



January 29, 2020

SB 179

Testimony from Olivia Naugle, legislative analyst, MPP, in support of SB 179

Dear Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee:

My name is Olivia Naugle, and I am a legislative analyst for the Marijuana Policy Project, the largest marijuana policy reform organization in the U.S., which has been working to improve marijuana policy for more than 20 years. MPP is also the convening organization of the Maryland Cannabis Policy Coalition, a diverse group of organizations that acknowledge that cannabis prohibition has failed and is working to advance and sensible humane marijuana policies.

I am here today in support of Senate Bill 179, which would ensure that medical marijuana patients have the same rights as all other Marylanders. Specifically, this bill would ensure that Marylanders do not lose their gun rights under state law simply for being a registered patient.

Regardless of what you think about people convicted of crimes not being allowed to have guns, the restrictions on Maryland's issuance of concealed carry permits, or assault rifle bans, this bill does nothing to change the law with respect to any of those things. Rather, all this bill does is ensure that Maryland patients are not forced to give up whatever rights they would otherwise have, under state law, to possess a weapon based solely on the fact that they have a debilitating medical condition and may benefit from the use of medical cannabis.

There is no reason not to give medical cannabis patients the same rights as everyone else. This is particularly true given that people who use alcohol recreationally, even people who abuse alcohol, are not prohibited from purchasing or possessing a firearm under Maryland law. Yet being under the influence of alcohol is associated with violent behavior, while the likelihood of violent behavior is *reduced* while someone is under the influence of cannabis.¹ In addition, there is no prohibition on people who are prescribed more dangerous drugs, including those that can cause or worsen mental health problems and increase the risk of suicide, from having a gun.² Law abiding medical cannabis

¹ An article in the *Journal of Addictive Behaviors* reported "alcohol is clearly the drug with the most evidence to support a direct intoxication-violence relationship," while "cannabis reduces the likelihood of violence during intoxication." Hoaken PN, Stewart SH., "Drugs of abuse and the elicitation of human aggressive behavior." *Addict Behav.* 2003 Dec;28(9):1533-54.

² These include: Ambien, "This medicine may cause unusual moods and behaviors. You may also do things while you are still asleep that you may not remember the next morning, *such as driving*." (Emphasis added) at: <https://www.ncbi.nlm.nih.gov/pubmedhealth/PMHT0012721/?report=details#warning>; Chantix, "Some people have had new or worse mental health problems, such as changes in behavior or thinking, aggression, hostility, agitation, depressed mood, or suicidal thoughts or actions while taking or after stopping CHANTIX." At: <https://www.chantix.com/about-chantix>; and SSRI antidepressants, which have a "black box" warning due to the increased risk of suicide in young people up to age 25, see: <https://www.nimh.nih.gov/health/topics/child-and-adolescent-mental-health/antidepressant-medications-for-children-and-adolescents-information-for-parents-and-caregivers.shtml>.

patients should not be singled out for disparate treatment simply because their condition is one for which cannabis can provide relief. Nor should they have to choose between their civil rights and their human right to treat their pain or illness.

While it is true that medical cannabis patients who possess guns may be in violation of federal law, whether an individual wishes to risk violating federal law is their decision and it does not mean the state must criminalize the behavior as well. In this regard, it should be noted that all marijuana possession — even by patients registered with the Maryland Medical Cannabis Commission — is illegal under federal law. The federal government, bound by the anti-commandeering doctrine, has no right to force the states to criminalize particular conduct, or to force states to enforce federal law. In practice, registered patients are generally protected by the fact that federal law enforcement have neither the time nor the inclination to prosecute individual patients.³ Instead, it is the states that exercise the majority of police powers under our federalist system of government.

As for gun ownership, 18 U.S.C. § 922 (d)(3) provides that “It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person . . . is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).” The federal bureau of Alcohol, Tobacco, Firearms, and Explosives has implemented this by requiring purchasers to fill out Form 4473, which they must sign under oath, that provides in part: “Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance? Warning: The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.” If a purchaser chooses to lie on that form, that is a federal crime. However, this issue relates to the *purchase* of a firearm; no such form need be filled out by people who already own a gun.

In addition, federal law criminalizes the *possession* of a gun by an “unlawful user”⁴ of a controlled dangerous substance, if they possess the gun “in or affecting commerce.” 18 U.S.C. § 922 (g)(3).⁵ But, once again, individual medical marijuana patients are unlikely to be prosecuted under federal law for the possession of a gun while a patient,⁶ unless there is some other unlawful activity or they are on federal property.⁷

³ In addition, the Department of Justice is currently forbidden by a Congressional appropriations bill from spending any funds “to prevent [Maryland and other] States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.” This has been interpreted to prohibit the prosecution of medical marijuana businesses that are in compliance with state law. To my knowledge, there have been no cases of the federal government prosecuting patients in compliance with state law, so courts have not needed to decide the issue.

