

Supporting documents provided for HB 324

January 18, 2021

Documents provided by Delegate David Moon

Supporting documents include:

- 2020 NCADD Testimony in support of HB 550 (2020 introduction of this bill)
- 2020 LEAP Testimony in support of HB 550 (2020 introduction of this bill)
- 2020 Justice Policy Institute Testimony in support of HB 550 (2020 introduction of this bill)



House Judiciary Committee

February 11, 2020

House Bill 550

Support

NCADD-Maryland supports House Bill 550 to decriminalize the possession of up to one ounce of cannabis for personal use. The bill more importantly prohibits a person who possesses up to an ounce of cannabis from being charged with possession with intent to distribute (PWID).

Maryland made the policy decision in 2014 to decriminalize the possession of personal use amounts of cannabis. Unfortunately, people are still sometimes arrested and charged for PWID for the simple act of sharing their cannabis, even when under the current 10 gram limit.

The collateral damage caused by the war on drugs continues to harm people in Maryland, and disproportionately people of color. As this committee has heard repeatedly over the years, people with criminal records are too often denied employment, housing, food stamps, and scholarships, without any due consideration of the details involved in the records.

We must focus our resources on education, prevention, and health interventions when it comes to the use drugs and addictions. We urge a favorable report on HB 550.

The Maryland Affiliate of the National Council on Alcoholism and Drug Dependence (NCADD-Maryland) is a statewide organization that works to influence public and private policies on addiction, treatment, and recovery, reduce the stigma associated with the disease, and improve the understanding of addictions and the recovery process. We advocate for and with individuals and families who are affected by alcoholism and drug addiction.



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To: Luke Clippinger, Chair
Vanessa E. Atterbeary, Vice Chair, and
House Judiciary Committee

From: **Neill Franklin, on behalf of the
Law Enforcement Action Partnership (LEAP)**

Support - House Bill 550

Criminal Law – Marijuana – Possession and Possession With Intent to
Distribute

Hearing: Tuesday, February 11, 2020, 1:00 p.m.

Distinguished members of the Committee, thank you very much for the opportunity to present the views of Law Enforcement Against Prohibition (LEAP) in support of HB 550.

LEAP is a nonprofit group of police, prosecutors, judges, and other criminal justice professionals who speak from firsthand experience to endorse evidence-based public safety solutions. Our mission is to make communities safer by focusing law enforcement resources on the most serious priorities, promoting alternatives to arrest and incarceration, addressing the root causes of crime, and healing police-community relations. My colleagues and I at LEAP whole heartedly support HB 550 because it will continue to free up valuable law enforcement resources and bring Maryland up to par with 23 other states in the Union, such as Mississippi, regarding possession of marijuana amount thresholds.

Raising the possession amount threshold to one ounce in Maryland is not an issue of contention for Maryland citizens. According to a 2019 Goucher poll, fifty-seven percent of Maryland citizens believe that we should have a regulated and taxed system for adult use. Where there may be a difference in opinion is with some of my law enforcement peers regarding possession with intent to distribute, where under HB 550 possession of less than an ounce cannot solely constitute possession with intent to distribute.

I've spent 34 years in policing and most of my time as a Maryland State Trooper was spent working undercover, commanding drug task forces, or in criminal investigation. During all of my relative drug investigation training (Maryland State Police academy, advanced criminal investigation training, Drug Enforcement Administration Training, etc.) I was taught that in making a case for possession with intent to distribute drugs, to have other corroborating evidence; such as, packaging material, measuring devices, transaction notes, ledgers, etc., unless the amount was far beyond reasonable personal use amounts.

LawEnforcementActionPartnership.org

Formerly known as Law Enforcement Against Prohibition

If you are wondering how this could be a problem, charging someone with possession with intent to distribute marijuana, solely on the amount alone, permit me to explain.

I currently offer my drug enforcement expertise to the Maryland Public Defenders Office, for citizens who cannot afford to hire expert witnesses as the affluent do. Since Maryland decriminalized possession of less than 10 grams of marijuana, possession with intent to distribute charges have risen in some Maryland jurisdictions. I have been consulted by the Public Defenders Office for many cases where the amount was under 10 grams and there was no other meaningful corroborating evidence, other than the marijuana being in multiple plastic baggies, and in each case the arrestee has been African American, or Latino. Most people who sell marijuana already have their product divided into small individual packages for transactional simplicity, which saves time. So, if the customer wants more than a one, or two-gram bag, he would need to purchase multiple packs.

It is for reasons such as this that it needs to be written into the law that a person may not be charged with possession with intent to distribute marijuana based solely on the possession of less than one ounce. As long as police officers are evaluated by the numbers of criminal arrests they make, we must do all that we can to prevent enforcement that is contrary to the spirit of the law.

HB 550 is the next best move for improving Maryland marijuana policy. In summation, it will reduce the squandering of police and prosecutor resources, free up detention center space for violent offenders, keep more citizens from entering our problematic criminal justice system, save taxpayer dollars and do more for equitable enforcement of the law. It is for these reasons and more that I and the many members of LEAP ask that you give a favorable report for HB 550.

Thank you for your time,

A handwritten signature in black ink, appearing to read "Neill Franklin". The signature is written in a cursive, somewhat stylized font.

Major Neill Franklin (Ret.)

Executive Director

Formerly with the Maryland State Police and Baltimore Police Departments

*This testimony does not necessarily represent the views of these departments.



Testimony before the House Judiciary Committee

**Keith Wallington
Justice Policy Institute
Kwallington@justicepolicy.org**

HB550 – Criminal Law – Marijuana – Possession and Possession with Intent to Distribute

February 11, 2020

My name is Keith Wallington. I am a resident of Prince George’s County and a State Based Strategist with the Justice Policy Institute. Please accept my statement in support of HB550, which increases the threshold for which possession of marijuana can be considered a civil offense from 10 grams to one ounce.

