



# MARIJUANA TASK FORCE REPORT

NOVEMBER 9, 2020

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**Appendix A** – Resolution Supporting the Decriminalization of Marijuana and Creating a Task Force to Minimize Enforcement for Possession of Marijuana for Personal Use (June 22, 2020)

**Appendix B** - Public comments

## TASK FORCE MEMBERS AND STAFF

### CHAIR

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#### GARY DICKEY

Gary Dickey is a founding member of Dickey, Campbell, & Sahag Law Firm whose practice focuses primarily on criminal defense, personal injury, and regulatory litigation. He is a lifelong resident of Des Moines. Upon graduation from Drake University Law School, he clerked for the Honorable Harold Vietor, Senior U.S. District Court Judge for the Southern District of Iowa. Prior to working in private practice, Gary served over two years in the Office of Governor Vilsack and Lt. Governor Pederson as general counsel and policy director.

### MEMBERS

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#### BILLY WEATHERS

Des Moines native. 2013 Simpson College Graduate in Marketing & Communications. Artist. Musician. Creative Director. 2020 JCI Young Iowan of the Year award winner. 2020 DMPS Volunteer of the Year award winner. Founder/Director of the “B.WELL Foundation.”

#### WEBSTER KRANTO

Webster Kranto was born in the West African country of Liberia, into a large family of farmers and merchants. He spent the early years of his life there before his family fled civil war and ended up in Buduburam Refugee Camp in Ghana. In 1998, Webster immigrated to the United States. He grew up in Illinois, and later moved to Iowa where he graduated from Iowa State University with a degree in Safety Engineering. Webster worked at Des Moines Water Works for three years as Operations Systems Analyst, then pursued his small business ventures full time. His notable entrepreneurial successes include: Kranto Education Alliance, an after school enrichment programs company that operates in many Des Moines metro public schools; Budu\Bu Art Collective, a smoke shop/African fashion boutique with two locations in West Des Moines; Kranto Professional Media Solutions, and a few others. Webster currently sits on the Iowa Board of Corrections, the Des Moines Civil & Human Rights Commission, the Marijuana Decriminalization Task Force for the City of Des Moines, and serves as president of Magnolia Park Neighborhood Association.

#### DANIEL ZENO

Daniel Zeno is policy and advocacy director at ACLU of Iowa. In that role, he leads the ACLU of Iowa’s legislative, policy and advocacy work, including lobbying in the state legislature, working with policymakers at the county and city levels and maximizing the strength of the organization’s growing network of members, supporters, partners, volunteers, and activists to advance ACLU initiatives and priorities. Prior to joining the ACLU of Iowa, Daniel represented Iowans living with low-income in civil cases as a staff attorney at Iowa Legal Aid. Daniel is a graduate of The University of Iowa College of Law, Indiana University Bloomington and Wabash College.

### **MARK GODWIN**

Mark Godwin is a retired Iowa lawyer who served as chief litigator for the City of Des Moines for over seventeen years. Prior to that he did the same for Polk County for five years. Before he was a lawyer Godwin was a newspaper reporter, editor and columnist, the first Alumni Relations Director for the University of Alaska - Anchorage and air traffic controller.

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### **JANIECE ALFORD**

Janiece Alford, VP Operations of Central Iowa Shelter & Services, has been a part of the CISS family since 2016. She graduated from Grandview University with a bachelor's degree in Human Services, and now has 32 years of experience in social services and 22 years of non-profit experience. She has grown quickly the past 5 years of working at CISS, by going from a Shelter Manager to the VP of Operations.

## **STAFF**

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### **ALEX HASSEL**

Alex Hassel serves as the Policy Liaison for the Des Moines City Manager's Office. In this role, she conducts policy research for the City Manager's Office, serves as staff to the Mayor and liaison to the City Council, and assists with the City's state and federal lobbying efforts. Alex received a Bachelor's degree in environmental policy from Drake University and is currently pursuing a Certificate in Public Management.

## EXECUTIVE SUMMARY

The Task Force wishes to thank the Des Moines City Council for giving us the privilege of serving on the Task Force to Minimize Enforcement for Possession of Marijuana for Personal Use (“Task Force”). In light of recent events nationwide, increased attention has been given to racial disparities in all aspects of our criminal justice system. We understand the Council’s urgency and share in its desire to see change in the enforcement of marijuana possession laws. In our four months of work, we met regularly to study, scrutinize, and discuss policy proposals and best practices from around the world.

