



**Testimony before the House Judiciary Committee**

**Keith Wallington  
Justice Policy Institute  
Kwallington@justicepolicy.org**

**HB550 – Criminal Law – Marijuana – Possession and Possession with Intent to Distribute**

**February 11, 2020**

My name is Keith Wallington. I am a resident of Prince George’s County and a State Based Strategist with the Justice Policy Institute. Please accept my statement in support of HB550, which increases the threshold for which possession of marijuana can be considered a civil offense from 10 grams to one ounce.

HB550 is a commonsense bill that would bring Maryland in line with other states around the country on marijuana reform and, more importantly, will help mitigate the harms resulting from a Maryland justice system that has alarming racial disparities. According to the recently released, *Rethinking Approaches to Overincarceration of Black Young Adults in Maryland*, Maryland’s prison system has the highest proportion of people of color behind bars in the country. According to the report, more than 70 percent of all people in Maryland’s prisons are black, double the national average, and almost 80 percent of people serving at least 10 years are Black. These numbers are worse than Mississippi. These disparities are most pronounced for people serving the longest sentences who were sentenced as emerging adults (18- to 24 years-old).

One of the main gateways of contact with the justice system for many young black males is arrest for marijuana possession. Of all the possession arrests in Baltimore from 2014-2019, 91 percent were of African Americans. Four in 10 of those arrested were 18 to 24 years old and 92 percent were black men. These arrest numbers are in stark contrast to general population numbers in Baltimore, where only 62 percent of Baltimore residents are black and fewer than 1 in 10 residents are 18 to 24 years of age.

This is the reality for many who have been charged for possession despite decriminalization policies. Using data from the Baltimore Police Department, the Baltimore Institute for Non-Profit Journalism found that from 2015-2017, 96 percent of the 1,514 people arrested in Baltimore for possession were black, and most of the 3,200 misdemeanor marijuana charges were from predominantly black neighborhoods. At the same time, Black Americans are overrepresented in Maryland’s prisons, making up about 70 percent of the total incarcerated population, in large part due to harsh drug policies that are disproportionately enforced in communities of color. This shows that despite the positive impact that decriminalization has had on arrest rates decreasing, we have not done enough.

Decriminalization is never going to undo the racial bias that exists in the criminal justice system. The numbers show that this issue is not simply a matter of who uses more marijuana. Studies have shown that marijuana is used recreationally at similar levels across races. In 2014, the federal National Survey on Drug Use and Health found that 49 percent of white Americans reported having used marijuana at least once in their lifetime. Meanwhile, 42 percent of African Americans and 32 percent of Latinos reported the same answer. These racially disparate numbers we witness in the criminal justice system are a matter of whose consumption is policed and who faces harsher punishment in the system.

A civil offense charge of possession for personal use carries with it a citation and no more than a \$100 fine for a first-time offense. A criminal offense charge of possession for personal use carries with it up to one year in jail and/or a \$1,000 fine. However, being charged for possession with intent to distribute, as is currently allowed based solely on the possession of any quantity over 10 grams, can lead to five years of jail time and/or up to a \$15,000 fine.

Having a criminal offense charge creates a link between an individual and a criminal justice system that already disproportionately punishes people of color. The consequences are worse for those who already have involvement with the criminal justice system. The use of marijuana constitutes a technical parole violation, which means that a judge will most likely issue a no-bail arrest warrant. For an individual attempting to overcome criminal justice involvement, that can mean spending weeks or months in a detention center awaiting trial.

Being detained can then cause an individual on parole to lose their housing and employment they had prior to the warrant. If the goal of the criminal justice system is truly to rehabilitate those who have, for whatever reason, been incarcerated, then preventing those on parole from using their time to reintegrate into their communities and reconnect with employment and education opportunities does not help achieve that objective.

According to Maryland's Justice Reinvestment Coordinating Council, nearly 60 percent of prison admissions in Maryland are due to parole, probation, or mandatory release supervision failures. Most of these 'failures', however, are due to technical violations rather than a new criminal conviction. Additionally, about 58 percent of admissions are for non-violent crimes. Non-violent crimes and technical parole violations should not lead an individual trying to successfully transition from prison back into detention. That is counterproductive to the goal of rehabilitation.

Possession of marijuana is not a violent offense. For possession over 10 grams to carry such a heavy burden is a policy choice that will have impact beyond discouraging use of the marijuana. Aside from needlessly incarcerating people with technical parole violations, which provides no real public safety benefit, research has continued to demonstrate that incarceration, when compared to non-custodial sanctions, can increase recidivism by dragging an individual deeper into the system.

Furthermore, increasing the threshold to one ounce will allow us to begin to repair the damage of harsh law enforcement that has led to a disproportionate number of people of color being incarcerated for marijuana. In order to combat institutionalized racial bias, it is important that we understand how drug policies perpetuate the cycle.

Consider a situation in which a person of color is pulled over due to racial profiling. An officer may use this circumstance to look for a reason to search. This could lead to the discovery of marijuana in the glove compartment. Assuming that the driver was not under the influence while behind the wheel, there is no public danger posed by the possession of marijuana. If the driver had nine grams in their possession, they could then be charged with a civil offense and pay a fine. Not a desirable outcome, but much preferable to the alternative. However, if the driver had 11 grams, the difference between both quantities being negligible, they would then be charged with a criminal offense and face potential incarceration.

If this were a first offense, the judge might be lenient, but the reality is that once an individual has contact with the criminal justice system, successive interactions will result in increasingly punitive responses. Incarceration for this non-violent offense could cause them to lose their job and their housing.

This bill is a step in the right direction. In the first year after decriminalization, we witnessed a 60 percent decline in the number of people arrested for marijuana. Even though we continue to see people of color overwhelmingly comprise those who are arrested for marijuana possession, by increasing the threshold for a civil crime this bill will prevent reduce some of the harm for a truly non-violent crime. More importantly, the passage of this bill will establish another safeguard for individuals against criminal justice involvement. Thus, we ask for favorable consideration for this legislation.