



**March 6, 2020**

**HB 1400**

**Testimony from Olivia Naugle, legislative analyst, MPP, in support of HB 1400**

Dear Chairman Clippinger, Vice Chair Atterbeary, and members of the House Judiciary Committee:

My name is Olivia Naugle, and I am a legislative analyst for the Marijuana Policy Project (MPP), the largest marijuana policy reform organization in the United States. MPP has been working to improve marijuana policy for 25 years; as a national organization, we have expertise taken by different states.

The Marijuana Policy Project strongly supports legalizing and regulating cannabis for adults 21 and older, and doing so in a way that repairs the damage inflicted by criminalization. That includes expungement of past cannabis convictions, provisions to ensure diversity and social equity in the industry, and reinvestment in communities hard-hit by the war on cannabis.

MPP has played a leading role in changing most of the state marijuana laws that have been reformed since 2000, including more than a dozen medical cannabis laws and the legalization of marijuana by voter initiative in Colorado, Alaska, Maine, Massachusetts, Nevada, and Michigan. MPP also assisted on the California campaign. MPP's team spearheaded the campaign that resulted in Vermont becoming the first state to legalize marijuana legislatively in 2018.

Just last year, Illinois became the 11th state to legalize cannabis for adult use, and the first in the country to adopt a regulatory system for cannabis cultivation, testing, and sales through a state legislature. It was a multi-year effort, and MPP was proud to work closely with the bill sponsors and government agencies over a period of years to reach this historic point. The most historic aspects of the Illinois legalization law are not that it legalizes cannabis for adults, but rather the extraordinary efforts it takes to reduce the harm caused by the failed war on marijuana and the people it affected. This measure is the biggest step forward in social and criminal justice reform anywhere in the country, inside or outside the issue of cannabis reform. We hope the Illinois bill can be a model for Maryland, and states around the country.

I would like to commend the Maryland General Assembly for taking up the issue of cannabis legalization by implementing the marijuana legalization workgroup. Given the trends in polling, and the increasing recognition by elected officials on both

sides of the aisle that criminalizing cannabis users has done more harm than good, ending marijuana prohibition in Maryland has become less a question of “if” and more about “when” and “how.”

I am here today in support of the effort to legalize, tax, and regulate cannabis for adults 21 and older in Maryland, and to discuss the positive impacts this policy change will have and encourage the legislature to move forward with this important reform.

## **I. Cannabis prohibition has failed.**

One does not have to support cannabis use to recognize that prohibition has not worked. Like the “noble experiment” of alcohol prohibition before it, cannabis prohibition has failed — and it has caused tremendous amounts of suffering.

Despite the vast sums spent on hundreds of thousands of marijuana arrests made in the U.S. every year, prohibition hasn’t stopped adults or youth from accessing cannabis. Cannabis remains readily available in Maryland and across the United States. Whereas cannabis use was relatively rare when it was first essentially prohibited nationwide in 1937,<sup>1</sup> after decades of prohibition, about half of Americans — including Presidents Bill Clinton, George W. Bush, and Barack Obama — acknowledge having used it.<sup>2</sup> In Maryland, almost 16 percent of adults admit having used cannabis in the past year.<sup>3</sup>

Prohibition has also spectacularly failed our youth. Prior to any state legalizing adult-use cannabis sales, 40% of American high schoolers reported they had a peer who sold cannabis at school, compared with less than 1% who knew a peer selling alcohol in school.<sup>4</sup> This is probably because unlike licensed liquor stores, drug dealers do not check ID. Regulating cannabis moves sales into safe, licensed retail stores where the only people selling or buying cannabis are adults, not schoolchildren.

Criminalizing the production and distribution of cannabis only serves to enrich and empower the criminal organizations controlling this lucrative underground market.

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<sup>1</sup> At the dawn of prohibition, Harry Anslinger reportedly said there were 100,000 total marijuana smokers in the U.S. Today, according to the National Survey on Drug Use and Health, about 22 million Americans admit to having used cannabis in the past month. *See* [www.drugabuse.gov/publications/research-reports/marijuana/what-scope-marijuana-use-in-united-states](http://www.drugabuse.gov/publications/research-reports/marijuana/what-scope-marijuana-use-in-united-states).

<sup>2</sup> Mary Emily O’Hara, “New Poll Finds Majority of Americans Have Smoked Marijuana,” *NBC News*, April 17, 2017; Brendan Bures, “Here are 11 U.S. Presidents who smoked marijuana,” *NY Daily News*, May 16, 2017.

