



Testimony for the Senate Finance Committee

March 23, 2022

HB 837- Cannabis Reform

Unfavorable

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We, the undersigned Maryland-based organizations, are united in our support for a racial justice-centered approach to legalizing marijuana in our state. We respectfully oppose HB 837 unless amended to address the four missing aspects of criminal justice-related policy (listed below) that are essential if cannabis legalization in Maryland is actually to achieve anything resembling racial justice. Centering racial justice means that legalization must contain strong provisions to repair and protect against the harms of the war on marijuana on the individuals and communities most impacted by it.

Legalization is now widely viewed in many states and by the majority of voters in Maryland, as a reasonable recreational option and an engine of potential economic growth benefiting corporate interests. However, at the same time, Black and Brown communities continue to face the brunt of unnecessary police interactions in the name of enforcement of our marijuana laws and the collateral consequences that accompany entanglement in the criminal legal system.

When the Maryland General Assembly decriminalized the possession of 10 grams or less of marijuana in 2014 it was in large part because of the strong leadership of this body in refusing to accept the disparate enforcement of marijuana laws on Black Marylanders. However, decriminalization was never enough, and despite comparable rates of use among Black and white people, *Black people in Maryland continue to be arrested overwhelmingly more than whites and at disproportionate rates.*

As currently drafted, HB 837 does not adequately address the racial inequities of the war on marijuana! HB 837 is missing crucial provisions to address the excessive interactions between Black people and law enforcement that have fueled public opinion in favor of legalization. Additionally, the bill lacks

provisions that would sufficiently address the harms done to Black and Brown people by the criminal justice system.

- 1) **The House bill 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 enforcements' disproportionate interactions with Black people will persist and inevitably lead to more violations of Black people's rights and dignity.
- 2) **The House bill favors corporate sellers by failing to adopt civil penalties, rather than criminal penalties, for possession of cannabis with an intent to sell it.** Without eliminating these penalties, Black people will be vulnerable to existing arrest patterns, saddling Black people with criminal penalties despite cannabis legalization. With legalization, unauthorized sales should be addressed with a civil penalty-- similar to operating a business without the appropriate license.
- 3) **The House bill similarly fails to adequately address all of the various marijuana-related offenses that Black people have been saddled with that have led to lack of access to employment, public benefits, and exposure to higher levels of incarceration than their white counterparts.** If we don't expand the scope of convictions that can be expunged/vacated, many people will not be eligible for redress. For example, people convicted of selling small amounts of cannabis would be denied any opportunity to have their sentence reconsidered, causing them to continue spending time in jail instead of contributing to the community.
- 4) **The House bill continues to penalize people who smoke in public.** Not treating smoking in public similar to smoking a cigarette in public will have poor Black and Brown people face the brunt of the enforcement and unnecessary interactions with police.

Any effort to legalize marijuana must center racial justice. To do so, we must offer proper redress to those impacted by the War on Marijuana and the racist enforcement of marijuana laws that Black and Brown communities have endured.

For the foregoing reasons, absent of key changes, the undersigned Maryland-based organizations urge an unfavorable vote on HB 837.

Respectfully,

ACLU of Maryland
Algebra Project
Baltimore Action Legal Team
Bloom Collective
Calvert PRISM
CASA
Common Cause-Maryland
Community Justice
ElevateHER Inc.
FACE Addiction Maryland, Inc
Fenix Youth Project
Jews United for Justice-Baltimore
JustUs_Initiative
Leaders of a Beautiful Struggle
League of Women Voters of Maryland
Lower Shore Progressive Caucus
Maryland Nonprofits
Maryland Office of the Public Defender
NAACP Maryland State Conference
Prince George's County Young Democrats
Progressive Maryland
Racial Justice NOW
Takoma Park Mobilization
The People's Commission to Decriminalize Maryland
The Talking Drum Incorporated
Schools not Jails
SURJ Baltimore



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As of March 23, 2022

	HB 837 (Clippinger)	SB 692 (Carter)	SB 833 (Feldman)
Economic Development	<p>✗ This bill limits economic development and assistance to actors within the industry, rather than promoting wholesale economic development in impacted communities.</p> <p>✓ Creates a Cannabis Business Assistance Fund to assist small, minority, and women-owned businesses (amount directed to this fund is not set).</p> <p>✓ Creates a partnership with "minority serving institutions" to give out money to Black businesses.</p> <p>✓ Provides resources to HBCU's to do programming that provides pathways to important aspects of the cannabis industry.</p>	<p>✓ This bill establishes community restoration fund that sends 60% of the tax revenue to jurisdictions based on the number of marijuana enforcement arrests in the area throughout the past 20 years. Additionally, SB 692 makes racial equity and diversity a key part in deciding whom to give licenses. It also directs a portion of the tax revenue to Small, Women, Minority, Business fund.</p>	<p>✗ This bill creates the Cannabis Regulation Fund to be distributed among a variety of efforts. Notably, only 25% is allocated to the Community Reinvestment and Repair Fund. The bill also creates an Office of Social Equity which oversees the Community Reinvestment and Repair Fund, Social Equity Start-Up Fund, and the Cannabis Education and Training Fund. Funding from Community Reinvestment is highly centralized / discretionary / unclear.</p>

