



February 14, 2022

HB 1 and HB 837

Testimony from Olivia Naugle, senior policy analyst, MPP, favorable with amendments

Dear Chair Clippinger and members of the House Judiciary Committee:

My name is Olivia Naugle, and I am senior policy analyst for the Marijuana Policy Project (MPP), the largest cannabis policy reform organization in the United States. MPP has been working to improve cannabis policy for 27 years; as a national organization, we have expertise in the various approaches taken by different states.

MPP has played a leading role in most of the major cannabis policy reforms since 2000, including more than a dozen medical cannabis laws and the legalization of marijuana by voter initiative in Colorado, Alaska, Maine, Massachusetts, Nevada, Michigan, and Montana. MPP's team spearheaded the campaigns that resulted in Vermont and Illinois becoming the first two states to legalize marijuana legislatively and played an important role in the recent Connecticut legalization effort.

The Marijuana Policy Project strongly supports legalizing and regulating cannabis for adults 21 and older and doing so in a way that repairs the damage inflicted by criminalization. That includes expungement of past cannabis convictions, provisions to ensure diversity and social equity in the industry, and reinvestment in communities hard-hit by the war on cannabis.

Given the trends in polling, and the increasing recognition by elected officials on both sides of the aisle that criminalizing cannabis users has done more harm than good, ending marijuana prohibition in Maryland has become less a question of "if" and more about "when" and "how."

We applaud House leadership for their commitment to ensure equitable legalization is achieved in Maryland. Marylanders have long supported moving forward with cannabis legalization, and there's no doubt that it is past time Maryland joined the 18 states (and D.C.) that have legalized cannabis for adults.

I am here today to discuss the positive impacts cannabis legalization will have and offer amendments to strengthen HB 1 and HB 837 as currently written.

I. Legalization should go into effect immediately upon voter approval.

As currently written, HB 1 and HB 837 would not legalize adult-use cannabis possession until July 2023 — eight months after voter approval. This delay would mean thousands of

Marylanders — disproportionately Black Marylanders¹ — will continue to be subjected to police interactions, citations, and arrests for cannabis for months *after* voters adopt legalization. There should not be a delay between voter approval and ending penalties and police interactions for cannabis.

New Jersey is the only other state that has taken the constitutional amendment route to legalize cannabis, and Maryland has an opportunity to learn from New Jersey's experience. New Jersey's voters approved legalization on the ballot in 2020, but that alone did not make cannabis legal. The legislature still had to come back and implement a law months later. In the three months between two-thirds of voters approving legalization and Gov. Phil Murphy signing implementing legislation, **more than 6,000 charges** for minor cannabis possession were filed. Maryland must not repeat New Jersey's mistake. When voters legalize cannabis in Maryland, cannabis needs to actually become legal.

II. Personal home cultivation and the safe home production of cannabis products should be legalized and go into effect immediately upon voter approval.

Under the current House proposals, both growing cannabis plants and safely producing cannabis-infused products (such as making brownies) carry up to three years in jail. These are harsh criminal penalties for personal use of cannabis. Most states that have legalized cannabis for adults — including neighboring D.C. and Virginia — allow adults to cultivate a small number of plants for their personal use.² In the states that have reasonable safeguards, such as limiting the number of plants per household and requiring plants to be secure and out of the public view, home cultivation of cannabis simply hasn't been a problem. No state has repealed home cultivation, and there has never been a serious push to do so.

Additionally, securely cultivating cannabis at home is the only way for some people who can benefit from cannabis medicinally to access it, as medical expenses and a reduced ability to work make the price of medical cannabis out of reach. Home cultivation should be included and effective immediately upon voter approval.

III. Personal-use amounts of cannabis should be more clearly defined.

As currently written, HB 837 legalizes possession of up to 1.5 ounces for adults 21 and older. We recommend that the possession limit be increased to at least four ounces to mirror the existing medical cannabis law. Having consistency in the possession limits between adult-use and medical cannabis will further protect patients, who may not have their card on them or have an expired card. Further, several adult-use states have possession limits greater than 1.5 ounces. In New Jersey, for example, adults can possess up

¹ Black Marylanders are still twice as likely to be arrested for simple possession than white Marylanders. *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform*, American Civil Liberties Union, 2020.

² <https://www.mpp.org/assets/pdf/issues/legalization/Review-of-State-Legalization-Laws.pdf>

to six ounces of cannabis. Allowing for a higher possession limit will further reduce arrests, citations, criminalization, and police interactions for cannabis possession.

HB 837 should also clearly legalize the possession of cannabis-infused products (such as edibles) and identify possession limits. As it is currently written, a person who possesses five ounces of edibles, containing a total of 300mg of THC, could seemingly be sentenced to up to six months in jail.

Finally, the bill should allow adults to share personal-use amounts of cannabis if there is no remuneration. Currently written, possession with intent to distribute carries up to three years' imprisonment and appears to include sharing (even between spouses, friends, roommates, etc.).

IV. Other criminal justice reforms to strengthen the bill to reduce criminalization and collateral consequences.

Providing that the odor of cannabis is not grounds for a search.