<sup>3</sup> National Survey on Drug Use and Health, “Table 52 – Selected Drug Use, Perceptions of Great Risk, Past Year Substance Use Disorder and Treatment, and Past Year Mental Health Measures in Maryland, by Age Group: Percentages, Annual Averages Based,” February 5, 2019. *See* <https://www.samhsa.gov/data/report/2016-2017-nsduh-state-specific-tables>

<sup>4</sup> Columbia University, National Center on Addiction and Substance Abuse Survey, 2012.

Prohibition also ensures cannabis products are untested, increasing the risk of contamination with illicit pesticides, heavy metals, dangerous molds, hazardous thickening agents, or even other drugs. Only with legalization and regulation can the government control where, when, and to whom cannabis is sold. Only with legalization and regulation can the government ensure testing and labeling.

Further, the public recognizes the harm associated with marijuana prohibition. Popular support for legalization has increased significantly over time. Nationwide, both October 2018 and October 2019 Gallup polls found that 66% support making cannabis use legal for adults, up from 60% in 2016, 48% in 2008, and 36% in 2005.<sup>5</sup> Public support is also strong here in Maryland. A February 2019 Goucher poll found that 57% of Marylanders support legalization (with only 37% opposed), up from 54% in 2016.<sup>6</sup>

## **II. Prohibition has racist roots and continues to be unequally enforced.**

While white and black Marylanders consume cannabis at similar rates, the same cannot be said of the rate at which they are arrested. Prior to decriminalization, black Marylanders were arrested or cited for marijuana possession 2.9 times more often than were white Marylanders despite similar usage rates.<sup>7</sup> And available evidence suggests that, although decriminalization helps by reducing the number of people who are criminalized, there continues to be a disparity in the remaining arrests. For example, *Baltimore Fishbowl* recently reported that even after decriminalization in 2014, Baltimore Police arrested 1,448 adults and 66 juveniles for cannabis possession during 2015, 2016, and 2017. Of those arrestees, 96% were African-American.<sup>8</sup> As a result of this disparity, African Americans are far more likely to be plagued with an arrest record and conviction for cannabis, which makes it harder to get jobs, housing, an education, professional licensing, and other opportunities.<sup>9</sup>

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<sup>5</sup> Jeffrey Jones, "U.S. Support for Legal Marijuana Steady in Past Year," Gallup, October 23, 2019. <https://news.gallup.com/poll/267698/support-legal-marijuana-steady-past-year.aspx>

<sup>6</sup> "Marylanders support raising minimum wage, legalizing recreational marijuana, and banning Styrofoam containers: Feb. 18, 2019, at: <https://htv-prod-media.s3.amazonaws.com/files/goucher-poll-feb19-part1-1550481111.pdf>

<sup>7</sup> ACLU of Maryland, *The War on Marijuana in Black and White*, available at: <https://www.aclu.org/report/report-war-marijuana-black-and-white>.

<sup>8</sup> McLeod, Friedman, & Soderberg. "Structural Racism and Cannabis: Black Baltimoreans still disproportionately arrested for weed after decriminalization". *Baltimore Fishbowl*. Dec. 28, 2018, available at: <https://baltimorefishbowl.com/stories/structural-racism-and-cannabis-black-baltimoreans-still-disproportionately-arrested-for-weed-after-decriminalization>. It should be noted that the amount decriminalized by Maryland is lower than most other states that have implemented this policy; one ounce (28.3 grams).

<sup>9</sup> Rebecca Vallas, "Should a Criminal Record Be a Life Sentence to Poverty?," *The Nation*, March 11, 2015. (Nearly nine in 10 employers and four in five landlords conduct background checks.) *See also*, the American Bar Associations' National Inventory of the Collateral Consequences of Conviction, [www.americanbar.org/groups/criminal\\_justice/niccc/](http://www.americanbar.org/groups/criminal_justice/niccc/) (cataloging over 45,000 federal and state statutes and regulations that impose collateral consequences on persons convicted of crimes.)

Unfortunately, the racially disparate impact is hardly surprising upon examination of the history of marijuana prohibition and enforcement. In 1971, President Richard Nixon launched the War on Drugs, which a top advisor later explained was motivated by Nixon's desire for a pretext enabling the government to harass and arrest black Americans and anti-Vietnam War activists.<sup>10</sup>

Unsurprisingly, legalizing cannabis has significantly reduced the number of searches and arrests for cannabis in those states among people of all races.

