RACIAL EQUITY IMPACT NOTE

DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND · GENERAL · ASSEMBLY

2022 Session
SB0833

Cannabis - Legalization and Regulation

Summary

This proposed constitutional amendment, if approved by the voters at the next general election, authorizes an individual at least age 21 to use and possess cannabis in the State beginning July 1, 2023, subject to the requirement that the General Assembly pass legislation regarding the use, distribution, possession, regulation, and taxation of cannabis. Subject to ratification of the constitutional amendment, the bill (1) renames marijuana "cannabis"; (2) establishes a regulatory and taxation framework for cannabis establishments within the Alcohol and Tobacco Commission; (3) establishes provisions related to social equity in the legal cannabis industry; and (4) establishes a process for dismissal of or postconviction relief for marijuana-related offenses and expungement of the dispositions of marijuana-related charges.
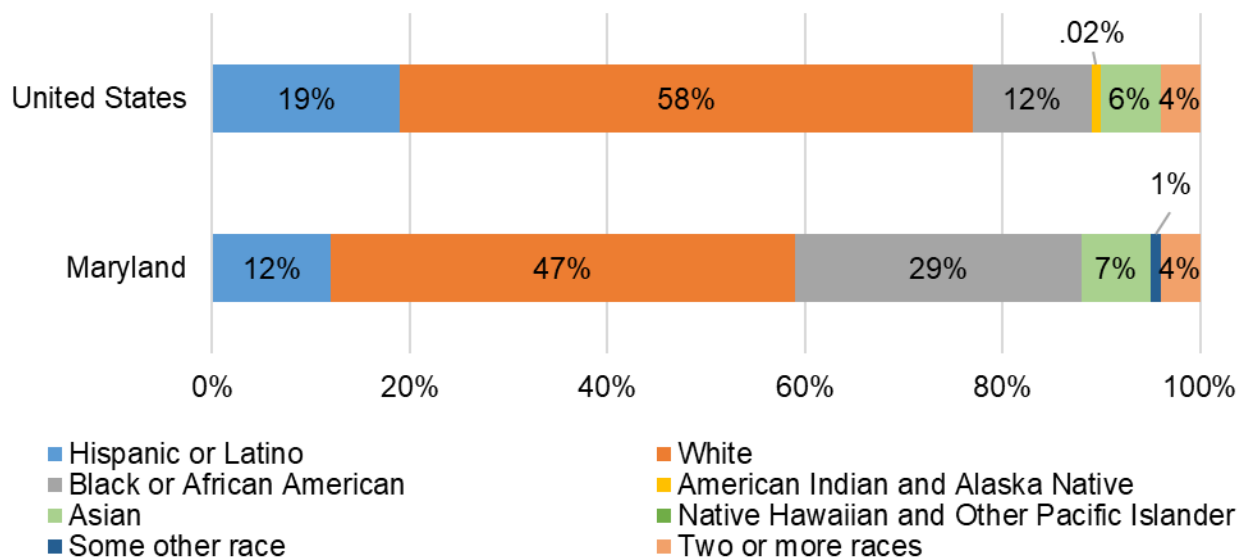

Maryland Demographics

Race and Ethnicity of the Maryland Population

Maryland's 2020 census population is 6,177,244, a 7% increase from the 2010 census count and approximately 2% higher than the 2019 census population estimates. In addition to an increase in population, Maryland's racial demographics have become more diverse. Maryland is now a state in which racial minorities make up a majority of its total population. Notable changes relevant to this shift are the increase in groups who identify as "other" and "multiracial" (*i.e.*, two or more racial identities), which total 5% of the State's population. Additionally, the change in demographics is due to the decrease in the number of individuals who only report "White" as their racial group. Despite this decrease, non-Hispanic Whites remain the largest single race demographic group in the State of Maryland comprising 47% of the State's population.

Compared to the U.S. population overall, Maryland's population of individuals who identify as a single race is more diverse. Maryland is ranked as the fourth most diverse state by the U.S. Census Bureau's Diversity Index. As shown in **Exhibit 1**, in Maryland, 47% identify as White alone

compared to 58% of the national population. Similarly, 51% of the population identify as non-White or multi-racial compared to 38% of the national population. In both the State and national population, the largest shares of the non-White population are individuals who are Black or African American, with 29% of the State population identifying only as Black or African American and another 2.5% identifying as Black in combination with some other race. Maryland's Asian population is 7%, which is slightly higher than the Asian share of the national population of 6%. The State's overall population by ethnicity, however, is slightly less diverse than the U.S. population; 12% of the State's population identified as Hispanic or Latino compared to 19% of the U.S. population.

Exhibit 1
U.S. and Maryland Population by Race and Ethnicity
2020

Source: U.S. Census Bureau, 2020 Census Redistricting Data (Public Law 94-171), Table ID P2, HISPANIC OR LATINO, AND NOT HISPANIC OR LATINO BY RACE.

