

We're Including Cannabis in the Smart Justice Conversation

For too many, cannabis sets in motion the revolving door of our criminal justice system.

It is time to legalize cannabis in Delaware. Too often, the smell of pot—real or imagined—is the first channel used by police to gain “probable cause” to conduct a warrantless search. Many times, a cannabis offense is the reason for an individual’s first appearance before a judge.

All in all, cannabis is often the first touchpoint with the criminal justice system—and many times it’s not the last. Keeping cannabis illegal sets in motion the revolving door of our criminal justice system—the first step into our under-resourced courts and over-populated prisons.

Like many other areas of the criminal justice system, cannabis penalties disproportionately impact Delaware’s African American community. Research shows that black and white Americans consume cannabis at similar rates, but African Americans are still being arrested and charged in greater numbers than whites, and sentenced much more harshly than their white counterparts.

Cannabis decriminalization was an important first step in Delaware, but it did not end the systemic failures caused by cannabis prohibition. In fact, decriminalization often exacerbates these racial disparities by giving law enforcement a loophole to use discretionary practices that leave



some individuals with a civil citation, some with a misdemeanor charge, and some with a felony charge, all for possessing personal use quantities.

The current decriminalized possession amount is set so low that many people still find themselves facing criminal charges for possessing amounts of cannabis meant for personal use. While total misdemeanor arrests for cannabis decreased by approximately 48% from 2013 to 2018, “possession only” cannabis court filings increased 127% in that same time period.

“Possession only” cannabis prosecutions are overburdening our criminal justice system. From 2016 to 2018, there were 16,359 court filings for these cannabis offenses. While the large majority resulted in civil citations,

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and more!

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Executive Director's Notes

Policy Priorities for 2019

The 150th General Assembly has officially kicked off the 2019 legislative season. This session the ACLU of Delaware will be advocating for expansion of voting rights and for criminal justice reform. We'll be fighting against legislation that restricts access to abortion and invades privacy. We've already seen a slew of bills introduced on these issues and we anticipate many more to come. Here's a summary of what's ahead.

For years, the ACLU, League of Women Voters, Common Cause and others have been pushing expansion of voting rights and access to the ballot box here in Delaware. So we were gratified when Governor Carney announced that he was supporting these reforms as well. Bills to advance same day voter registration (HB39) and early voting (HB38) have already been introduced and are waiting to be heard in committee. Same day registration has already been implemented in 17 states and D.C., and 39 states and D.C. have already given access to early voting.

Legislation we will oppose includes a bill that bans access to abortion after 20 weeks (HB52, SB21) and another that requires a doctor to offer fetal ultrasound images and the sound of a fetal heartbeat to women before performing an abortion (HB 53, SB 19).

ACLU of Delaware staff and other community partners are working closely with Attorney General Kathy Jennings and legislators to

pull together a criminal justice reform package.

Proposals will include:

significantly reducing the use of concurrent sentencing, which results in overly long prison stays; preventing arrest warrants from being issued automatically and drivers licenses from being suspended when fines are not paid to the court; and eliminating "location enhancements" (i.e. more prison time) when drug crimes are committed near a church or school. We will also work on legislation that expands opportunities to expunge a criminal record and makes it easier to get a professional occupation license with a criminal conviction.

Notices of legislative activity are posted on our website, on Facebook and sent by email, so make sure you connect with us electronically. If you want to sign up for our email list or have any questions about our website or social media pages, reach out to Morgan Keller, Communications Manager, at mkeller@aclu-de.org.

Finally, congratulations to all the women and men that worked for years to pass an Equal Rights Amendment to the Delaware Constitution (HB1). You got it done and we no longer permit discrimination on the basis of sex. What a way to kick off 2019! 🇺🇸



KATHLEEN MACRAE

Kathleen MacRae

CANNABIS LEGALIZATION, CONT. FROM PAGE 1

3,803 people were brought into the justice system with a misdemeanor cannabis possession offense during that time. In 2018 alone—three years after decriminalization—there were 5,981 cannabis court filings, and an average of thirteen citizens a day having law enforcement contact simply for possessing personal amounts of cannabis. These prosecutions have a substantial human and economic cost and will continue to contribute to overburdening our criminal justice system until cannabis is fully legalized.

For every cannabis possession arrest, an individual's life can be impacted in many significant ways, including loss of employment, housing, eligibility for educational loans, parental rights and constitutional rights. Each cannabis arrest opens a citizen up to police seizure of personal property, court fines, drug treatment fees, probation fees and the lingering threat of jail for violating a court order.



PHOTO BY: PIXABAY.COM / SURFWIZ17

In 2018 alone - three years after decriminalization - there were 5,981 total cannabis court filings, and an average of thirteen citizens a day having law enforcement contact simply for possessing personal amounts of cannabis."

Like other states that have legalized, Delaware could look forward to significantly reducing both misdemeanor and felony cannabis arrests, improving public safety in our communities, creating employment opportunities, saving millions in enforcement costs and generating millions in revenue to go toward improving our schools and reinvesting in our neighborhoods, if we move in that direction.

