

**Written Testimony of Keeda J. Haynes,  
Senior Legal Advisor to Free Hearts and Federal Policy Analyst  
The National Council for Incarcerated and  
Formerly Incarcerated Women and Girls  
to  
United States House Subcommittee on Civil Rights  
November 15, 2022**

**I. Introduction**

My name is Keeda Haynes. I am the Senior Legal Adviser to Free Hearts, a nonprofit organization based in Tennessee. Free Hearts is a statewide organization led by formerly incarcerated women that provide support, education, advocacy and organizing for families impacted by incarceration with the ultimate goals of reuniting families and strengthening communities.

I am also the Federal Policy Analyst for The National Council for Incarcerated & Formerly Incarcerated Women and Girls is the only national advocacy organization founded and led by incarcerated and formerly incarcerated women and girls. Organizing began in a federal prison yard with a group of women who wanted policy makers instituting criminal justice reform to hear the voices of formerly incarcerated people – those who understand the harm the current system inflicts and have the expertise to create an alternative system that recognizes each person’s humanity.

The Bureau of Prisons knows me as Number 00017-011. I will be associated with that number for the rest of my life because of my conviction for aiding and abetting a marijuana conspiracy. I served four years in a federal prison camp (reduced on appeal from seven) because I received packages for the man I was dating. He told me they contained merchandise for his cell phone business. His associates hid bricks of marijuana among the legitimate products; as I had no reason to open the packages or doubt his word, I never knew what they contained. This trust shattered my life.

Two weeks before I reported to FPC Alderson, I received my Bachelor’s degree in criminal justice and psychology from Tennessee State University. Upon my release on December 1, 2006, I began working for my defense lawyer and enrolled into law school two years after my release. As a person with a felony conviction, I was advised to undergo a psychological examination to gain admission to the Nashville School of Law. After graduating and successfully passing the TN Bar Exam on the first try, I had to have a hearing to convince the Tennessee Board of Law Examiners that I had the moral character and was “fit” to practice law. In 2012, six years after my release, I became a licensed attorney in Tennessee and started working as a public defender shortly after that.

While in law school, I fought to be released from federal supervision early, only to be denied. This denial underscored that the criminal legal system is more concerned with punishment than rehabilitation, considering all I had managed to accomplish, in spite of the many barriers. Like so many times throughout this experience, I continued to fight and two years later, after petitioning the court again for early termination of supervision, my petition was granted. Although I was finally released from the punitive clutches of the criminal legal system, the damage had already been done, I now had a scarlet F emblazoned on my chest. Like so many others, regardless of my accomplishments, I would continue to be reminded and treated as a second-class citizen all because of a felony conviction on my record.

After serving my community in the role of assistant public defender, for over six years and bearing witness to the disparities faced by Black communities in all systems, I decided to run for Congress in the 5<sup>th</sup> Congressional District in Tennessee. While I did not get the result that I would have liked, we were able to educate and build momentum around rights restoration in the state for the four-hundred fifty thousand plus individuals who are forced to live as shadow citizens, because they cannot vote because of a felony conviction. During the congressional campaign, I also had my civil rights restored. I was also sworn in as a practicing attorney in the Middle District of Tennessee, the very same court that, eighteen years earlier, changed the entire trajectory of my life.

My life has been anything but conventional. Girl Scout. Star college student. Federal inmate. Supreme Court petitioner. Public defender. Community advocate. Congressional candidate. Across my journey, I have personally experienced the injustice built into the foundations of our country. On November 16, 2021, I released my memoir entitled *Bending the Arc: My Journey from Prison to Politics* (Seal Press; November 16, 2021), where I show through my personal story how American policy and convention oppress Black, brown, and poor Americans, and offer a new way forward to reimagine justice.

## **II. Devastating Collateral Consequences of a Drug Conviction**

Please do not interpret my story as proof that the system works. I had several advantages: a supportive family who could assist me with housing after my return home, an exceptional lawyer, and the education to take advantage of the opportunity he offered me, and no dependents, giving me the ability to earn money and save for law school. The better question is why is my story so rare? The answer is collateral consequences. Once a person is entangled in the criminal legal system, it is nearly impossible to extract oneself.

While the criminal justice system claims to value rehabilitation and promotes reducing recidivism, many of the collateral consequences of a drug conviction can make these goals difficult to obtain for the average person. While education is often touted as the ticket out of the cycles of crime and poverty, anyone with a drug conviction on their record can face undue hardship when pursuing a college education. Most schools ask for applicants to disclose their criminal backgrounds, and background checks can also reveal convictions, which must be explained and can result in being passed over for acceptance – colleges use this as a proxy for determining whether the student is likely to be ethical during their tenure. If you are convicted while attending college you can also lose your federal financial aid, putting a higher education out of reach for most Americans.