Racial Equity Impact Statement

The bill authorizes an individual who is at least age 21 to use or possess a "personal use amount" of cannabis without penalty beginning July 1, 2023. Specified provisions in the bill are subject to the ratification of a proposed constitutional amendment at the November 2022 general election.

Generally, the bill legalizes possession of marijuana/cannabis by adults up to a specified amount and lowers the penalties for possession of larger quantities up to a specified amount. Under current law, possession of less than 10 grams (or 0.35 ounces) of marijuana is a civil offense, punishable by a fine of up to $100 for a first offense and $250 for a second offense. The maximum fine for a

third or subsequent offense is $500. The bill would allow for adult possession of a personal use amount of cannabis, defined as up to 2 ounces or 57 grams, without penalty. Under current law, possession of any amount greater than 10 grams or 0.35 ounces is a criminal offense punishable by imprisonment for up to six months and/or a fine of up to $1,000. In contrast, the bill would make possession of more than 2 ounces (57 grams) and up to 4 ounces (113 grams) a civil offense subject to a maximum fine of $250 or 16 hours of community service. Possession of more than 4 ounces would remain a criminal misdemeanor punishable by a maximum $1,000 fine and/or six months in prison.

Juveniles in possession of a personal use amount of cannabis are guilty of a civil offense under the bill as well, with a maximum penalty of $100 or 6 hours of community service for a first offense, $250 or 16 hours of community service for a second offense, and $500 or 32 hours of community service for a third offense.

The bill also includes provisions related to (1) expungement and release of specified individuals incarcerated or under supervision for cannabis possession; (2) cannabis plant cultivation restrictions; (3) the establishment of various cannabis-related funding programs; and (4) cannabis taxes, licensing, and regulation.

The analysis will discuss the provisions in the bill reducing penalties for marijuana/cannabis possession, which will likely decrease marijuana possession charges and arrests which data indicates have disproportionately impacted Black communities in the State. The bill's provisions regarding expungement and release for certain individuals who have previously been incarcerated for marijuana possession will also have a significant impact on those individuals, but sufficient data is not available to assess the specific racial impacts of these provisions.

As seen below, individuals who are 18 years old and older use marijuana at approximately the same rate across most racial demographic groups. However, African Americans are more likely to be charged, arrested, or incarcerated in disproportionate numbers for marijuana possession compared to all other racial groups.

Marijuana Usage

The most recent comprehensive data available on marijuana usage is an annual survey conducted by the Substance Abuse and Mental Health Services Administration. **Exhibit 2** displays the results of the 2019 survey and shows that at the national level, White individuals are more likely to use marijuana during their lifetime than individuals of any other race, excluding those who identify as two or more races.

Exhibit 2
Marijuana Use Nationally by Race and Ethnicity
2019

Race/Ethnicity	Age 18 and Over		Age 26 and Over	
	Use in Last Year	Lifetime Use	Use in Last Year	Lifetime Use
Hispanic or Latino	15%	37%	12%	35%
White	19%	55%	16%	55%
Black or African American	20%	46%	17%	46%
American Indian or Alaska Native	20%	52%	18%	51%
Native Hawaiian or Other Pacific Islander	15%	43%	12%	44%
Asian	8%	22%	6%	20%
Two or More Races	31%	67%	27%	69%
Total	**18%**	**49%**	**15%**	**49%**

Source: University of Baltimore Schaefer Center; Substance Abuse and Mental Health Services Administration

