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JUDGE
BALTIMORE COUNTY
CHAIR

HON. RICHARD SANDY
CIRCUIT COURT
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MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 474
Criminal Procedure – Probation, Parole, and Pretrial Release
DATE: January 31, 2024
(3/7)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 474's application to problem solving courts. This bill alters statutory language to state that a court may not revoke a defendant's pre-trial release or find a defendant has violated probation, and the Parole Commission may not find that a parolee has violated parole, solely on the use of cannabis or a positive test for cannabis unless a court (or, for parole, the Parole Commission) makes a specific finding that the defendant's/parolee's use of cannabis could create a danger to the defendant/parolee or others.

The Judiciary is concerned with the bill's impact and applicability to problem solving courts including the drug treatment, mental health, and veteran's courts. These courts typically provide individualized, but intensive and structured treatment programs. This bill could likely hinder the progress of individuals in these programs by precluding judges from addressing the use and potential abuse of cannabis without a finding of dangerousness. For example, the use of cannabis by a mental health court participant may interfere with and impede the effectiveness of psychotropic and prescribed medication but yet not rise to the level of dangerousness needed to be found by the court. Further, many of the community-based programs have a zero-tolerance policy but such policies may not result in a finding of dangerousness. This may impact treatment options. Finally,

there is no carve out for those individuals already enrolled in these programs where the determination was not made at the time of ordering pretrial release.

The Judiciary has no opposition to restricting revocations of probation and pre-trial release to instances in which the Court order includes that the Defendant may not use cannabis (p. 2, lines 14-15 and p.3 lines 3-4). However, the requirement that the Court make a specific finding of dangerousness does not recognize the multitude of factors, beyond dangerousness, that warrant such a restriction. There are instances in which the Court limits the use of lawful substances, including alcohol and cannabis, to ensure greater success and better outcomes. Limiting discretion to instances of dangerousness may not allow for such consideration.

cc. Hon. Caylin Young
Judicial Council
Legislative Committee
Kelley O'Connor