Data analyzed by the Stanford Open Policing Project found in the first two legalization states — Colorado and Washington — there have been dramatic decreases in traffic searches, which are disproportionately performed on cars with black or Latino drivers.<sup>11</sup> Traffic stop interactions have led to violence and even death for black Americans.<sup>12</sup> The data compiled by Stanford researchers shows searches dropped by about half in Washington and Colorado since legalization. Racial disparities have decreased, but have not been eliminated.

Meanwhile, a comprehensive report issued by the Colorado Division of Criminal Justice in October 2018 found that since legalization, the “number of marijuana arrests decreased by 56% for Whites, 39% for Hispanics, and 51% for Blacks.”<sup>13</sup> However, racial disparities remain. “The marijuana arrest rate for Blacks (233 per 100,000) was nearly double that of Whites (118 per 100,000) in 2017.”

Washington State has also seen a striking reduction in the total number of cannabis arrests and in the number of arrests of black individuals for cannabis. Before legalization, there were nine cannabis arrests per 100,000 Washington residents every year.<sup>14</sup> That number approached zero per 100,000 residents by 2015.

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<sup>10</sup> Dan Baum, “Legalize It All,” *Harper’s Magazine*, Apr. 2016. (Quoting top Nixon aide John Ehrlichman, “The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I’m saying? We knew we couldn’t make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.”)

<sup>11</sup> Phillip Smith, “States that legalized marijuana see dramatic drop in police traffic searches,” *Alternet*, April 1, 2019. (Before legalization 1.3% of black drivers were subject to traffic searches in Colorado. After legalization, the rate was under 0.2%. Among Hispanic drivers, the rate dropped from 1% to 0.1%. Among whites, the rate of searches dropped from 0.4% to 0.1%. Thus, black drivers went from being 6.5 times as likely to be searched as whites to twice as likely, and the total likelihood of black drivers being subject to a traffic search dropped eightfold.)

<sup>12</sup> Tanvi Misra, “Uncovering Disparities In Policing By Analyzing Traffic Stop Data,” *Pacific Standard*, June 7, 2018.

<sup>13</sup> “Impacts of Marijuana Legalization in Colorado: A Report Pursuant to Senate Bill 13-283,” Colorado Department of Criminal Justice, October 2018, p. 1.

<sup>14</sup> Caislin Firth, et al., “Did marijuana legalization in Washington State reduce racial disparities in adult marijuana arrests?,” *Substance Use and Misuse*, May 2019.

Unfortunately, as of 2015, Washington had seen an increase in the relative disparities, however.

While legalization has not eliminated disparities and arrests, it is important not to lose sight of the fact the total number of people — and the total number of African Americans — arrested for cannabis has plummeted in states that have legalized it. This means thousands of people no longer face the trauma of arrests or having their opportunities for housing, education, and employment derailed. It also saves many from deportation: more than 6,000 individuals are deported per year for cases where their most serious offense was cannabis possession,<sup>15</sup> including many who were legally in the country and have established deep roots.<sup>16</sup>

### **III. Legalizing cannabis improves the fairness and efficiency of the criminal justice system.**

By legalizing marijuana for adults, the state will save thousands of Marylanders from being searched, arrested, and prosecuted for marijuana offenses. Many of the people who are being prosecuted for possession of over 10 grams will not have to enter the criminal justice system and have their lives impacted by the accompanying collateral consequences. Nor will people in possession of 10 grams or less continue to face fines and stigma for choosing to consume a substance that is a safer alternative to alcohol. And, importantly, strong expungement provisions for past convictions for cannabis possession and cultivation will remove the life-altering scarlet letter such a conviction carries, and allow individuals to move on with their lives.

The unequal way in which cannabis prohibition is enforced — coupled with its nature as a victimless crime — erodes trust between police and communities at a time when such trust is sorely lacking. As Washington, D.C.'s former police chief bluntly put it: "All these [marijuana] arrests do is make people hate us."<sup>17</sup> In addition to being valuable in itself, positive police/community relationships improve public safety. A Department of Justice study found that trusting relationships with the local community was one of the most important factors in whether police were effective in solving violent crimes.<sup>18</sup>

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<sup>15</sup> "Secure Communities and ICE Deportation: A Failed Program?," TRAC Immigration, Syracuse University (finding 6,770 ICE deportations in FY 2013 where the most serious offense was marijuana possession and 6,447 in FY 2012).

<sup>16</sup> *Prado v. Barr*, No. 17-72914, (9th Cir. 2019) (ruled against a woman who had lived in the U.S. since she was six months old and became a lawful permanent resident in 1980; she had a felony marijuana charge prior to legalization in California); Matt Sintsing, "Disabled veteran's husband at risk for deportation over years old marijuana charges," Radio.com, December 13, 2018 (green card holder facing deportation for simple possession of cannabis convictions).