We thank the numerous community members who provided the Task Force with research, written recommendations, and public comment. We incorporated many of their ideas in our final recommendations, and this report is much more meaningful as a result. We would also like to acknowledge the assistance of the City Manager, staff, and legal department.

As directed in the Council’s resolution, the Task Force’s recommendations are organized around policy proposals and best practices at the state level as well as locally. In addition to these recommendations, we wish to identify three strong themes that emerged from our discussions and the public feedback:

## LEGAL LIMITATIONS:

Full scale decriminalization or legalization of marijuana for personal use will require a change in state law. State preemption of the regulation of criminal laws above simple misdemeanors limits the City’s ability to enact meaningful legislation in this area. If statewide decriminalization is not politically feasible in the short term, the City and its partners should push strongly for legislation that would allow flexibility for cities and counties to address the issue locally.

## COMMUNITY POLICING CONCERNS:

Nearly all the public comment we received identified two concerns. First, members of the public were concerned with the frequency and degree to which enforcement of marijuana possession laws are used to intrude upon the privacy of residents. Second, members of the public believed the laws to be arbitrarily enforced to the detriment of minority members of the community. Because these concerns related more to police practices and did not fall within the Task Force’s charge, they are not included in the final report. The Task Force strongly encourages the City Council to review these other recommendations and continually evaluate ways to make our police department’s practices more just.

## LAW ENFORCEMENT IMPLEMENTATION:

The Task Force recognizes that as worthwhile as many of its recommendations may be, their success depends on legitimate implementation by law enforcement. Despite repeated requests, no member of the Des Moines Police Department attended any meetings or provided any feedback on the Task Force’s proposals. We hope the City Council will take the steps necessary to ensure that law enforcement will embrace whatever recommendations it ultimately adopts.

## STATE POLICY OPTIONS

### CURRENT IOWA LAW

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#### CRIMINAL LAW

**Criminal Penalties:** Iowa law makes it a crime to knowingly or intentionally possess marijuana unless it has been obtained directly from a valid prescription. Iowa Code § 124.401(5). The penalty for first offense possession of marijuana is incarceration in the county jail for at least 48 hours, but not more than 6 months, and a fine of not more than \$1,000. *Id.* Subsequent marijuana possession convictions receive harsher penalties up to the incarceration in prison for up to two years. *Id.* All or any part of a sentence may be suspended and replaced with probation along with active participation in a drug treatment, rehabilitation, or education program approved by the court. *Id.*

**Preemption:** The Iowa General Assembly has expressly limited cities' home rule authority to legislate in the criminal arena. For example, a city may create a municipal infraction in its code for any criminal offense set forth in the Iowa Code that constitutes a simple misdemeanor. *See* Iowa Code § 380.10(2). Conversely, a city may not provide a municipal infraction for any criminal offense that is a felony, an aggravated misdemeanor, or a serious misdemeanor under state law. *Id.* § 364.22(3).

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#### MEDICAL MARIJUANA LAW

In 2014, Iowa lawmakers enacted a limited law to allow certain patients to possess — but not access — low-THC cannabis oils without risking a criminal conviction. The legislature significantly revised the law in 2017 and again in 2019). With those changes, many more medical conditions qualify for treatment with cannabis, including chronic pain and PTSD. Iowa law also now allows in-state access to cannabis, and patients are no longer limited to low-THC remedies.

The program, formally called the Iowa Medical Cannabidiol Program, is still among the most restrictive in the country. For example, only cannabis preparations, not raw flower, are allowed. Additionally, only two manufacturers are authorized in the state, home cultivation is not allowed, and patients are limited in the amount of THC they can access every 90 days unless they have a waiver.

Here are key features of the law:

**Qualifying conditions:** Chronic pain; HIV or AIDS; Crohn's disease; post-traumatic stress disorder (PTSD); amyotrophic lateral sclerosis (ALS); nausea or severe vomiting; cachexia or severe wasting syndrome; Parkinson's disease; ulcerative colitis; corticobasal degeneration; multiple sclerosis with severe and persistent muscle spasms; seizures; any terminal illness, with a probable life expectancy of under one year, and if the illness or its treatment produce severe or chronic pain; severe, intractable autism with self-injurious or aggressive behaviors; and cancer, if the underlying condition or treatment produces severe or chronic pain, nausea or severe vomiting, or cachexia or severe wasting syndrome.

**Enrolling in the program:** In order to enroll in the program, patients must obtain a written certification from their primary care provider, who must be either a doctor (MD or DO), a podiatrist, a physician's assistant, an

advanced registered nurse practice, or an advanced practice registered nurse. Patients must be permanent residents of the state. Patients under 18 can only enroll in the program through their caregivers.