Our criminal justice system is already overloaded and riddled with disparities. We shouldn't be punishing people for a non-criminal act that poses no threat to public safety, especially when there are more important issues at hand. It is the difference between continuing a horribly failed policy and instituting a fair one; between right and wrong; between antiquated justice and Smart Justice. **Cannabis legalization just makes sense.**

This article was written, in part, by Zoë Patchell of the Delaware Cannabis Advocacy Network—Delaware's premiere lobbying effort to legalize cannabis. To learn more about the organization, email Zoë at zoe@delawarecannabis.org or visit DelawareCannabis.org.

National Popular Vote Discussion Hits Delaware

It's time to make the popular vote work for the people.

ARTICLE BY:
GRACE HANOIAN, ACLU OF DELAWARE COMMUNICATIONS INTERN

On January 7, Common Cause, along with the League of Women Voters of Delaware, ACLU of Delaware, and the Delaware Sierra Club sponsored a discussion on the National Popular Vote Interstate Compact (NPVIC).

The NPVIC aims to change the outdated way the electoral college functions. States enter into an agreement that commits their electoral college votes to the winner of the popular vote nationwide.

In most states, the electoral votes go to the candidate who won the popular vote in that state—regardless of the margin of votes and insulated from the national total.

For example: were the NPVIC in effect during the 2016 election, states that took part would automatically pledge their electoral college votes to Hillary Clinton since she received the most votes nationwide, even if a specific state had more individual votes for Donald Trump. Because the compact would control 270 votes, Clinton would win the election. However, using the current electoral college system, electors pledge their votes based on how candidates did in their own states. When margins are very slim in several states, the current result can award the electoral college to one candidate, while the other wins the overall popular vote.

The current system causes presidential campaigns to focus most of their energy in a handful of “swing” states like Florida, Ohio and Pennsylvania, that usually decide the election because of the electoral college. Not only do candidates spend a disproportionate amount of time in swing states, but they spend a disproportionate amount of money there as well.

The compact has bipartisan support across the nation. NPVIC legislation passed Republican-led chambers in Arizona,



The NPVIC aims to change the outdated way the electoral college functions.

Oklahoma, and New York. Delaware’s own House of Representatives passed this legislation in 2009, but it did not pass the Senate. Now it’s

time for our 150th General Assembly to step up.

The NPVIC will only go into effect after states with a majority of the electoral votes (270) enact legislation in support of the compact. This way, regardless of how any electors from states not in the compact choose to vote in the electoral college, the compact, holding the majority of votes, will decide the winner. Currently, 11 states and Washington D.C. have passed this legislation, accounting for 172 electoral votes. The bill will take effect when it has a total of 270 electoral votes.

Deciding the presidential election by popular vote instead of by state makes the election more accurately reflect the will of the people. Enacting this compact would change the way presidential campaigns are run, and change the way many voters make a decision that will impact them for years to come. 🇺🇸

Coalition for Smart Justice Delaware Launches 2019 Legislative Advocacy with Lobby Day

Dozens of advocates took over legislative hall last month with one goal: get the 150th General Assembly on-board with meaningful criminal justice reform.

ARTICLE BY:
TREVOR BROWN, CAMPAIGN FOR SMART JUSTICE VOLUNTEER

“We’re here today because we understand that someone’s last name, skin color and income should not determine the outcomes of their interactions with the criminal justice system,” said Kerri Evelyn-Harris, community organizer, at a press conference to kick off the Coalition for Smart Justice Lobby Day held in January.

Kerri is just one of thousands of people in Delaware who has had a warrant issued for their arrest and driver’s license suspended due to unpaid fees or fines.

Throughout the day advocates met with over 30 members of the 150th General Assembly to explain why criminal justice reform should be a top priority and what legislators can do to create meaningful reform. The coalition’s legislative focus areas include:

- Revising drug statutes to remove location-based enhancements for all drug crimes, change the tiering and remove drug offenses from the violent felony list.
- Amending the sentencing modification statute to allow for release of individuals who are not a significant public safety threat and/or may be eligible for compassionate release, such as elderly and ill inmates.
- Modifying the use of fines/fees by requiring judges to do an ability to pay analysis, eliminate driver’s license revocation and eliminate the use of warrants for failure to pay.
- Expanding second chances through an expungement bill that will reform the availability of expungement for adults.
- Expanding and improve criminal justice data transparency on issues such as the

imposition of fees, fines and court costs, as well as charging, prosecution, sentencing, incarceration and release.

- Allowing concurrent sentencing for all criminal laws instead of requiring sentences for certain cases with more than one charge to run consecutively (one after another).

The Coalition for Smart Justice is a group of organizations and individuals who advocate for a criminal justice system that fosters public safety by reducing mass incarceration, recidivism and racial disparities. The coalition has two main goals: reduce the prison population and address racial disparities in the criminal justice system.

To get involved contact Erica Marshall, Campaign for Smart Justice Manager, at emarshall@aclu-de.org.