<sup>17</sup> McCarton Ackerman, "D.C. Police Chief Supports Marijuana Legalization," *The Fix*, March 4, 2015.

<sup>18</sup> See "Getting Away with Murder," *The Economist*, July 4, 2015.

Ending prohibition also frees up police time and resources that are currently wasted in prosecuting adults for cannabis offenses, allowing those resources to be focused on solving crimes with victims. A study published in *Police Quarterly* found that clearance rates (the percent of reported crimes resulting in arrests) increased significantly post-legalization in Washington and Colorado, while remaining basically unchanged in other states.<sup>19</sup> Burglary and motor vehicle theft clearance rates “increased dramatically” while violent crime clearance rates also increased.

#### **IV. A path to a better solution — regulation — has been forged by 10 states.**

As it became increasingly obvious prohibition was not working and was plagued by inequality, states began to choose a more sensible approach — taxing and regulating cannabis similarly to alcohol.

Colorado and Washington voters led the way in November 2012. Since then, Alaska, Oregon, California, Maine, Massachusetts, Nevada, Michigan, and Illinois followed suit, bringing the total number of states that have replaced cannabis prohibition with regulation to 10. Meanwhile, Vermont and Washington, D.C. legalized adult possession and cultivation of cannabis, but they have not yet regulated cannabis sales. (In D.C.’s case, this is due to Congress’ Harris Rider prohibiting it from spending funds to do so. In Vermont’s case, the House and Senate have approved legalizing and regulating adult-use cannabis sales — the language is expected to be reconciled in a conference committee in the coming weeks.)

As Gov. Jay Inslee and Attorney General Bob Ferguson of Washington State explained:

Our state’s efforts to regulate the sale of marijuana are succeeding. A few years ago, the illegal trafficking of marijuana lined the pockets of criminals everywhere. Now, in our state, illegal trafficking activity is being displaced by a closely regulated marijuana industry that pays hundreds of millions of dollars in taxes. This frees up significant law enforcement resources to protect our communities in other, more pressing ways.<sup>20</sup>

In Colorado, more than \$290 million in adult-use cannabis tax revenue was collected in 2019.<sup>21</sup> The state has issued over 40,500 active licenses for cannabis industry

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<sup>19</sup> “Positive policing changes after cannabis legalization: Clearance rates improve for burglaries, vehicle thefts,” *Science Daily*, July 24, 2018.

<sup>20</sup> February 15, 2017, Letter from Gov. Inslee and AG Ferguson to U.S. Attorney General Jeff Sessions, available at <https://www.documentcloud.org/documents/3474339-Gov-AG-Ltr-to-Sessions-Re-Marijuana-002.html>.

<sup>21</sup> <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data>

employees and 1,698 to business owners.<sup>22</sup> Meanwhile, Washington State brought in more than \$434 million in cannabis tax revenue in 2018.<sup>23</sup>

Cannabis tax revenue has been used to fund numerous programs improving the lives and health of the states' residents. Colorado devotes much of its cannabis tax revenue to school construction, and state education officials have used marijuana taxes to give \$6 million dollars to 71 schools since 2016 to fund anti-bullying education.<sup>24</sup> Meanwhile, in 2018, Washington used \$262 million of its cannabis tax revenue to help pay for its share of Medicaid, which insures nearly 1.8 million low-income Washington residents. It also allocated more than \$5 million in a biennium to provide beds for youth residential treatment services and address substance use disorders.<sup>25</sup>

More than 450,000 Marylanders use cannabis at least once per month.<sup>26</sup> Allowing legal businesses to meet that demand eliminates the vast majority of illicit market sales<sup>27</sup> and leads to safer outcomes for communities and consumers. In the underground market, both parties are vulnerable to armed robbery, and disputes

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<sup>22</sup> <https://www.colorado.gov/pacific/enforcement/med-resources-and-statistics> (as of March 2, 2020)

<sup>23</sup> Monthly excise tax data: <https://www.502data.com/>

Monthly sales tax data: <https://dor.wa.gov/about/statistics-reports/recreational-and-medical-marijuana-taxes>

<sup>24</sup> <https://www.marijuanamoment.net/colorado-marijuana-money-funds-cleaner-highways-and-anti-bullying-programs/?fbclid=IwAR34z9AnhWKhc3P7sX4b7hyFfZKBMZaKyXNUgI4nJjqtXRTu12cpggok9g>

<sup>25</sup> Jake Whittenberg, "Where does Washington's marijuana tax money go?," *King 5 News*, August 8, 2018.