NOTES: The problem with HB 837: limits economic development to people looking to participate in the industry. The problem with SB 833: distribution of funds from the Community Reinvestment and Repair Funds is decided by a single body and is up to the will of that body. Unlike provisions from the Cannabis Education and Training Fund, there are no specific guidelines on how that money must be used.

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	HB 837 (Clippinger)	SB 692 (Carter)	SB 833 (Feldman)
Growing or Manufacturing Cannabis and Cannabis Products	✗ HB 837 establishes that a person may not cultivate, grow, or manufacture more than 2 plants. A person who violates this provision is guilty of a misdemeanor and subject to a penalty of imprisonment for up to three years and/or a fine of up to \$5,000.	✓ Marylanders 21 and over may cultivate no more than six plants. If two or more individuals live in the same residence, they may grow no more than twelve plants. Growing more than the legal amount is a civil offense punishable by a \$750 fine.	✓ Marylanders 21 and over may cultivate no more than four plants. If two or more individuals live in the same residence, they may grow no more than eight plants. Growing more than the legal amount but less than 8 plants is a civil offense punishable by a \$250 fine. Growing more than 8 plants is a \$750 fine or 50 hours of community service.

	HB 837 (Clippinger)	SB 692 (Carter)	SB 833 (Feldman)
Smoking in Public	✗ Smoking marijuana in a public place is a civil offense punishable by a fine not exceeding \$50 for the first offense and \$150 for the second offense.	✓ The same rules that govern cigarette smoking apply: you can smoke cannabis in the same places where cigarette smoking is permitted, and you can't smoke cannabis in places where cigarette smoking is prohibited.	✗ Smoking marijuana in a public place is a civil offense punishable by a fine not exceeding \$50 fine or 5 hours of community service.

NOTES: Making it a crime or civil penalty to smoke marijuana in public will enable racially biased policing and facilitate discrepancies in arrests between individuals in more crowded, over-policed neighborhoods and individuals in wealthy, spacious neighborhoods. Many people do not have the luxury of consuming marijuana in private, especially if they live in communal or multi-generational households. Additionally, because research has routinely debunked theories about "contact highs," the greatest "harm" associated with smoking in public is the smell, which hardly warrants a \$50 fine and an unnecessary police interaction.

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	HB 837 (Clippinger)	SB 692 (Carter)	SB 833 (Feldman)
Possession of More than the Personal-Use Amount	<p>✗ Possessing more than 1.5 ounces but less than 2.5 ounces is a civil offense punishable by a fine not exceeding \$250. The possession of more than 2.5 ounces is a misdemeanor offense that carries a penalty of 6 months in jail or a \$1000 fine.</p>	<p>✓ The possession of marijuana exceeding the legal personal use limit is a civil offense punishable by a fine of \$150 or 15 hours of community service.</p>	<p>✓ For individuals under 21, the fine for a first offense of the use or possession of an amount not exceeding the personal use amount is \$100 or 6 hours of community service. The fine for a second offense is \$250 or 16 hours of community service, and a \$500 fine or 32 hours of community service for the third offense.</p> <p>✓ For persons 21 and over, possession of more than 2 ounces but less than 4 ounces will have to pay a \$250 fine or 16 hours of community service.</p> <p>✗ Possession of more than double the personal use amount (4 ounces) is a misdemeanor offense that carries a penalty of 6 months in jail or a \$1000 fine.</p>

NOTES: The continued criminalization of simple marijuana possession is not an effective use of law enforcement resources or time. Legalization, under any of these models, presumes that the conduct is not inherently unsafe. There are no criminal penalties (or civil penalties) for having large quantities of alcohol, which arguably poses a greater risk to public health and safety.

As of March 23, 2022

	HB 837 (Clippinger)	SB 692 (Carter)	SB 833 (Feldman)
Possession with Intent to Distribute	✗ Possession with the intent to distribute (PWID) is a misdemeanor and subject to a maximum penalty of three years imprisonment and/or a \$5,000 fine.	✓ SB 692 reduces PWID to a civil offense not punishable by more than a \$1000 fine.	✗ This bill does not eliminate or reduce the criminal penalties for PWID.

