



AMERICAN CIVIL LIBERTIES UNION

Maine

PO Box 7860
Portland, ME 04112
(207) 774-5444
www.aclumaine.org

TESTIMONY OF MICHAEL KEBEDE, ESQ

Ought To Pass - LD 1789

**An Act to Remove All Marijuana-related Provisions from the Maine Criminal Code
and Expunge All Convictions Involving Marijuana**

JOINT STANDING COMMITTEE ON JUDICIARY

April 27, 2023

Senator Carney, Representative Moonen, and Members of the Joint Standing Committee on Judiciary, greetings. My name is Michael Kebede, and I am Policy Counsel for the ACLU of Maine, a statewide organization committed to advancing and preserving civil liberties in Maine. On behalf our members, I urge you to support LD 1789 because it would ensure that cannabis legalization laws are fairly applied, and because it would give a second chance to people who were convicted of activity that is now legal.

In 2016, the people of Maine made landmark progress on cannabis legalization.¹ Their decision to join the growing number of legal states has transformed the state. By merely regulating what was already going on all over the state,² we have increased employment,³ tourist revenue,⁴ and economic benefits,⁵ all while ensuring that children use at lower rates.⁶

¹ See An Act to Legalize Marijuana, I.B. 6 - L.D. 1701 (eff. Jan. 30, 2017) (codified as amended at 28-B M.R.S.A. § 101 *et seq.*).

² See *National Estimates of Marijuana Use and Related Indicators – National Survey on Drug Use and Health, United States, 2002–2014*, CTR. FOR DISEASE CONTROL AND PREVENTION, (Sept. 2, 2016) at Figure 5 (noting that about 9% of people in the northeast used marijuana during the studied period). Available at, <https://www.cdc.gov/mmwr/volumes/65/ss/ss6511a1.htm#T3down>.

³ *Maine Has 400 Legal Cannabis Industry Jobs, Study Finds*, CTR. SQUARE (Jun. 1, 2020), https://www.thecentersquare.com/maine/maine-has-400-legal-cannabis-industry-jobs-study-finds/article_690ecd7c-9aa8-11ea-8b47-0f7bd38668f8.html.

⁴ Sam Wood, *Maine's Tourist Attractions Include Lobster, Quaint Towns, Blueberries and Now, for Some, Weed*, PHILADELPHIA INQUIRER, <https://www.inquirer.com/business/weed/marijuana-maine-new-jersey-reciprocity-medical-card-20190716.html>.

⁵ See Patrick Whittle, *Maine Marijuana Shops Report Brisk Business Despite Pandemic*, ABC NEWS (Jan. 9, 2021), <https://abcnews.go.com/US/wireStory/maine-marijuana-shops-report-brisk-business-pandemic-75149065>.

⁶ See Katelyn Newman, *Study: Teen Use of Marijuana Drops in States Where It Is Legal*, U.S. NEWS & WORLD REP. (July 8, 2019), <https://www.usnews.com/news/healthiest-communities/articles/2019-07-08/study-teen-use-of-marijuana-drops-in-states-where-it-is-legal>; see also *Teen Odds of Using Marijuana Dip When States Legalize Recreational Use*, NBC NEWS (July 8, 2019), <https://www.nbcnews.com/health/kids-health/teen-odds-using-marijuana-dip-when-states-legalize-recreational-use-n1027576>.

However, some of us have been left behind. Although possession of small amounts of cannabis was decriminalized in Maine in 1976, it remains a federal crime and many states still impose criminal penalties for it. It is still a crime in Maine to possess 2.5 ounces or more of cannabis, and possession of over 20 pounds is punishable by up to 10 years in prison. 17-A M.R.S. §1107-A (A)(1)(F). The racial disparities in who is arrested for cannabis possession in Maine are startling: a 2020 ACLU study found that Black people in Maine are four times more likely than white people to be arrested for cannabis possession in 2018, despite both groups having similar rates of usage.⁷ In York County, Black people were more than twelve times more likely than their white peers to be arrested for simple cannabis possession – over 3 times worse than the racial disparity nationwide.⁸ Removing cannabis possession from the criminal code and expunging cannabis conviction records would provide some degree of fairness for people who were punished for something that is now legal.

Some have argued that any legislatively established criminal records expungement system would unconstitutionally infringe upon the governor’s exclusive power to pardon.⁹ We disagree. Pardons and expungements are fundamentally different. Pardons do not necessarily entail expungements, and expungements never modify sentences. A pardon frees you from serving any remainder of your sentence, or any other penalties attached to the pardoned crime. A pardon is available for any crime, at any point after conviction. In contrast, expungement simply removes records, and perhaps also makes it unlawful to disseminate certain records. Indeed, expungement is simply a more thorough, and a more accelerated, way to do two things the state already does: make certain records confidential pursuant to the Criminal History Records Information Act, 16 M.R.S. §701 *et seq.*, and destroy records under state agency retention schedules.

We urge you to vote *ought to pass*.

⁷ *A Tale of Two Countries Racially Targeted Arrests in the Era of Marijuana Reform*, ACLU, July 1, 2020, at 68, https://www.aclu.org/sites/default/files/field_document/tale_of_two_countries_racially_targeted_arrests_in_the_era_of_marijuana_reform_revised_7.1.20_0.pdf

⁸ *Id.*

⁹ Some lawyers cite *State v. Hunter* to argue that legislatively established expungement is unconstitutional, although the words “expungement” or “sealing” or “vacatur” do not even appear in that case. 447 A.2d 797, 800 (Me. 1982) (ruling that a resentencing statute that allowed deductions of a prison sentence was an unconstitutional encroachment on the governor’s commutation power).