This survey confirms the results of a 2017 study by the National Institute on Drug Abuse that found both the Black and White populations nationally use marijuana at the same rate. Although marijuana usage is roughly equal across groups, data shows that African Americans are more likely to be charged, arrested, and/or incarcerated for marijuana possession.
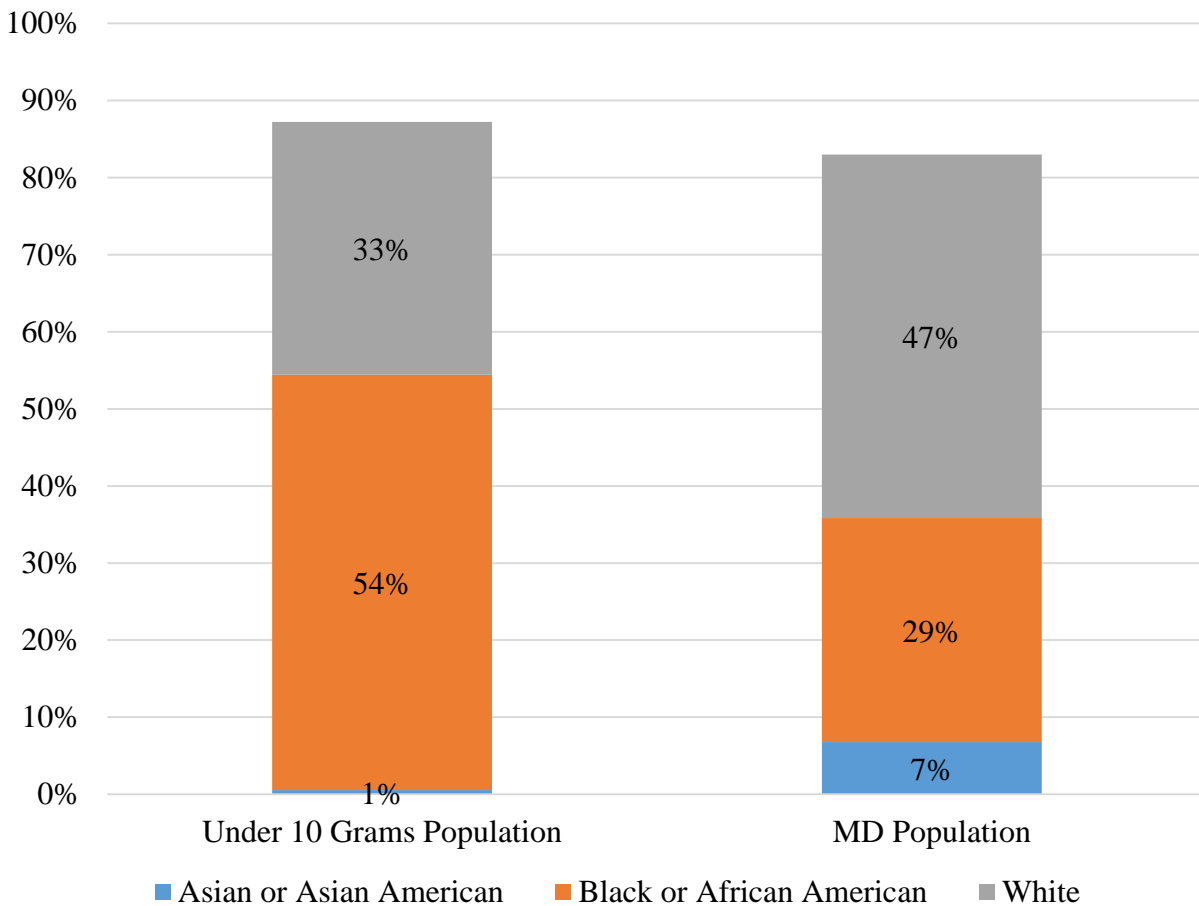
Charges for Marijuana Possession in Maryland

According to the Administrative Office of the Courts (AOC), there were 12,429 charges for possession of marijuana in the State in 2020. With respect to age, the vast majority (91%) of the individuals charged were 21 years of age and older. Of these charges, 2,435 (20%) represented possession of over 10 grams of marijuana. This note will discuss the disproportionality and disparities among and between racial groups exhibited by the court charging data.

Charges for Marijuana Possession of Less Than 10 Grams

In 2020, 80% of marijuana possession charges were for possession of less than 10 grams of marijuana. **Exhibit 3** illustrates that 54% of the individuals charged were African American, 33% were White, and 0.5% were Asian.

Exhibit 3
Individuals Charged with
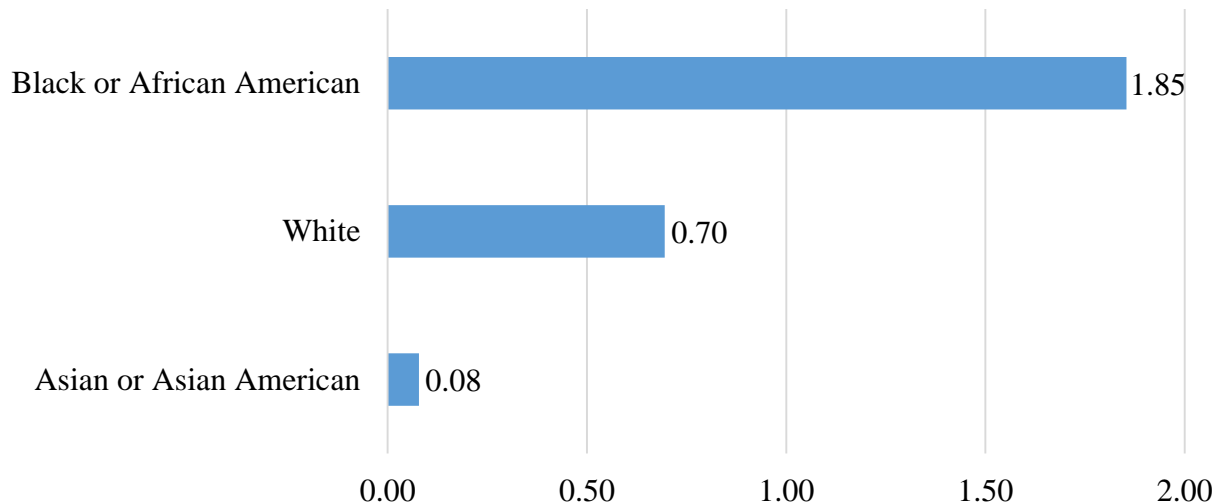**Possession of Less than 10 Grams of Marijuana by Race**
2020

Source: U.S. Census Bureau; Administrative Office of the Courts; Department of Legislative Services

Disproportionality in Charge Frequency Among Racial Groups

African Americans are more likely to be charged for marijuana possession of less than 10 grams than what would be expected given their proportion of the State's population. **Exhibit 4** illustrates any disproportionality between a racial group's proportion of the overall group of individuals charged with possession of under 10 grams and their proportion of the State population in general.