NOTES: The uniform crime reports show an uptick in distribution charges and a decrease in simple possession charges since Maryland decriminalized possession of small amounts of marijuana in 2024. This suggests that a portion of individuals in possession of the civil amount are being charged with PWID charges rather than a more appropriate simple possession charge. The penalties under HB 837 would essentially individuals who could not pass the barrier to entry to the legal marijuana industry because of licensing fees, etc. More importantly, 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 unfair to continue to levy any kind of punishment against these persons when wealthy Marylanders will be able to engage in the same conduct legally and for profit.

	HB 837 (Clippinger)	SB 692 (Carter)	SB 833 (Feldman)
Expungement	✗ Expungement petitions for PWID convictions may not be filed until 3 years after the person has completed their sentence, including supervision. By July, 2024, DPSCS shall expunge all convictions for simple possession (with no additional charges in the case) that occurred before July, 2023.	✓ As amended, SB 692 allows for individuals previously convicted for possession and PWID to vacate their convictions.	✓ Automatic expungement for single possession and dismissal of current charges of possession. A person previously convicted for the possession, cultivation, processing or sale of cannabis may file a petition for expungement.

NOTES: Vacatur is when the conviction is dismissed and the matter shall be considered terminated and deemed a nullity, having been rendered “legally invalid.” Vacatur is a more appropriate option for the impending legal and ideological shift, as it will formally undo convictions for activity, we now agree should be legal. Collateral damage caused by PWID convictions will not be mitigated by a expungement after 3 years. Additionally, cannabis remains illegal under federal law and it can still lead to serious immigration consequences. The new system for automatically expunging past convictions may not be enough to avoid the potential for federal immigration complications.

As of March 23, 2022

	HB 837 (Clippinger)	SB 692 (Carter)	SB 833 (Feldman)
Resentencing / Reconsideration	✗ A person who is incarcerated for a conviction related to cannabis under § 5-601 of the Criminal Law Article may apply to the court for resentencing, and the court must grant the application and resentence the person to time served. If the person is not serving another sentence, the person must be released from incarceration.	✓ SB 692 mandates reconsideration hearings or new evidentiary hearings for 4th Amendment violations due to odor searches. This will address more people entangled in the criminal legal system due to criminalization of marijuana and racial profiling.	A person incarcerated for possession or cultivation of personal amount may present an application for release. A person incarcerated for the possession, cultivation, processing or sale of cannabis may file a petition for resentencing.

NOTES: There are not many people actually serving jail or prison time solely for the possession of marijuana, rather marijuana enforcement has been used a tool for the enforcement of more serious offenses. In order to actually offer redress to the majority of individuals effected by marijuana prohibition, redress must be expanded to PWID and other low-level felonies and misdemeanors that resulted from a marijuana search. We are advocating for reconsideration hearings for people who have had their 4th Amendment rights violated due to an odor search.

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	HB 837 (Clippinger)	SB 692 (Carter)	SB 833 (Feldman)
Reparations	<p>✓ Cannabis Business Assistance Fund would provide assistance to small, minority, and women-owned businesses. Grants would be provided to HBCUs for cannabis-related business development. Financial redress for impacted communities is limited to business owners or those seeking to participate in the marijuana industry.</p>	<p>✓ (See Economic Development) 60% of revenue from the Cannabis Regulation Fund will be directed to the Community Reinvestment and Repair Fund. Funds will be distributed to counties based on the total number of marijuana arrests in the county compared to the total number of marijuana arrests in the state, from July 1, 2002 to June 30, 2022. Money from the fund will be distributed to community-based organizations for the creation of community programs and initiatives.</p>	<p>✗ This bill also establishes a Community Reinvestment and Repair Fund, which will aim to improve the wellbeing of individuals and communities that have been negatively impacted by poverty, unemployment, cannabis prohibition, mass incarceration, and systemic racism. Distribution of funds (which will be 25% of remaining tax revenue) is decided by the Office of Social Equity and the Department of Commerce, in collaboration with local communities. Does not provide direct redress for marijuana prohibition.</p>

NOTES: Community reparations in the form of tax revenue will provide a form of compensation for communities who have felt the financial burden of marijuana arrests and convictions. 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, financial redress coming from marijuana industry revenue must be targeted and focused on those impacted by the financial harms of past marijuana enforcement specifically.

As of March 23, 2022

	HB 837 (Clippinger)	SB 692 (Carter)	SB 833 (Feldman)
Odor searches	✗ Does nothing to prohibit warrantless police searches due to the odor of marijuana.	✓ Prohibits 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.	✗ Does nothing to prohibit warrantless police searches due to the odor of marijuana.

NOTES: Per the Maryland Court of Appeals 2020 opinion, even under decriminalization, the odor of marijuana is not reason to suspect a crime is being committed by the individual in question. However, bans on odor based searches only to one's person, but do not apply to their vehicle. The delineation between these two spheres is arbitrary. Most importantly, if adult use of marijuana is legalized, it makes no sense for its odor to be used as justification for a fishing expedition.