In 2021, the Maryland Court of Special Appeals held that, “the odor of marijuana, by itself, does not provide reasonable suspicion to conduct an investigatory stop.”³ It should be explicitly included in statute that the odor of cannabis is not grounds for a search.

Legalizing cannabis has significantly reduced the number of searches and arrests for cannabis in states that have legalized. Data analyzed by the Stanford Open Policing Project found in the first two legalization states — Colorado and Washington — there have been dramatic decreases in traffic searches, which are disproportionately performed on cars with Black or Latino drivers.⁴ Traffic stop interactions have led to violence and even death for Black Americans.⁵ The data compiled by Stanford researchers shows searches dropped by about half in Washington and Colorado since legalization.

Explicitly including that odor is not grounds for a search would further reduce police interactions for cannabis.

³ <https://www.courts.state.md.us/data/opinions/cosa/2021/2616s19.pdf>

⁴ Phillip Smith, “States that legalized marijuana see dramatic drop in police traffic searches,” *Alternet*, April 1, 2019. (Before legalization, 1.3% of Black drivers were subject to traffic searches in Colorado. After legalization, the rate was under 0.2%. Among Hispanic drivers, the rate dropped from 1% to 0.1%. Among whites, the rate of searches dropped from 0.4% to 0.1%. Thus, Black drivers went from being 6.5 times as likely to be searched as whites to twice as likely, and the total likelihood of Black drivers being subject to a traffic search dropped eightfold.)

⁵ Tanvi Misra, “Uncovering Disparities in Policing by Analyzing Traffic Stop Data,” *Pacific Standard*, June 7, 2018.

Reducing the civil penalty for public smoking

HB 837 provides that smoking cannabis in public will carry a civil fine of up to \$500. This is a steep fine that will disproportionately affect low-income residents. Smoking cannabis in public should be punishable by a more modest civil fine of up to \$50, rather than up to \$500, if there is any state penalty. In Virginia, public consumption carries a civil fine of up to \$25 for a first offense. In New York, smoking cannabis is allowed where tobacco smoking is allowed. In Connecticut, there is no statewide penalty for cannabis smoking, but cities can implement fines, which is another option to reduce police-civilian interactions.

Reducing penalties for first-offense low-level sales

Currently written, possession with intent to distribute (PWID) carries up to three years of imprisonment. The bill should reduce penalties for low-level sales.

Most of the earlier legalization laws removed state penalties for possession of a modest amount of cannabis and regulated commercial activity but did not reduce penalties for unlicensed sales. In several cases, even low-level sales remained felonies. Now, legalization states are increasingly working to reduce the harsh penalties for low-level sales to avoid harshly penalizing individuals who are simply trying to make ends meet. At least seven states reduced penalties for some or all unregulated sales either as part of legalization or shortly thereafter. Three of those states — Connecticut, New Jersey, and New York — “decriminalized” low-level sales as part of legalization. (Connecticut and New Jersey’s laws apply to first offenses only.)⁶

Including anti-discrimination provisions

Ten of the 18 legalization states include at least some provisions that protect adult-use cannabis consumers from being discriminated against for legal cannabis conduct or testing positive for cannabis.⁷ Provisions should be included in HB 837 to prevent people from losing their homes, education, professional licenses, children, freedom, etc. for the responsible use of cannabis. The bill should stipulate that individuals cannot be denied medical care (including organ transplants), professional licenses, child custody, housing, state benefits, gun rights, or state or local employment based on state-legal cannabis activities that do not endanger others or for testing positive for cannabis.

Providing that parole, probation, and pre-trial release cannot be revoked for state-legal cannabis activity

The bill should provide that parole, probation, and pre-trial release cannot be revoked for state-legal cannabis activity, including testing positive for cannabis, unless there is a specific finding that the individual’s use of cannabis could create a danger to the individual or other persons.

⁶ <https://www.mpp.org/assets/pdf/issues/legalization/Sales-Penalties-After-Legalization.pdf>

⁷ <https://www.mpp.org/assets/pdf/issues/legalization/Review-of-State-Legalization-Laws.pdf>

V. An equitable system of regulation should be established.

HB 837 does not set up a regulatory system for adult-use sales and does not have a specified timeline to do so. The bill should set up an equitable system of legalization and regulation, including licensing that prioritizes impacted communities and community reinvestment, which is automatically effective upon voter approval. The definition of a social equity applicant could be finalized later in 2023 — after a disparity study in the interim — but this would allow ATCs to prepare for the transition to adult-use sales and work to begin for technical assistance and other support for social equity applicants.

The delay for the legislature to establish a regulatory system, let alone for that system to go into effect, is especially problematic given the need and will of the people to allow adults to access safe, regulated cannabis. The sooner the legislature begins to work out the regulatory structure, the sooner the state can begin to displace the illicit market and repair the decades of harm cannabis prohibition has caused.

Conclusion

HB 1 and HB 837 are a promising start, but with these equity-driven recommendations, the legislature can deliver immediate relief to cannabis consumers and patients across the state while being a leader on equitable cannabis legalization to the growing national movement.

Thank you to Chair Clippinger and members of the committee for your time and attention. I urge you to consider our suggested amendments to HB 837.

If you have any questions or need additional information, I would be happy to help and can be reached at the email address or phone number below.

Sincerely,

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