Exhibit 4
Disproportionality Ratios
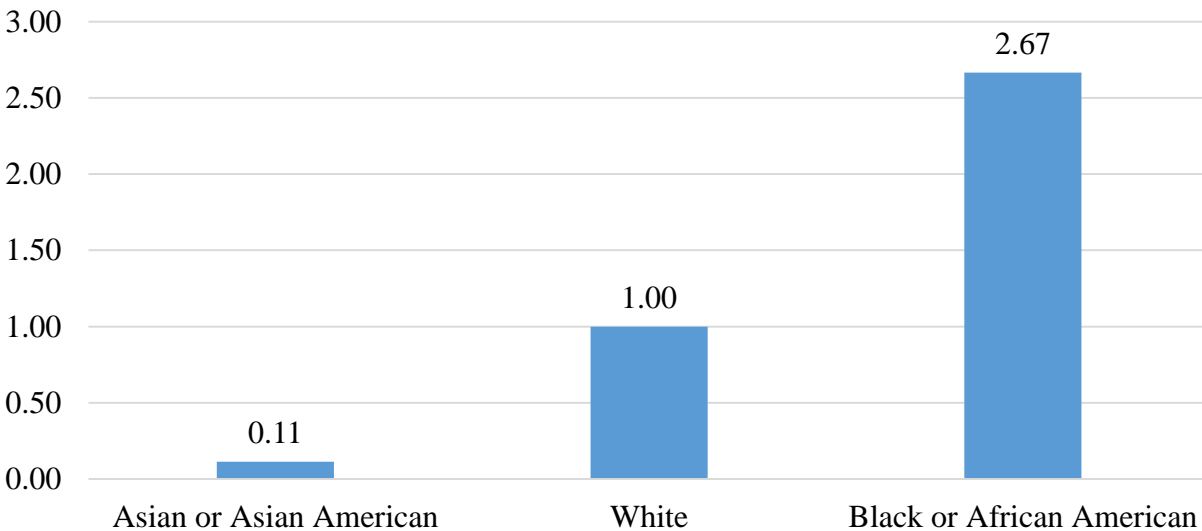**Charges for Possession of Less than 10 Grams of Marijuana**
2020

Source: Administrative Office of the Courts; Department of Legislative Services

The disproportionality ratio for African Americans is 1.85. This means that African Americans are almost twice as likely to be charged for marijuana possession of less than 10 grams than what would be expected given their proportion of the State's population. Whites and Asians have disproportionality ratios of less than 1.00, with Whites at 0.70 and Asians at 0.08. Thus, White individuals are somewhat less likely and Asian individuals significantly less likely to be charged for possession of less than 10 grams of marijuana than would be expected given their respective proportions of the State's population.

Disparity in Charge Frequency Between Racial Groups

Exhibit 5 compares the likelihood of various racial groups being charged with possession of under 10 grams of marijuana compared to the White population.

Exhibit 5
Disparity Ratios
Charges for Possession of Less than 10 Grams of Marijuana
2020

