



**Testimony for the Senate Finance Committee
March 3, 2022**

SB 833- Cannabis - Legalization and Regulation

YANET AMANUEL
INTERIM PUBLIC POLICY
DIRECTOR

Unfavorable

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
F/410-366-7838

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS
HOMAYRA ZIAD
PRESIDENT

DANA VICKERS SHELLEY
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

The ACLU of Maryland opposes SB 833, which seeks to change how marijuana is treated under Maryland law and establishes a regulatory structure for commercial production and sales. While the bill makes some improvements, SB 833 is missing crucial provisions to address the excessive interactions between Black people and law enforcement and lacks provisions that would sufficiently address the harms done to Black and Brown people by the criminal justice system. Additionally, SB 833 fails to establish reparations for communities directly impacted by the failed war on marijuana.

The war on marijuana has failed. The most damaging aspect of this failure is the way in which the criminalization of marijuana is used as an excuse to over-police Black, Indigenous, and People of Color. While this body seems poised to legalize marijuana, it is critical that legalization be carried out through a racial justice lens to address the onslaught of harms that have been selectively aimed at Black and Latinx communities.

The Maryland General Assembly decriminalized the possession of 10 grams or less of marijuana in 2014 – in large part because of the disparate enforcement of marijuana laws on Black people. However, decriminalization was never enough, and legalization without adequately addressing the racial inequalities of the war on marijuana will not be enough to repair the harm done to communities or reduce disparities in arrests. Despite comparable rates of use among Black and white people, Black people are still significantly more likely to be arrested for marijuana. This is true across *all* states, regardless of whether marijuana has been legalized, decriminalized, or remained illegal. National trends reveal that, on average, a Black person is 3.64 times more likely to be arrested for marijuana possession.

In Maryland, Black people continue to be arrested overwhelmingly more than whites and at disproportionate rates. In Queen Anne's County,

Black people are eight times more likely to be arrested for marijuana. In Carroll County, Cecil, and Frederick, Black people are six times more likely to be arrested for marijuana and five times more likely in Allegany County. Between 2018- 2019, 76% of Marylanders arrested for possession of more than 10 grams of marijuana were Black, despite Black people only making up 30% of the state's population¹.

Legalization is now widely viewed in many states and by the majority of voters in Maryland² as a reasonable recreational option and an engine of potential economic growth. Black and Brown Marylanders should not have to continue to face the brunt of the enforcement of our marijuana laws and the collateral consequences that accompany entanglement in the criminal legal system. Recreational use of marijuana is growing to be more mainstream, and the industry is booming. This shift requires a paradigm shift in how this body deals with existing marijuana-related convictions and enforcement, one grounded in the principle of retroactive legalization.³

Smoking in Public

SB 833 continues to make the smoking of marijuana in a public place a civil offense punishable by a fine. While the bill reduces the fine amount from \$500 to \$50, continuing to prohibit smoking or consuming in public contradicts the progress the General Assembly seeks to make towards addressing racially biased policing. Making it a crime to smoke or consume marijuana in public will enable the same racially biased policing to occur and does little to reduce unnecessary interactions between police and communities of color.

Black people being accused of smoking marijuana when they are, in fact, smoking a cigarette is not unheard of. For example, Alberto Willmore was a public-school teacher accused of and arrested for smoking marijuana when he was smoking a cigarette. He was a beloved teacher but could no longer teach due to his arrest. That arrest devastated his life.⁴ As Maryland moves forward with the Justice Reinvestment Coordinating Council reviewing our bloated criminal justice system and persistent racial disparities, it simply makes no sense to continue to

¹ Requested court data of marijuana possession over 10 grams from 2018-2019 made by Delegate Mosby in 2020

²<https://www.marylandmatters.org/2021/10/26/goucher-poll-support-for-marijuana-legalization-dips-slightly-hogan-remains-popular/>

³ Deborah M. Ahrens, Retroactive Legality: Marijuana Convictions and Restorative Justice in an Era of Criminal Justice Reform, 110 J. CRIM. L. & CRIMINOLOGY 379 (2020).
<https://scholarlycommons.law.northwestern.edu/jclc/vol110/iss3/1>

⁴http://www.huffingtonpost.com/2013/12/09/alberto-willmore_n_4412610.html

penalize people – mostly of color. To the extent the smoking of marijuana in public continues to be punishable, it should be treated similarly to tobacco.

Eliminate criminal penalties for possession over the personal use amount and possession with intent to distribute and require, not just permit, law enforcement to treat these violations as citable offenses

SB 833 still treats possession of more than double the personal use amount as a misdemeanor and PWID a felony offense subject to a maximum penalty of four years imprisonment and/or a \$5,000 fine. SB 833 favors corporate sellers by failing to adopt civil penalties, rather than criminal penalties, for possession and possession of cannabis with an intent to sell it. With legalization, unauthorized sales should be addressed with a civil penalty— similar to operating a business without the appropriate license. Without eliminating these penalties, Black people will be vulnerable to existing arrest patterns, saddling Black people with criminal penalties despite cannabis legalization. Especially because the vast majority of those currently selling marijuana are subsistence dealers [meaning they are selling to survive; they are not bringing in substantial profit] and will not have access to a license to distribute lawfully. It is cruel and unfair to continue to levy any kind of punishment against these persons when wealthy Marylanders, who are not overpoliced, will be able to engage in the same conduct legally and for profit.