PHOTO BY: TREVOR BROWN

Coalition for Smart Justice Members:

ACLU of Delaware, Campaign for Smart Justice Coalition of Black Trade Unionists, Coalition to Dismantle the New Jim Crow, Delaware Cannabis Advocacy Network, Delaware Center for Justice, Delaware Civil Rights Coalition, Delaware United, H.E.A.D.S. U.P. in the 302, League of Women Voters Delaware, Metropolitan Wilmington Urban League, NAACP Delaware State Conference, Network Delaware, Pacem in Terris, Southern Delaware Alliance for Racial Justice, Westminster Presbyterian Church Peace and Justice Work Group, Chris Johnson, Kerri Evelyn-Harris Criminal Justice Committee, Wilmington Hope Commission, Unitarian Universalist Delaware Advocacy Network

CASE DOCKET

Right to Counsel. In October 2018, we filed an amicus curiae brief in support of Jacquez Robinson. In that Delaware Supreme Court case, the State maintains that it can secretly read an inmate's attorney-client communications without seeking permission or even informing the court. Our brief argues that such an invasion of the attorney-client privilege is a clear violation of the Sixth Amendment's guarantee of a right to counsel in criminal matters. The Supreme Court will hear oral argument on February 20.

Adequate Education. We are proceeding with our lawsuit asserting that Delaware's education system is not providing all students with a meaningful opportunity to obtain an adequate education, and that the three Delaware counties' failure to perform property reassessments has contributed to the problem. In November, having denied motions to dismiss filed by the counties, the Court of Chancery also denied the motion to dismiss filed by the State Defendants. The case is now in the pre-trial discovery phase.

Muslim Ban. In April 2017 along with other ACLU affiliates, we sued the Department of Homeland Security to get access to documents concerning the implementation of President Trump's January 27, 2017 Executive Order preventing people from certain Muslim-majority countries from traveling to the United States. The case is proceeding in the Eastern District of Virginia. In January, Customs and Border Protection reported that they believe they have now processed all of the materials responsive to our requests, but could not definitively confirm this because "the individuals responsible for the same have been furloughed due to the current lapse in appropriations." We are expecting an update in mid-February.

Improper arrests. We have settled our class action lawsuit challenging false arrests carried out by the Wilmington Police Department, pending final approval by the United States District Court. In addition to monetary compensation for the named plaintiffs and an award of attorney fees, the settlement requires the City to amend its detention policies, train police on the new policies, and implements new documentation requirements for arrests.

Make A Difference in DE's Education System: Run for School Board

March 1, 2019 is the deadline to apply to run for a school board position in all three counties.

New Castle County Open Seats

More info: <https://electionsncc.delaware.gov>

- Appoquinimink School District
- Brandywine School District
- Christina School District
- Colonial School District
- Red Clay Consolidated School District

Kent County Open Seats

More info: <https://electionskc.delaware.gov>

- Caesar Rodney School District
- Capital School District
- Lake Forest School District
- Milford School District
- Smyrna School District

Sussex County Open Seats

More info: <https://electionssc.delaware.gov>

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- Delmar School District
- Indian River School District
- Laurel School District
- Seaford School District
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Inside the Amicus Society

ARTICLE BY:
DAVID BEVER, ACLU-DE DIRECTOR OF DEVELOPMENT

Almost a century after our founding, civil rights, free speech and privacy remain core values of the ACLU. We stand ready to tackle any challenge to our liberties that our increasingly digital lives may present.

That's how it's always been.

From Clarence Darrow's spirited defense of high school teacher John Thomas Scopes in 1925 to the battle to desegregate schools in *Brown v. Board of Education*, from *Roe v. Wade* to the fight for marriage equality and beyond, ACLU lawyers and their allies have stood at the forefront of the fight for freedom for a hundred years.

In Delaware, we celebrate these civil rights heroes through our Amicus Society, a network of First State lawyers committed to defending our civil rights and civil liberties. Thanks to the annual giving of Amicus members, ACLU-DE has realized a bold vision to expand our litigation, legal and legislative advocacy and increase our communications and development capacity. Members of the Amicus Society act as a bridge between the ACLU and the broader community because they share the core values we were founded on.

On January 25, we honored Amicus members with a special annual breakfast featuring Peter Romer-Friedman of Outten &

Golden. In his presentation "Discrimination 2.0: How Social Media Platforms are Assisting Prejudice," Peter addressed the crucial 21st century civil liberties questions of how social media is used as a tool of oppression—and what can be done to stop it.

As an ACLU cooperating attorney in *National Fair Housing Alliance v. Facebook*, Peter represents those minorities impacted by Facebook's user classification and ad targeting tools. Like our Amicus Society members, he also represents the crusading legal spirit of the ACLU itself.

To the Delaware lawyers who share that spirit: we humbly extend an invitation for you to join the ACLU-DE Amicus Society today, and stand with us as we make history in our next 100 years.

Annual membership in the Amicus Society begins at \$1000 per year for private attorneys and \$250 per year for new, retired or public interest attorneys. Members receive exclusive case updates, special invitations to events (including our annual breakfast) and recognition throughout the year at ACLU events. For more information about the Amicus Society, please contact Director of Development Dave Bever at (302) 654-5326, ext. 100 or via email at dbever@aclu-de.org for assistance.



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A SPECIAL THANK-YOU TO THIS YEAR'S BARTENDERS:

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