**Caregivers:** Under the program, caregivers can enroll to help patients pick up and use the oil. Caregivers must be residents of Iowa or a bordering state to Iowa and at least 18 years of age. The patients' doctors must designate them as a necessary caretaker.

**Registration card fees:** Card fees for patients are typically \$100. However, if the patient receives social security disability benefits, supplemental security insurance payments, or is enrolled in a medical assistance program, the fee is \$25. Caregiver cards are \$25.

**Cannabis oil limits:** Raw (flower) cannabis is not permitted. Smoking is also not permitted. In most cases, patients can obtain cannabis preparations containing no more than 4.5 grams of THC every 90 days. However, a practitioner can allow a specific, greater amount that the practitioner finds appropriate if either: 1) the patient has a terminal medical condition, with a life expectancy of under a year; or 2) the patient is not new to the program, and the practitioner determines 4.5 grams is insufficient for the patient.

## BEST PRACTICES IN OTHER STATES

According to the [National Conference on State Legislatures](#), 26 states and the District of Columbia have taken some step toward decriminalization of marijuana. Of these, eleven states and the District of Columbia have legalized small amounts of marijuana for adult recreational use. Other state actions have reduced criminal penalties for marijuana convictions, generally following a trend to reduce adverse consequences of some marijuana crimes. In the last five years, legislation in at least 16 states have lowered the penalties for marijuana possession. At least 15 states have passed laws addressing expungement of certain marijuana convictions.

## PUBLIC RECOMMENDATIONS

The Task Force received the following proposals from members of the public and interested stakeholders for policymaking consideration by the State of Iowa:

- Legalize or decriminalize simple possession of marijuana by statute;
- Eliminate escalating penalties for marijuana possession;
- Reduce fines for personal production of cannabis;
- Removal of criminal penalties for illicit drugs like in Portugal;
- Establish a state marijuana enforcement task force;
- Amend the medical cannabis program to align with 21 C.F.R. § 1307;
- Expungement of criminal records for non-violent marijuana convictions;
- Relax regulation of hemp; and
- Provide immunity for police officers who use discretion in marijuana enforcement.

## CITY POLICY OPTIONS

### BEST PRACTICES IN OTHER MUNICIPALITIES:

Over the past decade, several municipalities all over the country have enacted reforms reducing criminal penalties for marijuana possession for personal use. On one end of the spectrum cities like Fayetteville, Arkansas, and Louisville, Kentucky, have passed city ordinances expressly declaring that enforcement of marijuana possession laws to be a low enforcement and prosecution priority. On the other end are cities like Cincinnati, Ohio, which has completely decriminalized the possession of less than 100 grams of marijuana for personal use. In the middle are several cities that have replaced criminal penalties with civil fines.

Below is a survey of municipal efforts to decriminalize the possession of marijuana for personal use:

Municipality	Population	Policy	Quantity	Penalty
Miami Dade County, Florida	2.7 million	<a href="#">Fine</a>	20 grams	\$100
Louisville, Kentucky	766,757	<a href="#">Ordinance declaring lowest enforcement priority</a>	N/A	N/A
Milwaukee, Wisconsin	594,833	<a href="#">Fine</a>	25 grams	\$50
Albuquerque, New Mexico	545,852	<a href="#">Civil infraction</a>	1 ounce	\$25
Atlanta, Georgia	420,003	<a href="#">Fine</a>	1 ounce	\$75
New Orleans, Louisiana	390,144	<a href="#">Removes jail as penalty</a>	No limit	\$40
St. Louis, Missouri	315,685	<a href="#">Fine, not subject to arrest</a>	35 grams	\$100
Cincinnati, Ohio	296,945	<a href="#">Decriminalization</a>	100 grams	None
Orlando, Florida	238,300	<a href="#">Fine</a>	20 grams	\$100
Fayetteville, Arkansas	73,580	<a href="#">Ordinance declaring lowest enforcement priority</a>	N/A	N/A



## **PUBLIC RECOMMENDATIONS**

The Task Force received the following proposals from members of the public and interested stakeholders for policymaking consideration by the City Council:

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### **ENFORCEMENT PRIORITY DECLARATION**

The City Council could express, either through ordinance or written policy, a formal declaration that possession of marijuana should be given the lowest enforcement priority by the police department. Because such declaration would not be binding, however, its value would depend upon the police department's willingness to follow it. To add persuasive value to the declaration, the City Council could support it with (1) resident public opinion data on enforcement priorities; (2) data on the fiscal impact to the public safety budget on current marijuana enforcement police practices; and (3) police department data on citizen complaints by offense type.