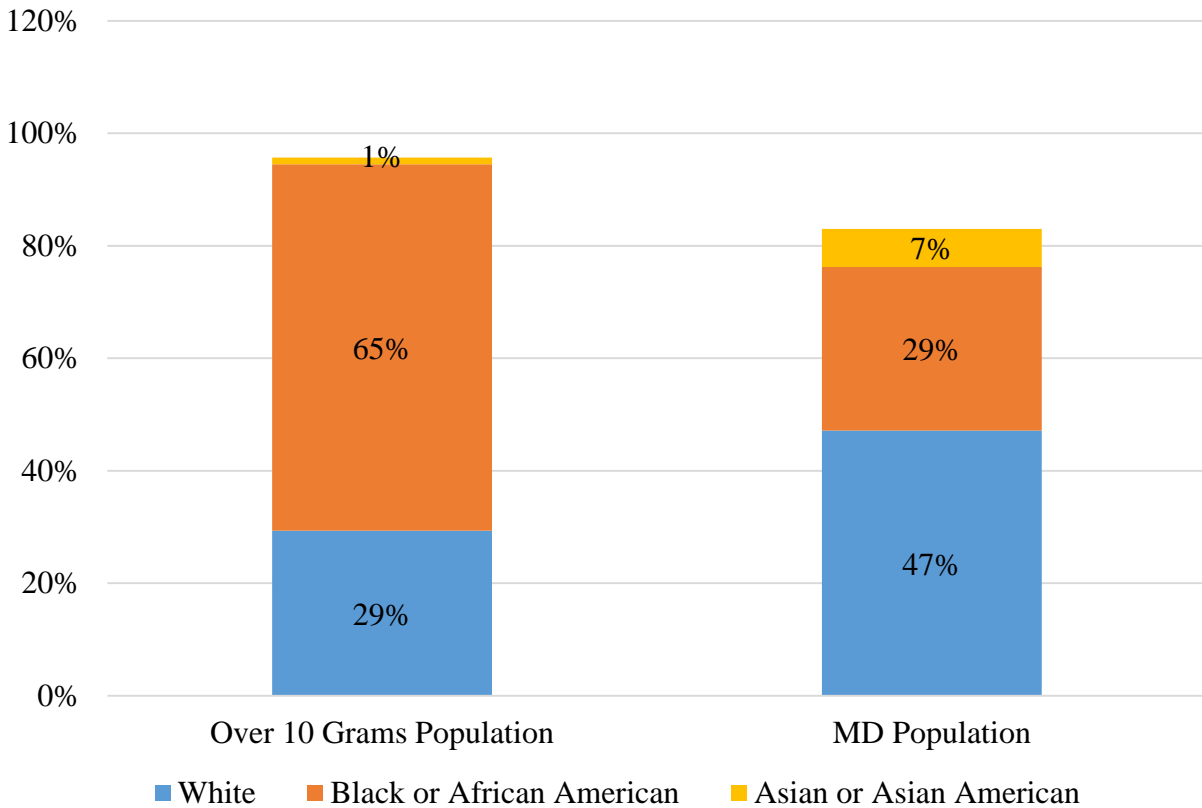Source: FBI Uniform Crime Report; Administrative Office of the Courts

As seen in the exhibit, African Americans have a racial disparity ratio of 2.67, which means those individuals are over two and a half times likelier to be charged with possession of less than 10 grams of marijuana as compared to Whites. With a disparity ratio of 0.11, Asians are much less likely to be charged with possession of less than 10 grams of marijuana compared to Whites.

Data were not available to analyze disproportionality and disparity ratios related to ethnicity and other racial groups.

Charges for Marijuana Possession of More than 10 Grams

AOC data shows that there were approximately 2,435 charges for possession of more than 10 grams of marijuana, which is currently a criminal misdemeanor. **Exhibit 6** illustrates the percentage breakdown of these charges by race.

Exhibit 6
Individuals Charged with
Possession of More than 10 Grams of Marijuana by Race
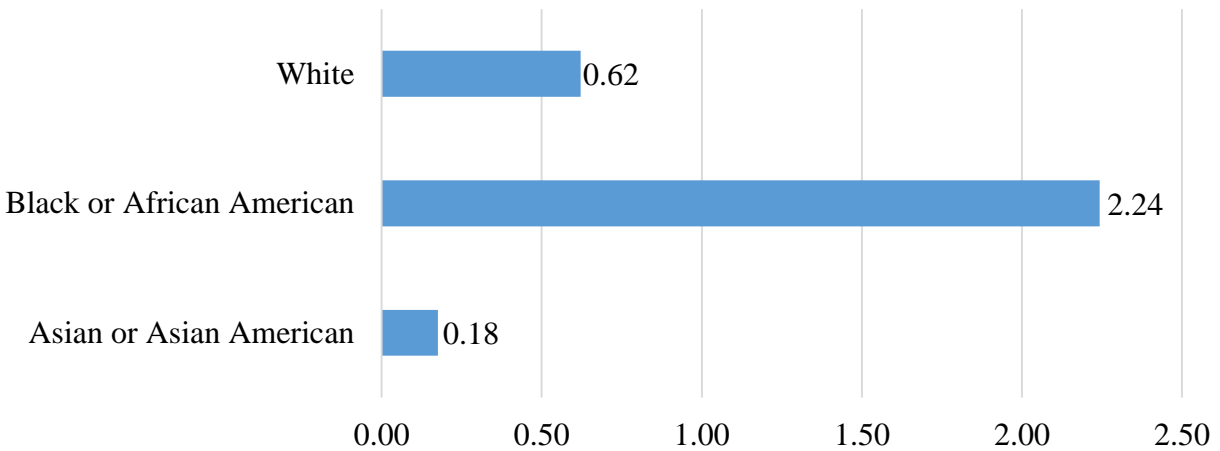**2020**

Sixty-five percent of the total charged were African American and 29% were White, while Asians comprised 1% of those charged.

Disproportionality in Charge Frequency Among Racial Groups

Exhibit 7 illustrates any disproportionality between a racial group's proportion of the overall group of individuals charged with possession of more than 10 grams of marijuana and their proportion of the general State population.