HB550 is a commonsense bill that would bring Maryland in line with other states around the country on marijuana reform and, more importantly, will help mitigate the harms resulting from a Maryland justice system that has alarming racial disparities. According to the recently released, *Rethinking Approaches to Overincarceration of Black Young Adults in Maryland*, Maryland’s prison system has the highest proportion of people of color behind bars in the country. According to the report, more than 70 percent of all people in Maryland’s prisons are black, double the national average, and almost 80 percent of people serving at least 10 years are Black. These numbers are worse than Mississippi. These disparities are most pronounced for people serving the longest sentences who were sentenced as emerging adults (18- to 24 years-old).

One of the main gateways of contact with the justice system for many young black males is arrest for marijuana possession. Of all the possession arrests in Baltimore from 2014-2019, 91 percent were of African Americans. Four in 10 of those arrested were 18 to 24 years old and 92 percent were black men. These arrest numbers are in stark contrast to general population numbers in Baltimore, where only 62 percent of Baltimore residents are black and fewer than 1 in 10 residents are 18 to 24 years of age.

This is the reality for many who have been charged for possession despite decriminalization policies. Using data from the Baltimore Police Department, the Baltimore Institute for Non-Profit Journalism found that from 2015-2017, 96 percent of the 1,514 people arrested in Baltimore for possession were black, and most of the 3,200 misdemeanor marijuana charges were from predominantly black neighborhoods. At the same time, Black Americans are overrepresented in Maryland’s prisons, making up about 70 percent of the total incarcerated population, in large part due to harsh drug policies that are disproportionately enforced in communities of color. This shows that despite the positive impact that decriminalization has had on arrest rates decreasing, we have not done enough.

Decriminalization is never going to undo the racial bias that exists in the criminal justice system. The numbers show that this issue is not simply a matter of who uses more marijuana. Studies have shown that marijuana is used recreationally at similar levels across races. In 2014, the federal National Survey on Drug Use and Health found that 49 percent of white Americans reported having used marijuana at least once in their lifetime. Meanwhile, 42 percent of African Americans and 32 percent of Latinos reported the same answer. These racially disparate numbers we witness in the criminal justice system are a matter of whose consumption is policed and who faces harsher punishment in the system.

A civil offense charge of possession for personal use carries with it a citation and no more than a \$100 fine for a first-time offense. A criminal offense charge of possession for personal use carries with it up to one year in jail and/or a \$1,000 fine. However, being charged for possession with intent to distribute, as is currently allowed based solely on the possession of any quantity over 10 grams, can lead to five years of jail time and/or up to a \$15,000 fine.

Having a criminal offense charge creates a link between an individual and a criminal justice system that already disproportionately punishes people of color. The consequences are worse for those who already have involvement with the criminal justice system. The use of marijuana constitutes a technical parole violation, which means that a judge will most likely issue a no-bail arrest warrant. For an individual attempting to overcome criminal justice involvement, that can mean spending weeks or months in a detention center awaiting trial.

Being detained can then cause an individual on parole to lose their housing and employment they had prior to the warrant. If the goal of the criminal justice system is truly to rehabilitate those who have, for whatever reason, been incarcerated, then preventing those on parole from using their time to reintegrate into their communities and reconnect with employment and education opportunities does not help achieve that objective.

According to Maryland's Justice Reinvestment Coordinating Council, nearly 60 percent of prison admissions in Maryland are due to parole, probation, or mandatory release supervision failures. Most of these 'failures', however, are due to technical violations rather than a new criminal conviction. Additionally, about 58 percent of admissions are for non-violent crimes. Non-violent crimes and technical parole violations should not lead an individual trying to successfully transition from prison back into detention. That is counterproductive to the goal of rehabilitation.

Possession of marijuana is not a violent offense. For possession over 10 grams to carry such a heavy burden is a policy choice that will have impact beyond discouraging use of the marijuana. Aside from needlessly incarcerating people with technical parole violations, which provides no real public safety benefit, research has continued to demonstrate that incarceration, when compared to non-custodial sanctions, can increase recidivism by dragging an individual deeper into the system.

Furthermore, increasing the threshold to one ounce will allow us to begin to repair the damage of harsh law enforcement that has led to a disproportionate number of people of color being incarcerated for marijuana. In order to combat institutionalized racial bias, it is important that we understand how drug policies perpetuate the cycle.

Consider a situation in which a person of color is pulled over due to racial profiling. An officer may use this circumstance to look for a reason to search. This could lead to the discovery of marijuana in the glove compartment. Assuming that the driver was not under the influence while behind the wheel, there is no public danger posed by the possession of marijuana. If the driver had nine grams in their possession, they could then be charged with a civil offense and pay a fine. Not a desirable outcome, but much preferable to the alternative. However, if the driver had 11 grams, the difference between both quantities being negligible, they would then be charged with a criminal offense and face potential incarceration.

If this were a first offense, the judge might be lenient, but the reality is that once an individual has contact with the criminal justice system, successive interactions will result in increasingly punitive responses. Incarceration for this non-violent offense could cause them to lose their job and their housing.

This bill is a step in the right direction. In the first year after decriminalization, we witnessed a 60 percent decline in the number of people arrested for marijuana. Even though we continue to see people of color overwhelmingly comprise those who are arrested for marijuana possession, by increasing the threshold for a civil crime this bill will prevent reduce some of the harm for a truly non-violent crime. More importantly, the passage of this bill will establish another safeguard for individuals against criminal justice involvement. Thus, we ask for favorable consideration for this legislation.