A criminal record can and does create a barrier to employment for many Marylanders. More than 80 percent of U.S. employers perform criminal background checks on prospective employees.⁵ Under current regulations, a misdemeanor conviction in Maryland may result in the denial, suspension, or revocation of myriad business licenses and serves to exclude persons from educational opportunities. A recent study found that a majority (66%) of colleges collect criminal justice information as part of the admissions process⁶. A misdemeanor conviction also hinders an individual's access to stable housing and a range of public benefits. Additionally, misdemeanor conviction records may bar individuals from residing at certain homes⁷ and exclude individuals from low-income

⁵ Burke, M.E., 2004 Reference and Background Checking Survey Report: A Study by the Society for Human Resource Management, Alexandria, Va.: Society for Human Resource Management, 2006.

⁶ Center for Community Alternatives—Innovative Solutions for Justice, The Use of Criminal Records in College Admissions, Reconsidered (available at <http://www.communityalternatives.org/pdf/Reconsidered-criminal-hist-recs-in-college-admissions.pdf>).

⁷ See for example, COMAR 35.04.01.04.

utility payment plans⁸ and food stamps. ⁹With higher conviction rates, persons of color bear the brunt of collateral consequences stemming from misdemeanor convictions. Exclusion from the job market, stable housing, and countless other crucial services perpetuate the cycle of imprisonment plaguing communities of color—without gainful employment and stable housing, individuals are forced to livelihoods of criminality.

Moreover, although currently, law enforcement has the discretion to issue citations for many offenses, they rarely do so. If this body intends to treat marijuana more leniently, law enforcement must be *required* to issue citations for PWID, possession, and growing more than the personal use amount.

Expand opportunities for redress to include reconsideration hearings and vacatur for charges that stem from a conviction based on a search due to the odor of marijuana

The ACLU of Maryland appreciates the step that SB 833 takes to allow persons incarcerated for possession or cultivation of personal amounts to present an application for release and persons incarcerated for possession cultivation, processing, or sale of cannabis to file a petition for resentencing. However, this will not be enough to offer proper redress or capture the majority of individuals currently incarcerated with marijuana-related offenses. We suggest that SB 833 be expanded to provide relief to persons whose convictions sprung from cannabis-related searches by allowing them to petition for their convictions to be vacated or for a new trial.

Prohibit police from using the odor of marijuana, without other legitimate cause for suspicion, as probable cause to arrest and perform a warrantless search of a person or vehicle

SB 833 does not protect Black and Brown Marylanders from being disproportionately and unnecessarily targeted and searched by police due to the odor of marijuana. If we don't address this, law enforcement's disproportionate interactions with Black people will persist and inevitably lead to more violations of Black people's rights and dignity.

Any association between Black people and marijuana often frames Black people as inherently criminal or immoral. In contrast, white persons continue to use marijuana, which is seen as recreational or

⁸ COMAR 20.31.01.08.

⁹ *Rasherd Lewis v. State of Maryland*, No. 44, September Term, 2019

medicinal. As a result of this, Black persons are unfairly targeted and criminalized by the enforcement of our marijuana laws. When it comes to reforming our drug laws, policing, which more rightly can be titled over-policing, is at the root of the injustices communities of color suffer. SB 833 fails to combat or eliminate this discriminatory policing practice or structural racial bias of our drug enforcement laws. Allowing police to search based on odor creates a loophole that is frequently exploited: police conduct an unlawful search, and then if they find something else during the search, they claim afterward to have smelled marijuana before the search in order to justify it in court.

Community investment

State revenue generated through the marijuana industry must be reallocated directly towards communities most harmed by marijuana enforcement. Financial redress should not be limited to those looking to participate in the cannabis industry but rather to all those who have been negatively impacted by cannabis prohibition and enforcement. Additionally, individuals who have a stake in these communities and or have lived in these communities should have substantial oversight of the allocation of these funding sources be done through reallocating the at least 60% of the tax revenue to local councils in jurisdictions most impacted by the war on drugs. SB 833 fails to accomplish this.

For the foregoing reasons, the ACLU of Maryland opposes SB 833, and we urge the committee to be more proactive and explicit in ensuring that the future legalized marijuana market is, in fact, equitable and that the over-policing and mass incarceration of Black and Brown communities due to marijuana seizures.



YANET AMANUEL
PUBLIC POLICY ADVOCATE

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
or 240-274-5295
F/410-366-7838

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS
JOHN HENDERSON
PRESIDENT

DANA VICKERS SHELLEY
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