Exhibit 7
Disproportionality Ratios
Charges for Possession of More than 10 Grams of Marijuana
2020

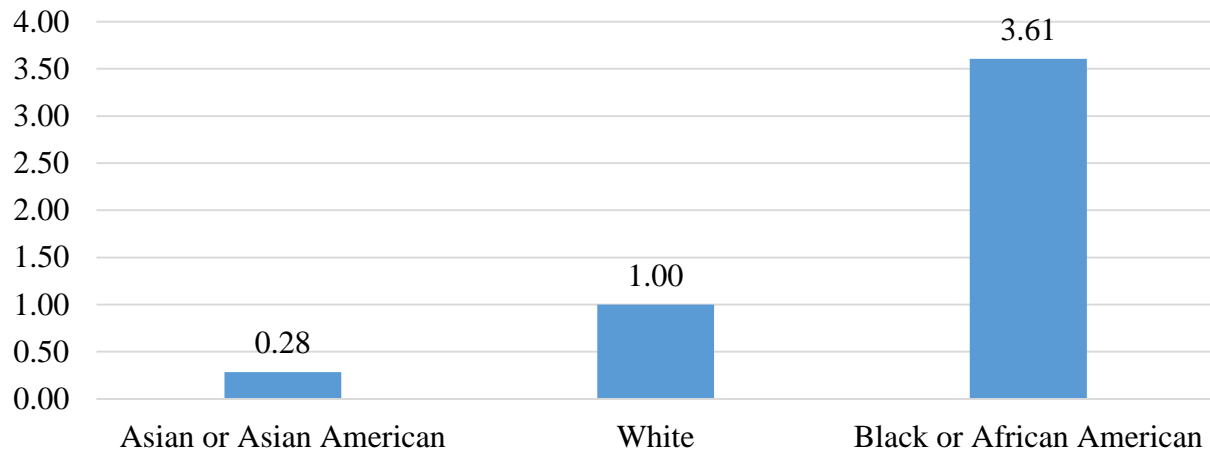|	
White	0.62
Black or African American	2.24
Asian or Asian American	0.18

Source: Administrative Office of the Courts; Department of Legislative Services

The disproportionality ratio for African Americans in Maryland is 2.24. This means that African Americans are over twice as likely to be charged for marijuana possession of more than 10 grams than would be expected given their proportion of the State's population. White and Asian individuals have disproportionality ratios of less than 1.00, with Whites at 0.62 and Asians at 0.18. Thus, White individuals are somewhat less likely and Asian individuals significantly less likely to be charged for possession of more than 10 grams of marijuana than what would be expected given their respective proportions of the State's population.

Disparity in Charge Frequency Between Racial Groups

Exhibit 8 compares the likelihood of various racial groups being charged with possession of more than 10 grams of marijuana compared to the White population.

Exhibit 8
Disparity Ratios
Charges for Possession of More than 10 Grams of Marijuana
2020

Based on the data, African Americans have a racial disparity ratio of 3.61, which means that African Americans are more than three and a half times likelier to be charged with possession of more than 10 grams of marijuana as compared to Whites. With a disparity ratio of 0.28, Asians or Asian Americans are much less likely to be charged with possession of more than 10 grams of marijuana than Whites.
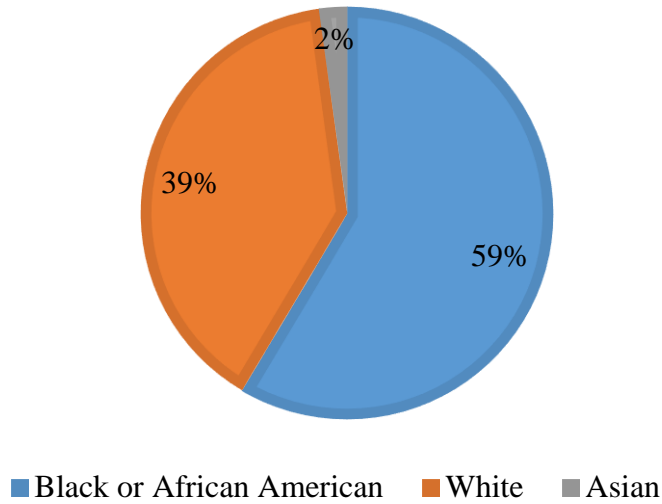
Data were not available to analyze disproportionality rates and disparity ratios related to ethnicity and other racial groups.

Arrests for Marijuana Possession in Maryland

With respect to arrests, Maryland's annual Uniform Crime Report (UCR) indicates 10,256 arrests in 2020 for possession of marijuana. However, the UCR does not provide demographic data associated with these arrests. The FBI's National Incident-Based Reporting System (NIBRS) does provide demographic data on marijuana possession arrests but currently only includes data from 6 out of 153 law enforcement agencies in the State. Although NIBRS data represents a small portion of Maryland marijuana possession arrest cases given limited reporting by law enforcement agencies, the disparities present in this limited dataset are also indicative of African Americans being disproportionately and adversely impacted by marijuana possession arrests as compared to Whites and other racial groups.

