

**Testimony of Doni Crawford, Policy Analyst
At the Budget Hearing on the
Prohibition of Marijuana Testing Act of 2019 and
Medical Marijuana Program Patient Employment Protection Amendment Act of 2019
Committee on Labor and Workforce Development
October 9, 2019**

Chairperson Silverman and members of the Committee, thank you for the opportunity to provide testimony. My name is Doni Crawford, and I am a Policy Analyst at the DC Fiscal Policy Institute (DCFPI). DCFPI is a non-profit organization that promotes budget choices to address DC's racial and economic inequities through independent research and policy recommendations.

DCFPI supports the Prohibition of Marijuana Testing Act of 2019 because it would eliminate pre-employment cannabis testing, which not only conflicts with the spirit of Initiative 71, but also may be disproportionately harming groups of people already facing steep barriers to work.¹ DCFPI also supports the Medical Marijuana Program Patient Employment Protection Amendment Act of 2019, which would prevent employers in the District from penalizing and discriminating against individuals participating in the medical cannabis program. Both measures are crucial to improving cannabis laws, boosting worker protections, and forging a more equitable future — but further improvements are needed in each bill to ensure that the District is positioned to meet these goals.

The Prohibition of Marijuana Testing Act of 2019

While the District has legalized the use and possession of small amounts of cannabis, most employers are still able to punish their employees for consuming cannabis.

In 2015, Initiative 71 legalized the possession of minimal amounts of cannabis in the District for adults aged 21 and older. The initiative made it legal for adults to possess, grow and transfer small amounts of cannabis and consume it on private property — but it didn't include a provision to prohibit cannabis testing as a condition of employment. As such, existing law conflicts with this new right to consume cannabis on private property and on personal time by allowing employers to test for cannabis as a condition of employment. Pre-employment cannabis testing typically uses urinalysis, which measures usage or presence of cannabis within a certain timeframe rather than impairment.

The proposed legislation would address this conflict by prohibiting public and private employers from testing for cannabis usage at the hiring stage, except as required by federal law and for safety-sensitive occupations. However, the most recent listing of factors to consider in designating a position “safety-sensitive,” is broader than past District definitions, which could lead to over-classification, according to

¹ The author chooses to use the race-neutral scientific term “cannabis” throughout this testimony except in reference to official bill titles.

analysis by the American Civil Liberties Union of DC.² Currently, over 7,000 District jobs are classified as safety-sensitive. We recommend that final bill language require the District Department of Human Resources (DCHR) to take steps to annually ensure that safety-sensitive occupations throughout District agencies are appropriately categorized.

We also recommend that the final bill language require DCHR to analyze whether entry-level positions are overrepresented as safety-sensitive throughout local government. If so, this could have a disproportionate impact on individuals enrolled in workforce training programs and returning citizens, who are often people already facing steep barriers to work and people of color. Additionally, the final bill language should include employee protections for random on-the-job cannabis testing given the issues with urinalysis not measuring impairment.

If this measure becomes law, the District will join Nevada and New York City as leading jurisdictions in eliminating archaic pre-employment cannabis testing policy.³

The Medical Marijuana Program Patient Employment Protection Amendment Act of 2019

Under the District’s Medical cannabis program, participants can legally purchase a small amount of cannabis every thirty days, but they lack adequate employment protections under the law. Currently, DCHR personnel policy authorizes the usage of medical cannabis by program participants working within District agencies under the Mayor’s purview if they aren’t in safety-sensitive positions. The proposed legislation would embed this personnel policy into law for those government workers.⁴ The legislation would prevent these District agencies from penalizing or terminating individuals that take prescribed cannabis medications for a medical condition or to relive side effects of a medical treatment.

We recommend that the proposed legislation also include language that any attempt by District agencies to measure on-the-job impairment of medical cannabis participants involve DCHR and the Department of Forensic Science, as they will be investigating emerging technology that can measure a person’s current impairment from cannabis rather than past usage.⁵ We further recommend that the Council expand the protections guaranteed under the bill to private employment in non-safety sensitive positions because medical cannabis participants should be protected in all places of employment.

Equity Must Be at the Heart of Cannabis Regulation

The District will also begin to consider legislation to legalize, tax and regulate the sale of recreational cannabis in the near future. It is imperative that policymakers apply a systemic approach that not only addresses employment practices such as those outlined in these two bills but also the historic harm to Black

² Michael Perloff, “Bill 23-309, The Medical Marijuana Program Patient Employment Protection Amendment Act of 2019,” ACLU DC, September 25, 2019, <https://www.acludc.org/en/legislation/bill-23-309-medical-marijuana-program-patient-employment-protection-amendment-act-2019>

³ Alonzo Martinez, “Up In Smoke: Pre-Employment Marijuana Testing Goes Poof in NYC and Nevada,” Forbes, August 16, 2019, <https://www.forbes.com/sites/alonzomartinez/2019/08/16/up-in-smoke-pre-employment-marijuana-testing-goes-poof-in-nyc-and-nevada/#173e7a4338ec>.

⁴ “Marijuana and the District’s Drug & Alcohol Testing,” DCHR, July 28, 2016, https://dchr.dc.gov/sites/default/files/dc/sites/dchr/publication/attachments/edpm_4_34_drug_and_alcohol_testing_0.pdf.

⁵ Government of the District of Columbia, “Cannabis Policy, Guidance and Procedures,” Office of the Mayor, September 2019, https://www.scribd.com/document/426129233/Mayoral-Order-About-Cannabis-Policy#fullscreen&from_embed, pg. 9

and Brown communities that criminalization has caused — as well as ensuring that access to this new industry is equitable, particularly for people who have cannabis-related convictions.

Thank you for the opportunity to provide testimony.