



JUSTICE FOR ALL

MARYLAND HOUSE JUDICIARY COMMITTEE
TESTIMONY OF MARYLAND VOLUNTEER LAWYERS SERVICE
IN SUPPORT OF HB474: CRIMINAL PROCEDURE – PROBATION, PAROLE,
AND PRETRIAL RELEASE
MARCH 5, 2024

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Chair Clippinger and distinguished members of the Committee, thank you for the opportunity to testify in support of House Bill 474. My name is Emeline Smith, and I am a Legal Advocate at Maryland Volunteer Lawyers Service (MVLS), where I work on our Cannabis Expungement Project. MVLS is the oldest and largest provider of pro bono civil legal services to low-income Marylanders. The Cannabis Expungement Project team at MVLS is working with community partners to provide educational resources on expungement and connect Marylanders to expungement services. Within this project, I work specifically with incarcerated and formerly incarcerated individuals. Working directly with those who are impacted by practices of the Maryland Parole Commission has allowed us to identify key points that demonstrate the necessity for this bill. For the reasons presented below, MVLS respectfully requests the committee return a favorable report on House Bill 474.

House Bill 474 aligns with national best practices by requiring a case-by-case determination as to whether cannabis use constitutes a violation of probation, parole, or pretrial release in Maryland. This bill aptly recognizes that cannabis use should no longer serve as a standardized basis for violation of probation, parole, or pretrial release in Maryland. As recognized by the Justice Policy Institute, one key principle that Maryland should consider in crafting parole-related policies that align with national best practices is that “conditions of release should be linked to risk and be the least restrictive measures necessary to meet reentry goals and ensure public safety.”¹ This bill accomplishes this by recognizing that Maryland’s courts and Parole Commission should only impose a requirement to avoid cannabis use as a condition of release if they find that “the use of cannabis could create a danger to the defendant or others.” In making this distinction, HB474 takes an important step forward towards recognized best practices in the field of community supervision and reentry.

House Bill 474 better ensures due process for individuals on probation, parole, and pretrial release by providing that any individually determined requirement to avoid cannabis use is established at the time release is ordered. As recognized by the Maryland Office of the Public Defender, “fundamental to the notion of due process is that a person must be on notice that conduct could violate a condition of release at the time they are released, so that they know how to comport themselves going forward.”² In clarifying that individuals are to be informed of an individual requirement to avoid cannabis at the time their release is ordered, House Bill 474 would eliminate the current challenge of ensuring that all individuals are sufficiently informed of current practices regarding cannabis testing on parole.

Through working with re-entry professionals, parole staff, and incarcerated individuals awaiting parole in Maryland, I have observed certain challenges to ensuring that all parolees possess a comprehensive understanding of the current standardized requirement to avoid cannabis use immediately upon their release. Those awaiting parole often first hear from a parole officer at an exit orientation, which is offered within 120 days of one’s projected release to showcase reentry services. I have observed parole staff use this opportunity to inform individuals that parolees are tested for cannabis and that positive cannabis tests can serve as the basis for a parole violation. Many individuals are understandably surprised to learn this information considering Maryland’s recent cannabis legalization. However, despite the hard work of re-entry staff, issues with attendance at exit orientations are not uncommon, and some individuals may miss this opportunity to hear from parole. Further, while parolees must report to parole on the first business day after their release, from what I have observed, a parolee may be drug tested before they are able to have a substantive meeting with their assigned officer.

House Bill 474 would help reduce incarceration caused by probationary violations in Maryland. In 2020, one in four admissions to Maryland prisons resulted from parole violations, including failure of a drug test.³ Further, between 2017 and 2021, Maryland processed 4,449 revocations of parole among individuals released from state correctional facilities, and about two-thirds of such parole revocations were for Black individuals.⁴ We must work to ensure that individuals pursuing reentry in Maryland are not hindered by over-restrictive requirements that catalyze recidivism and inequity. As outlined, HB474 prioritizes due process and individualized conditions of release to help individuals avoid unnecessary violations due to cannabis use. For this reason, we at MVLS respectfully request that you vote yes on HB474.

¹ “Safe at Home: Improving Maryland’s Parole Release Decision Making.” Justice Policy Institute (2023). Accessed February 29, 2024. <https://justicepolicy.org/wp-content/uploads/2023/05/Safe-At-Home.pdf>.

² “Position on Proposed Legislation: HB 980 Criminal Procedure- Probation, Parole, Pretrial Release Violations.” Maryland Office of the Public Defender (2023). Accessed February 28, 2024. https://mgaleg.maryland.gov/cmt_e_testimony/2023/jud/1XSvwJmGqJJrMt-SnrGpz82dNavLsm6Ju.pdf

³ *Supra* note 1.

⁴ *Id.*