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### **PRE-ARREST & POST-ARREST DIVERSION**

The Iowa Office of Drug Control Policy has received a federal grant for a pilot project to work with three communities to implement a Pre/Post Arrest Diversion ("PAD") Program for drug offenses. The project is modeled on efforts in other cities focused on early intervention with low-risk offenders as an alternative to criminal prosecution. Five models of pre-arrest diversion include: (1) self-referral; (2) active outreach; (3) Naloxone plus; (4) officer prevention; and (5) officer intervention. Due to differences in demographics, resources, and political makeup, each PAD must be uniquely tailored to a particular community. Common features, however, include case managers that work with law enforcement and service agencies to evaluate participant needs, connect them with community resources and public assistance, and to track progress. Although PAD is a relatively new approach, the early results are encouraging. For example, participants in PAD programs in Florida, Washington, and Wisconsin were less likely to offend upon successful completion.

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### **PUBLIC AWARENESS OF MEDICAL MARIJUANA**

The City of Des Moines could work together with state and local stakeholders to raise public awareness about the availability marijuana legally through the Iowa Medical Cannabidiol Program. Many people who currently possess marijuana illegally may be able to do so lawfully but simply may not know about eligibility or process for participating in the program.

## **POLICE AND LAW ENFORCEMENT ACADEMY ACCREDITATION**

The Marijuana Decriminalization Task Force Resolution did not receive any information to suggest that any of the policy proposals submitted in this report would result in the loss of accreditation of any member of the Des Moines Police Department or the Des Moines Law Enforcement Academy.

## OTHER PUBLIC RECOMMENDATIONS

The Task Force received substantial public comment on police practices related to enforcement of marijuana possession laws. The central theme of the comments was that enforcement of marijuana possession laws is excessive and often perceived as a pretext to justify intrusive searches and seizures of individuals and property. While the issue of police practices does not fall directly within its charge, the Task Force thought the public's recommendations would aid the City Council's in addressing the concern identified in the resolution regarding the "disparity in arrest rates for marijuana possession between blacks and whites."

The Task Force received the following proposals from members of the public and interested stakeholders concerning police practices:

- Stop the use of pretextual traffic stops;
- Require written consent for vehicle searches;
- Prohibit vehicle searches that are not supported by probable cause;
- Eliminate the use of odor of marijuana as the basis for searches and seizures;
- Collect and publish traffic stop data;
- Mandate the use of body cameras and car cameras in all police encounters;
- Make drug enforcement a separate agency within the police department; and
- End the practice of civil asset forfeiture.

## **TASK FORCE RECOMMENDATIONS**

### **STATE PUBLIC POLICY RECOMMENDATIONS**

1. Adopt a formal statement in support of changing state laws to legalize or decriminalize the possession of marijuana for personal use;
2. Adopt a formal statement in support of changing state laws to expunge prior convictions for marijuana possession and eliminate collateral consequences such as driver license suspensions, eligibility for state and federal benefits, and fines;
3. Adopt a formal statement in support of changing state laws to allow local municipalities to enact ordinances to legalize or decriminalize the possession of marijuana for personal use;
4. Adopt a formal statement in support of changing state laws to create a more clear and comprehensive medical marijuana program;
5. Actively advocate for these policy changes as part of the City's legislative priorities; and
6. Request that these policy changes be included in the legislative priorities of the City's membership organizations, including the Iowa League of Cities and the Iowa Metropolitan Coalition.

### **CITY PUBLIC POLICY RECOMMENDATIONS**

1. Enact an ordinance that formally declares that marijuana possession for personal use shall be the lowest enforcement priority for public safety officials;
2. Track and publish data arising from traffic stops and police encounters that involve investigation, arrest, or criminal prosecution for possession of marijuana for personal use;
3. If changes in state law allow, adopt an ordinance that legalizes or decriminalizes the possession of marijuana for personal use;
4. Evaluate best practices in pre-arrest and post-arrest diversion programs being piloted around the country and begin a conversation with the Iowa Office of Drug Control Policy, city public safety officials, and community service providers about the viability for implementation in Des Moines; and
5. Identify opportunities to raise public awareness of the Iowa Medical Cannabidiol Program so that eligible residents may lawfully possess marijuana for personal use under existing state law.

### **OTHER PUBLIC POLICY RECOMMENDATIONS**

1. Discourage police practices that result in intrusions into personal liberties that are justified on the basis of investigations into possession of marijuana for personal use.