Even after obtaining a college education, people with drug convictions on their record can be barred from obtaining professional licenses needed to practice in a wide variety of fields or lose licenses they already had. The loosely defined “unprofessional conduct” clause found in many licensure requirements allows for revocation for drug convictions. Licenses are required for hundreds of professions ranging from cosmology, law, and medicine, to finance, plumbing and electrical work.

Once ready to pursue employment, people with drug convictions face a difficult road finding anyone to offer them employment. Almost any job application asks whether a person has a prior conviction, and many require a criminal background check. While failing to list a prior conviction can result in losing a job opportunity if found during a background check or dismissal for lying on an application, many employers are unwilling to offer a person who

states they have had a drug conviction a chance. Some fields will not hire people with drug convictions, such as childhood care and education, law enforcement, commercial driving, and some medical fields.

Factors that can affect job hunting and retaining employment include the ability to actually show up to work. In some states a drug conviction can result in the suspension or loss of a driver's license for a period after their sentence is complete. This can make it difficult or impossible to get employment in many places throughout the United States where public transportation is scarce or woefully insufficient.

People who have been convicted of a drug felony can lose their right to vote and millions of Americans each year are unable to do so. The length of time someone with a conviction is unable to vote varies widely from state to state. In some states a conviction can result in the permanent loss of voting rights. In others voting rights may only be restored with a governor's pardon, or there may be a mandatory waiting period after completion of their sentence, and/or additional actions might need to be taken before their voting rights can be restored. This disenfranchises people and takes away their voices and ability to change their government to better represent them and their needs, to build communities where they can thrive after their release.

Although President Biden has announced that he is asking for a review of marijuana's drug classification, the fact remains that it is still federally categorized as a Schedule 1 drug alongside heroin and fentanyl. By federal law anyone who uses marijuana, even for medical purposes, is not legally allowed to purchase or possess firearms. The Second Amendment gives Americans the right to bear arms for the purposes of self-defense, and this right is infringed upon for millions of Americans who have drug convictions, regardless of whether the crime they were charged with was violent or involved a firearm.

For immigrants seeking the American Dream, a marijuana conviction – or even marijuana use in a state where it is legal to possess it – can result in the loss of legal immigration status, which can ultimately result in deportation, and the inability to obtain US citizenship. More than 45,000 people were deported between 2003 and 2018 for possession of marijuana. This can break apart families and result in trauma for everyone involved, especially children who lose a parent.

Passage of the MORE Act that would decriminalize marijuana will free a huge number of people like myself who carry the stigma of conviction and the practical disadvantages that linger for years – and even decades – after the “debt” to society has been paid.

### **III. Discriminatory Impact on Women Due to Conspiracy Laws**

The criminalization of marijuana has done incalculable damage in large part thanks to the War on Drugs. Under drug conspiracy laws, anyone who is even tangentially involved in a group that is engaged in illegal activity can be held responsible for the most serious act of any other participant. Conspiracy prosecutions are a major weapon of the war on drugs that disproportionately harm minor players, mainly women and people of color.

The U.S. Code contains dozens of conspiracy laws, giving prosecutors broad leeway to file conspiracy charges, which only require proof of an agreement between two or more people to

commit an illegal act. It is worth noting that in my case, the prosecutor could not even meet that low threshold as I could not agree to receiving FedEx packages with marijuana, as I had no idea the drugs were there. Instead, I was convicted of aiding and abetting a conspiracy, which still condemned me to spend years on a prison bunk.

Federal drug conspiracy laws which include marijuana convictions require mandatory minimum sentences tied to the amount of drugs involved. While the leaders of the enterprise have valuable information that they can trade for immunity or light sentences, others caught up in the system have nothing to offer. Women are disproportionately affected by this system. We are told to betray loved ones and when we cannot, or will not, prosecutors then use the draconian punishments mandated by conspiracy laws to extort unwarranted guilty pleas. Women who try to resist are told that they will be separated from their children for decades and if they do get out, their kids will be strangers to them. For those few who try to withstand the pressure, prosecutors make good on their threats, using conspiracy laws to implicate women in drug operations of which they knew nothing, obtaining decades-long sentences for something as trivial as passing on a phone message or renting a car – or in my case signing for a package.

The horror caused by conspiracy laws can be best illustrated by the tragedy of Michelle West who is currently serving a 2 LIFE plus 50-year sentences for a murder she did not commit while the person, her then-boyfriend, who admitted pulling the trigger did not serve a day in prison for that crime. Michelle had no criminal record. The person who committed the murder cooperated with authorities, but Michelle went to trial. Under the conspiracy laws and mandatory sentences at the time, she was given a de facto death sentence for dating the wrong man.

