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POSITION ON PROPOSED LEGISLATION

BILL: HB 217 Vehicle Laws – Cannabis Use in Motor Vehicle With Minor Occupant – Prohibition

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: January 22, 2024

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 217.

House Bill 217 creates a new criminal statute wherein a passenger in a motor vehicle who smokes, vapes, or consume marijuana with a minor present in the vehicle is subject to a year imprisonment or a maximum fine of \$1,000. This bill has the effect of recriminalizing marijuana use and provides law enforcement excuses to stop and harass motorists.

In 2022, Marylanders overwhelmingly voted to legalize recreational marijuana use making it the 20th State to do so. In doing so, Marylanders ended the unproductive prosecution of those who choose to use marijuana rather than use other legal drugs such as caffeine, nicotine, or prescription drugs.

In recriminalizing marijuana use for passengers in cars with minors, House Bill 217 seeks to turn back the clock on progress and has the potential to place parents in jail should they choose to use marijuana while riding in cars with their own children.

House Bill 217 criminalizes all marijuana use for passengers in cars with minors regardless of the size of the vehicle, the age of the minor, or the method of ingestion. Thus, a parent in the front passenger seat who eats a gummy can be prosecuted if their 17-year-old child is in the third row of a minivan. With the maximum penalty being one year in jail, the ‘minor’ whom this bill presumptively protects is left without a parent. And the parent is left with a criminal record. The potential harms this bill inflicts far outweigh any imagined benefit.

House Bill 217 could also ensnare others in the vehicle in a criminal prosecution. If a driver is aware that another adult has ingested marijuana with a minor present, that driver could be charged as an aider and abettor thus expanding the scope of the bill’s intent. In addition, if a minor ingests marijuana while being a passenger in a motor vehicle, the minor could be charged with both possession of the marijuana, and ingesting marijuana in a vehicle in which a minor is

an occupant. House Bill 217 draws no distinction between the person using marijuana, and the minor occupant.

House Bill 217 would encourage arbitrary stops and searches of Maryland motorists. Currently, Maryland law prohibits law enforcement stop or search a motorist based on the odor of marijuana. MD. CRIM. PRO. § 1-211. However, House Bill 217 would allow a stop and search of a motorist based on the presence of premise of a passenger, a minor, and something that may or may not be related to a marijuana edible. Even a cookie wrapper could be used to conduct a pretextual search of a vehicle should an officer decide it is potentially related to ingestion of a marijuana product. Such pretextual stops and search are well-known for disproportionately affecting minorities. *See Vote 'for' statewide ballot Question 4: Legalize adult use of cannabis in Maryland*, THE BALTIMORE SUN, Oct. 12, 2022 (“the most compelling argument for legalization of cannabis [was] to end the huge racial disparities in law enforcement.”).

House Bill 217 is an unnecessary step backwards. House Bill 217 would simply create yet another law by which marijuana users can be prosecuted with severe penalties for using a legal product.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB 217.

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

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