⁴ Note that: “In order to sustain a conviction under § 922(g)(3), the Government must prove that the Defendant's drug use was sufficiently consistent, ‘prolonged’ and close in time to his gun possession to put him on notice that he qualified as an unlawful user of drugs under the statute.” *United States v. Williams*, 216 F. Supp. 2d 568, 575 (2002) (citation and emphasis omitted).

⁵ The Fourth Circuit has interpreted possession “in or affecting commerce” to mean merely “the firearm had travelled in interstate or foreign commerce at some point during its existence.” *United States v. Langley*, 62 F.3d 602, 606 (4th Cir.1995) (*en banc*). The federal overreach inherent in this interpretation is beyond the scope of this testimony.

⁶ The Fourth Circuit has interpreted 18 U.S.C. § 922 (g)(3) narrowly enough that some firearm owning medical cannabis patients — such as those using cannabis only rarely — are likely not be in violation of it. *U.S. v. Parris*, 111 Fed.Appx. 158 (4th Cir, 2004) (“In order to sustain a conviction under § 922(g)(3), the Government must prove that the Defendant's drug use was sufficiently consistent, ‘prolonged,’ and close in time to his gun possession to put him on notice that he qualified as an unlawful user of drugs under the statute”)

I would suggest an amendment to the bill to make its protections even stronger. That is to clarify that, for the purposes of state law, neither being a registered medical cannabis patient *nor* purchasing and using medical cannabis in accordance with state law shall cause a patient to be deemed “addicted to” or a “habitual user of” a “controlled dangerous substance.” This change would address the specific provision of Maryland law that would be used to deny a patient’s gun rights, the provision that a person may not possess a regulated firearm if the person is “addicted to a controlled dangerous substance or is a habitual user.” Md. Code, Public Safety Article, § 5-133(b)(5). It also ensures that *actual ongoing use* of medical cannabis, not simply having registered for the program, will not result in a denial of the patient’s rights. There is a distinction because it is possible for someone to be “authorized to use medical cannabis,” as this bill states, but not actually currently using it. Some patients, for example, might sign up for the program but then find that they cannot afford it and never actually use medical cannabis.

I would also like to suggest this bill be expanded to include other explicit anti-discrimination protections for patients. Due to federal prohibition, medical marijuana patients do not receive protection from discrimination under the American’s with Disabilities Act (ADA) for using their medicine. Several of the more recent medical cannabis laws include language intended to prevent discrimination against medical cannabis patients in housing, child custody cases, organ transplants, college enrollment, or employment, with some limitations.⁸ In 16 of the 33 medical cannabis states, either the laws include some explicit employment protections or courts have ruled in favor of employees — Arizona, Arkansas, Connecticut, Delaware, Maine, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Oklahoma, Rhode Island, Pennsylvania, Utah, and West Virginia. Maryland, which of January 13, 2020 has 88,594 certified patients in its medical cannabis program, should follow suit and protect patients from such discrimination. Patients should not have to choose between using their medicine and their livelihood.

Thank you to Chairman Smith and the members of the committee for your time and attention. I respectfully urge a favorable report of SB 179 — ideally after it is amended to provide more comprehensive protections — so that Maryland patients can have the same rights as everyone else. If you have any questions or need any additional information, I would be happy to help and can be reached at the number or email address below.

Sincerely,

Olivia Naugle
Legislative Coordinator
Marijuana Policy Project
202-905-2037
onaugle@mpp.org

⁷ A patient would be much more likely to be prosecuted by the federal government if they were violating state law and engaged in selling or manufacturing (growing) marijuana, and if that was the case their simultaneous possession of a firearm could certainly result in a harsher penalty.

⁸ See <https://www.mpp.org/issues/medical-marijuana/medical-marijuana-laws-anti-discrimination-provisions/>.



Noah Karn <noah.karn4@gmail.com>

FW: SB 179 written testimony

1 message

Pinton, Luke <LPinton@senate.state.md.us>
To: Noah Karn <noah.karn4@gmail.com>
Cc: Olivia Naugle <onaugle@mpp.org>

Tue, Jan 28, 2020 at 2:25 PM

Noah – can you submit for MPP?

From: Olivia Naugle [mailto:onaugle@mpp.org]
Sent: Tuesday, January 28, 2020 2:26 PM
To: Pinton, Luke <LPinton@senate.state.md.us>
Subject: SB 179 written testimony

Hey Luke,

I've attached my written testimony for SB 179 here. Are you able to get it submitted for the hearing tomorrow?

As of now, I don't plan on testifying in person, but I'll let you know if that changes.

Appreciate it!

Olivia Naugle, Legislative Analyst

Pronouns: she/her/hers

Marijuana Policy Project

Washington, D.C. 20009

[Onaugle@mpp.org](mailto:onaugle@mpp.org)

<http://www.mpp.org>

 **MPP SB 179 testimony JPR 2020 on.docx**
110K