According to the NIBRS data, six law enforcement agencies reported 1,072 arrests for misdemeanor marijuana possession in 2020. As shown in **Exhibit 9**, of this total, 59% were African American, 39% were White, and 2% were Asian.
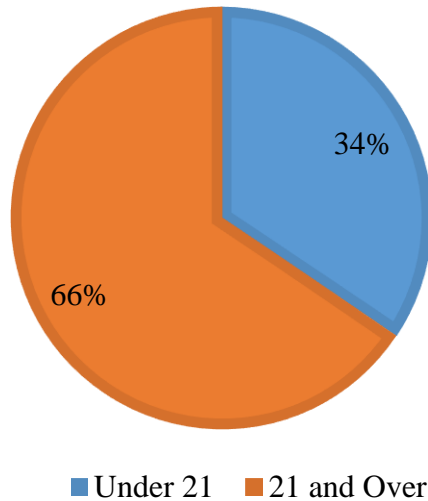
Exhibit 9
Arrests for Possession of More than 10 Grams of Marijuana
in Maryland by Race

■ Black or African American   ■ White   ■ Asian

With respect to age, the 2020 FBI Uniform Crime Report shows that a majority of the 1,072 individuals arrested were 21 years of age or older. As **Exhibit 10** illustrates, 66% of the individuals arrested were 21 and older and 34% were under the age of 21.
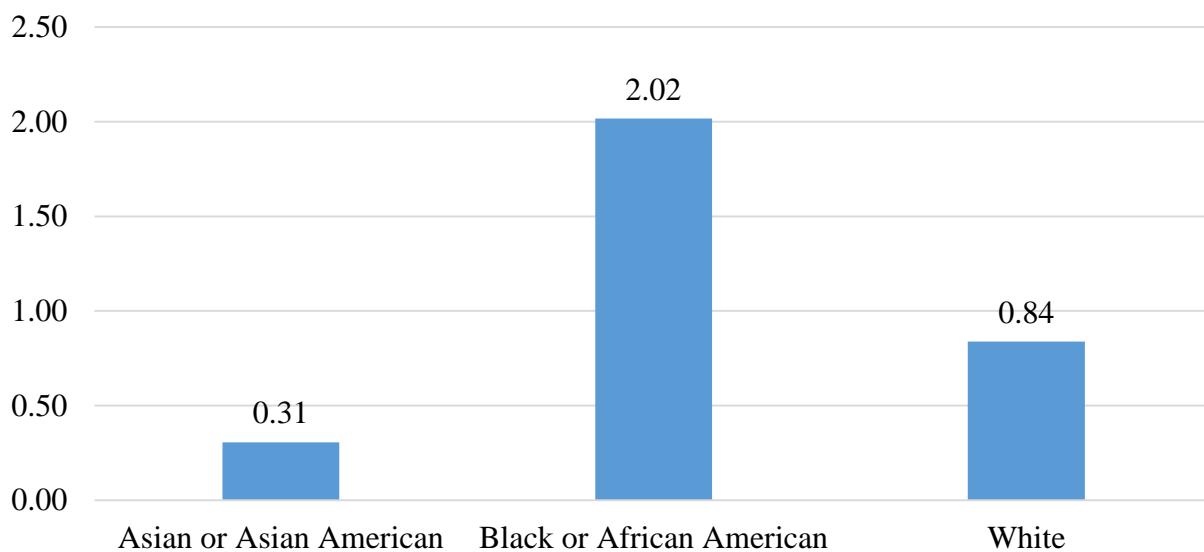
Exhibit 10
Arrests for Marijuana Possession in Maryland
by Age Group

■ Under 21   ■ 21 and Over

11

African Americans also comprise a disproportionate share of those arrested for marijuana possession in Maryland when compared to their overall share of the State's population. As shown in **Exhibit 11**, NIBRS arrest data indicates that the disproportionality ratio of arrests for marijuana possession for African Americans in Maryland is 2.02, meaning they are twice as likely to be arrested for marijuana possession as compared to their proportion of the State's population. Whites and Asians have disproportionality ratios of less than 1.00, with Whites at 0.84 and Asians at 0.31. Thus, individuals in these groups are less likely to be arrested for marijuana possession as compared to their overall proportion of the State population.