<sup>26</sup> See "2017-2018 National Surveys on Drug Use and Health: Model-Based Estimated Totals (in Thousands); Table 3 Marijuana Use in the Past Month, by Age Group and State: Estimated Numbers (in Thousands), Annual Averages," *National Survey on Drug Use and Health*. See <https://www.samhsa.gov/data/sites/default/files/reports/rpt23259/NSDUHsaeTotals2018/NSDUHsaeTotals2018.pdf>. This is based on federal survey data, which relies on respondents admitting to something that is illegal. Thus, it is almost surely underreported.

<sup>27</sup> "Market Size Demand for Marijuana in Colorado Market 2017," Colorado Marijuana Enforcement Division, August 2018. ("Colorado's preexisting illicit marijuana market for residents and visitors has been fully absorbed into the regulated market.") However, as long as some states prohibit cannabis, that demand will fuel illicit production and sales. In addition, a variety of policy choices in states that legalize influences how swiftly and completely sales transition to a legal market. For a quicker and more complete transition, regulators should expeditiously license enough businesses of all types to meet demand. Unduly onerous regulations and excessive taxes should be avoided to ensure illicit market cannabis is not cheaper. To avoid large pockets of prohibition, states should allow delivery statewide and incentivize localities to allow sales.

cannot be solved in the courts.<sup>28</sup> In jurisdictions with prohibition, violence is sometimes employed to gain market share, further increasing the dangers.<sup>29</sup>

Replacing prohibition with legalization, taxation, and sensible regulation is also far better for workers. In the underground market, workers are vulnerable to exploitation, and they risk felony convictions and prison time.<sup>30</sup> A regulated market offers important protections to workers, from health and safety regulations to unemployment insurance and social security and all the advantages of working in a legal industry instead of the sometimes-dangerous criminal market.

Finally, prohibition guarantees cannabis won't undergo quality control testing, resulting in possible contamination by pesticides, fertilizers, molds, bacteria, or the lacing of cannabis with other drugs or additives, unnecessarily putting consumers at risk. A regulatory system can include requirements for testing to ensure quality control, including by ensuring cannabis and cannabis-infused products are accurately labeled for potency.

The recent incidences of severe lung ailments related to vaping underscores the need for effective public health regulations — regulations which are only possible in the context of legalization. As of February 18, 2020, a CDC map shows Colorado, a legalization state, having experienced no more than nine illnesses requiring hospitalization. Meanwhile in neighboring, less populous Utah — where marijuana is not legal — CDC data shows between 100 and 149 cases required hospitalization.<sup>31</sup> The far better safety profile of regulated products was underscored when CannaSafe, a California-based testing laboratory, recently tested illegal and legal vape cartridges. It found that 13 of the 15 illegal vape cartridges included vitamin E acetate<sup>32</sup> — an additive the CDC recently identified as the likely cause of the illnesses.<sup>33</sup> None of the legal products CannaSafe tested included vitamin E acetate.

## V. Conclusion

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<sup>28</sup> See “Keansburg man found guilty of murder in marijuana robbery,” *New Jersey 101.5*, October 23, 2019; Kathleen Hopkins, “Keyport pot deal murder: ‘I didn’t mean for any of this to happen’ defendant says,” *Asbury Park Press*, October 17, 2019; “NJ man, 22, joins girlfriend in prison for killing weed dealer,” *New Jersey 101.5*, April 4, 2019; “Family of police informant who was murdered, dismembered agrees to \$1M settlement,” *WJBK*, October 4, 2017.

<sup>29</sup> See Dan Werb, et al., “Effect of drug law enforcement on drug market violence: A systematic review,” *International Journal of Drug Policy*, March 2011.

<sup>30</sup> See Shoshana Walter, “In secretive marijuana industry, whispers of abuse and trafficking,” *The Center for Investigative Reporting*, September 8, 2016.

<sup>31</sup> “Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products,” Centers for Disease Control & Prevention, (accessed March 2, 2020) [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/severe-lung-disease.html#latest-outbreak-information](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html#latest-outbreak-information)

<sup>32</sup> <https://www.nbcnews.com/health/vaping/tests-show-bootleg-marijuana-vapes-tainted-hydrogen-cyanide-n1059356>

<sup>33</sup> <https://www.nytimes.com/2019/11/08/health/vaping-illness-cdc.html>



Thank you Chairman Clippinger and members of the committee for your time and attention.

If you have any questions or need additional information, I would be happy to help and can be reached at the email address or phone number below.

Sincerely,

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