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POSITION ON PROPOSED LEGISLATION

BILL: HB 837 - Cannabis Reform
FROM: Maryland Office of the Public Defender
POSITION: Favorable with Amendments
DATE: March 23, 2022

The Maryland Office of the Public Defender strongly supports Cannabis Legalization and supports the efforts made by HB 837. MOPD urges the committee to consider significant amendments to improve the bill.

MOPD emphasizes the import of financial reinvestment in communities that have been ravaged by the War on Drugs, and the legalization of possession of up to four ounces of marijuana commensurate with the medical marijuana regime, along with the reduction of penalties for various marijuana related crimes. Moreover, MOPD urges the committee to consider two particular additions to this bill, limiting the Role of Marijuana in Police Investigations and Expanding Opportunities to Reverse Marijuana-Related Convictions. In short, MOPD urges the committee to legalize marijuana, but to consider amending the HB 837 to mirror more equitable and comprehensive plan proposed in [SB 692](#).

1. Limiting the Role of Marijuana in Police Investigations

Marijuana legalization should explicit precludes police from relying solely on the odor of marijuana, simple possession of marijuana, or possession of marijuana in proximity to money, to conduct a stop, search, or arrest of a person, or to search a vehicle. This is an essential component of any marijuana legalization bill in order to make clear to the police that they cannot rely on legal conduct alone to infringe on the citizenry's Fourth Amendment rights.

Maryland's 2014 decriminalization bill did not explain what role the odor or possession of marijuana was to play in police-citizen interactions in the post-decriminalization world. The result is that in the past eight years countless people have been stopped, searched, and arrested based on the odor of marijuana and/or the possession of a small amount of marijuana—conduct that does not in and of itself indicate someone is engaged in criminal conduct. These issues are still actively being litigated in Maryland's courts to sort out what role the odor of marijuana plays in stops and searches post-decriminalization. If the Legislature does not limit police action based on the odor or possession of marijuana post-legalization, people will continue to be stopped, searched, and arrested based on legal conduct. As the legal marijuana industry continues to expand, this will create an unacceptable violation of civil liberties, and it will invite biased policing, because police will use the odor of marijuana as a pretext for otherwise illegal, race-based stops, searches, and arrests.

Additionally, even post-legalization, possession of large amounts of marijuana will remain subject to civil penalties and will therefore be contraband. Absent a legislative limitation, this leaves open the possibility that police can continue to search vehicles based on the odor of marijuana, because under the *Carroll* doctrine officers can conduct a warrantless roadside search of a vehicle whenever they have probable cause to believe it contains contraband. *Robinson v. State*, 451 Md. 94 (2017). If the Legislature does not limit the role marijuana plays in police investigations at the same time as legalization, Marylanders' cars will continue to be searched in the course of any traffic stop based on possession of, or mere proximity to, a legal substance. This will undermine the entire legalization regime.

Making clear from the outset that police cannot stop, search, and arrest people, or search vehicles, based only on the odor or simple possession of marijuana (1) ensures that people's rights are not infringed upon for legal conduct, (2) ensures that police do not continue to use the odor of marijuana to disproportionately stop, frisk, and search people and vehicles in Black and Brown communities, and (3) and prevents another decade of litigation to answer the question of what is lawful police conduct post-legalization.

A key concern remains what the odor of marijuana should mean when an officer suspects an individual is driving a motor vehicle while impaired by drugs. In that context, it is understandable to include language that would permit officers to use odor or possession of marijuana in this context as an additional factor in the totality of circumstances to support the officer's observations of suspected impairment, but not the sole basis for a stop. MOPD urges inclusion of language that balances concerns for maintaining safe roads and highways, with protecting individual's rights to be free from police intrusion based on legal use of marijuana.

2. Expanding Opportunities to Reverse Marijuana-Related Convictions

An essential component of community reparations is remediating harm caused by the over-policing of low-income communities and communities of color as part of the War on Drugs. The consequences from criminal convictions for marijuana crimes and crimes where police began their investigation based solely on the odor or sight of marijuana continue to harm these communities. People are incarcerated, deported, and evicted from public housing; they lose custody of their children; and they are unable to gain employment—all because of convictions that stem from marijuana. This is an injustice and a scourge on our state, particularly as we have established a lucrative medical marijuana industry and are on the verge of legalizing marijuana. We cannot move forward when our residents continue to be saddled with hefty and expansive collateral consequences from conduct that is legal.

MOPD encourages the committee to include language in the bill that vacates all prior convictions for possession of marijuana, marijuana paraphernalia, possession with intent to distribute marijuana, manufacturing marijuana, and distribution of marijuana. Moreover, we urge consideration of language that would allow anyone convicted of a crime where the stop, search, or arrest began based solely on the odor of marijuana, simple possession of marijuana, or the possession of marijuana in proximity to money, to have an opportunity to challenge the way the evidence was collected in their case. If the court determines in this new hearing that the evidence

was gathered in a way which is now impermissible under, then that evidence is suppressed, and if that evidence is the sole basis for the conviction, the conviction is overturned. This language can be seen in SB 692

Marijuana legalization is important, legalizing it correctly is essential to righting the wrongs caused by the War on Drugs and over-policing in communities of color, and ensuring that prospectively marijuana is not still used as a tool to disenfranchise communities of color while the State reaps the financial benefits of legalization.

For these reasons, the Office of the Public Defender urges a favorable report on HB 837, with amendments to bring it in line with the important provisions in SB692.

Submitted by: Government Relations Division of the Maryland Office of the Public Defender.