Exhibit 11
Disproportionality Ratios
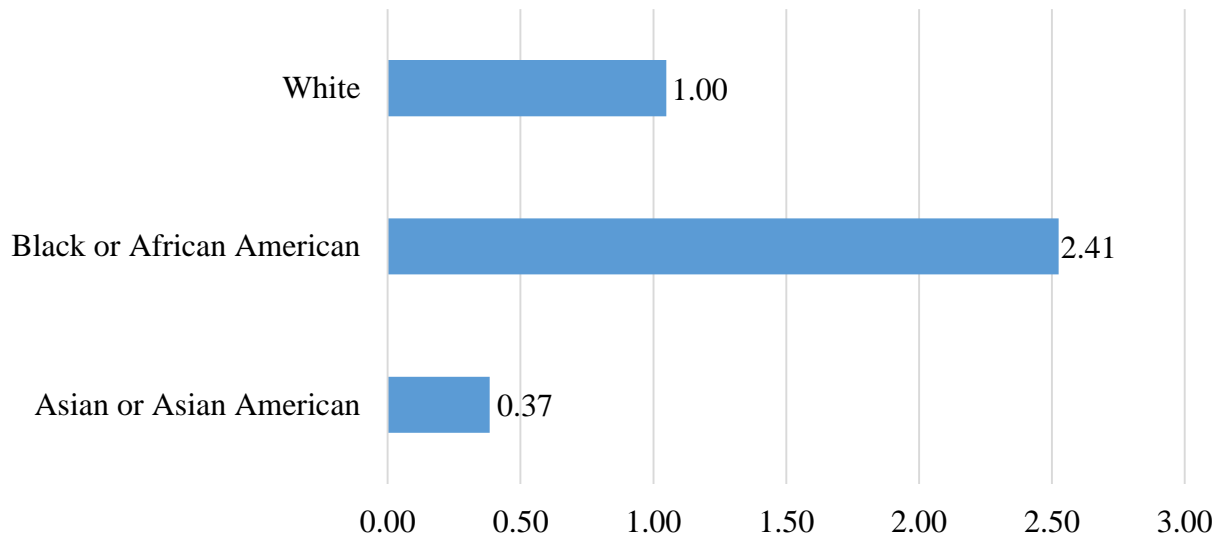**Arrests for Marijuana Possession in Maryland**
2020

Source: Department of Legislative Services

Exhibit 12 shows the disparity among the different racial groups with respect to arrests for marijuana possession. African Americans have a racial disparity ratio of 2.41, making them more than twice as likely to be arrested for marijuana possession as Whites. Asians have a disparity ratio of 0.37 and are therefore much less likely to be arrested for marijuana possession than Whites.

Data were not available to analyze disproportionality and disparity ratios related to ethnicity and other racial groups.

Exhibit 12
Disparity Ratios
Arrests for Marijuana Possession in Maryland
2020

White 1.00

Black or African American 2.41

Asian or Asian American 0.37

0.00   0.50   1.00   1.50   2.00   2.50   3.00

Source: Department of Legislative Services

It is anticipated that additional State-level arrest data will be made available in the near future to allow for further analysis. When that data becomes available, this note will be updated accordingly.

Conclusion

State arrest and charge data show that, despite the fact that racial and ethnic groups use marijuana at similar rates, African Americans are disproportionately and disparately impacted by both charges and arrests for marijuana possession.

The bill's provisions would significantly impact all racial groups in the State by increasing the amount of marijuana an individual can legally possess without any civil or criminal penalty. Because African Americans have been disproportionately negatively affected by existing marijuana possession laws, they will likely benefit to a greater extent. Moreover, data show that individuals who are 21 years of age and older encompass the majority of charges and arrests for marijuana possession. Thus, the bill's intention to establish a minimum age of 21 to legally use and possess certain amounts of marijuana/cannabis would reduce charges and arrests for use and possession by individuals who are at least 21 years old, regardless of their racial and ethnic identity.

The exact magnitude of this bill's potential impact on racial equity cannot be fully determined without additional historical and consistent data on the specific amounts of marijuana that individuals were arrested with, the number of charges, sentence outcomes, and the number of

citations issued across racial and ethnic groups. In addition, the actual measurable impact will also depend on the developing statutory framework and regulation for the use, distribution, possession, and regulation of marijuana.

Methodologies, Assumptions, and Uncertainties

Although some reports use disparity and disproportionality interchangeably, this racial equity impact note distinguishes them. Disproportionality is the state of being out of proportion. It compares the proportion of one racial or ethnic group of a target population to the proportion of the same racial or ethnic demographic group in the general population. Disparity, however, refers to a state of being unequal. A disparity describes an unequal outcome experienced by one racial or ethnic group of the target population as contrast against a different racial or ethnic group in the target population. The information provided in this note is drawn from quantitative data analysis of available statistical datasets on crime and criminal justice collected by entities at the national and state level. Moreover, the information includes scholarly literature on racial and ethnic disparities in the U.S. criminal justice system.

Information Sources: Maryland Uniform Crime Report; Maryland Administrative Office of the Courts; FBI Uniform Crime Report; Substance Abuse and Mental Health Services Administration; National Institute on Drug Abuse; U.S. Census Bureau; Department of Legislative Services

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