit motive and the incentive to increase consumption by marketing to create new users and maintain heavy users.
- This will have negative impacts to public health.
- These possible consequences are a big-trade off for a possibility of limited revenue.
- It is a proven fact that the more available marijuana is, the more youth users exist.
- Colorado has seen increases in youth use since legalization as shown by High Intensity Drug Trafficking Areas (HIDTA) Report.
- The HIDTA Report is full of data from the CDC, the Department of Revenue, Department of Education, and Public Health.
- In the two year average since Colorado legalized recreational marijuana, youth usage increased by 20%, while national youth use declined by 4%.
- In '13/'14 Colorado youth ranked #1 in the nation for past month marijuana use, up from #4 in '11/'12.
- Colorado youth past month use for '13/'14 was 74% higher than the national average, compared to 39% higher in '11/'12.
- Colorado has seen a 49% increase in the number of marijuana related emergency room visits and a 32% increase in the number of marijuana related hospitalizations.
- Colorado has seen a 62% increase in marijuana-related traffic deaths since legalization.
- Highway patrol yearly interdiction seizures of Colorado marijuana increased 37% from 288 to 394 since legalization.
- Colorado's annual tax revenue from the sale of recreational marijuana was only about .5% of the statewide budget.
- The revenue promises made from legalization have not come to fruition.
- NH still does not correctly allocate profits from the sales of liquor for prevention, treatment, and recovery 13 years after the Alcohol Fund was created.
- As of January 2016, in Colorado there were 424 retail marijuana stores, compared to 322 Starbucks and 202 McDonalds.
- NH can wait and see what other states do in order to avoid missteps.
- Senator Lasky asked about 62% increase in traffic deaths and whether or not they were attributable to marijuana or simply increased traffic deaths.
  - It was related to marijuana use.

**Dan Goodman** (AAA Northern New England)(provided written testimony)

- This raises traffic safety concerns.
- In Washington State, where marijuana was legalized in 2012, the percentage of drivers involved in a fatal car crash who had recently used marijuana more than doubled from 8% in 2013 to 17% in 2014, which means 1 in 6 drivers involved in a fatal car crash tested positive for THC.
- After alcohol, cannabis is the most common drug found in drivers who have been involved in crashes.
- There are serious limitations and challenges law enforcement face to identify marijuana impaired drivers.



- This is different than alcohol where it is clear that a crash is more likely at certain BAC levels.
- Impairment under marijuana can be very different from person to person. Some with high blood concentrations may only be mildly impaired, while others with low levels might be severely impaired.
- It has taken generations to educate individuals on drinking and driving.
- Without solid measures to detect and prosecute impaired marijuana driving, NH should not move forward.
- Senator Gannon asked what happens now if an officer can smell marijuana when stopping a driver.
  - A Drug Recognition Experts comes to the scene and they have a multitude of eye and roadside tests. NH has 85 of these experts, which is too few. They can do a blood test, but it takes a long time to get a result.
- Senator Lasky asked if there is no real definitive test on marijuana.
  - If an individual does have a blood test the science does not show that they are impaired because of differences in individuals.
- Senator Lasky asked how do people know if there is x amount of individuals using marijuana in these accidents.
  - They have THC present in their system when they are in the crash.
- Senator Lasky asked if it is a certain amount.
  - It varied in all different levels.
- Senator Lasky asked if there is no statewide consistency of how much in the blood creates impairment.
  - Most states have done 5nanograms and some have said 11nanograms.
- Senator Lasky asked if that is in their laws.
  - Yes.

**Future Action:** Pending

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Date Hearing Report completed: March 2, 2017