The only way to fix this injustice is to reform conspiracy laws to bring them into compliance with basic principles of due process. Prosecutors should no longer be able to obtain a conviction without any solid evidence of actual participation in a drug conspiracy or solely on the word of an informer. Sentences should be given based on the person's actual participation (including prohibiting incarceration for otherwise innocent acts such as passing a message) not on the most heinous act committed by anyone in the group. It violates every fundamental principle of justice to punish someone for the act of another, yet thousands of people are serving decades-long sentences for actions they knew nothing about. Conspiracy laws are a toxic remnant from the failed war on drugs and must be reformed. Therefore, we are very grateful to Representative Karen Bass (D-CA), Representative Jackie Speier (D-CA), and Representative Nancy Mace (R-SC) for introducing the Women in Criminal Justice Reform Act, which, among other things, would limit application of conspiracy laws to substantive involvement not the incidental contact such as taking a phone message or picking up lunch for the conspirators. This legislation amends the Controlled Substances Act and the Controlled Substances Import Act to solve the "girlfriend problem," i.e. would end the all too common situation in which girlfriends or wives of individuals involved in drug trafficking have no knowledge of the operation and thus have no information to trade in exchange for a more lenient sentence. Many women face stiffer penalties on conspiracy charges than the person convicted of trafficking.

#### **IV. Use the Marijuana Industry to Reverse the Damage of Mass Incarceration**

Decriminalization of marijuana has the potential to lower crime in impoverished communities where jobs and decent educational opportunities are scarce. The marijuana industry has the potential to revitalize local neighborhoods by creating jobs, augmenting the tax base for better schools, and rebuilding the community ties. Cannabis sales in the United States are projected to hit \$33 billion by the end of 2022. *Forbes* projects marijuana sales in the United States will reach \$57 billion by 2030. *Business Insider* reports that the U.S. marijuana industry could be worth over \$100 billion by 2030 if it is federally legalized. Eighty percent of cannabis business owners are white. In contrast, a mere 4.3% of cannabis businesses were run by Black owners and 5.7 identified as Hispanic or Latino. This translates into economic discrimination. For example, the California marijuana industry made \$5.3 billion in profits in 2021. More than \$4 billion of those profits went to white-owned businesses. Black businesses in this sector made \$254.4 million, or about 94% less than whites. The MORE Act's provision to provide loans to small businesses would help bridge this gap. By establishing a trust fund to support various programs and services for individuals and businesses in communities impacted by the war on drugs, the MORE Act would take an important step in rebuilding Black and Brown communities.

Retroactive decriminalization of marijuana will benefit parents sentenced under the draconian conspiracy laws of the 1980s and 1990s and will bring them back where they belong: working, raising their children, and using their second chance to make the world a better place. Two-thirds (63%) of people in BOP custody have minor children. That means 65,600 mothers are in federal prison unable to raise their children. Put another way, that is 1.7 million children who have absent mothers cannot read them a bedtime story or tuck them in at night.

People can permanently lose custody of their children while they are incarcerated for any crime, including marijuana convictions. The 1997 Adoption and Safe Families Act mandates that if a child has been in foster care for 15 of the most recent 22 months, then parental rights are permanently ended. This law disproportionately affects women that have been incarcerated, as they are five times more likely to have their children end up in foster care. And because black people are disproportionately incarcerated, resulting in 1 in 10 black children having an incarcerated parent, this law disproportionately affects them.

In the meantime, the United States Sentencing Commission is currently updating its Policy Statement outlining the criteria for receiving a Reduction in Sentence due to "extraordinary and compelling" circumstances to bring them in line with the First Step Act. Surely bringing people home who are incarcerated for manufacturing or distributing marijuana – now a booming legal industry with gross receipts of \$10.8 billion in 2021 – fits the definition of "compelling." The Sentencing Commission should write guidance that reunites families and fixes blatant injustices and if the Commission fails to do so, Congress should use its oversight to make sure that Reductions in Sentence are available to people who are incarcerated for legal activity.

## **V. Conclusion**

Decriminalization of marijuana is very personal to me. Today, while 21 states have legalized recreational marijuana, and 14 more have for medical marijuana, there are still thousands of people sitting in prison with marijuana convictions. Many thousands more are saddled with a host of collateral consequences that impact the ability to acquire jobs, housing, education, licenses, the right to vote and frankly, an individual's overall quality of life because of outdated, racist laws and excessive prosecution.

I applaud the passage of the MORE Act and President Biden's executive action on federal simple possession marijuana offense, but more must be done to repair the harms inflicted upon Black communities due to marijuana prohibition. Furthermore, to truly achieve equitable, reparative marijuana reform, those of us that have been directly impacted by these policies must be and continue to be included in the conversations.