



March 10, 2022

The Honorable William C. Smith, Jr.  
Chair, Senate Judicial Proceedings Committee  
2 East, Miller Senate Office Building  
Annapolis, MD 21401

**RE: Senate Bill 772 – Child in Need of Assistance – Neglect – Marijuana Use – Letter of Support**

Dear Chair Smith and Committee Members:

The Maryland Medical Cannabis Commission (the Commission) is submitting this letter of support for Senate Bill (SB) 772 – Child in Need of Assistance – Neglect – Marijuana Use.

SB 772 will prohibit marijuana use by a parent or guardian from impacting child custody or visitation rights unless as a result of the use of marijuana: 1) the child’s health or welfare is harmed or placed at substantial risk of harm; or 2) the child has suffered mental injury or been placed at a substantial risk of mental injury. The bill’s legal protections will extend to both medical cannabis patients and those who use cannabis for personal adult use.

Currently, there is no uniformity and consistency in how courts consider cannabis use in child custody and visitation cases. Absent clear statutory direction it is left up to the substantial discretion of the judge. Depending on the Court and judge, a parent or guardian may lose custody or visitation for cannabis use. Although Maryland law is not explicit with respect to how cannabis use may impact child custody and visitation, State statute offers broad protection for medical cannabis patients by stating that a medical cannabis patient “may not be subject to arrest, prosecution...or any civil or administrative penalty...or may not be denied any right or privilege” for the use of medical cannabis. This broad protection could reasonably be interpreted to apply to child custody and visitation rights. (See Health-General Article §13-3313(a))

There is no evidence that cannabis use itself impacts an individual’s ability to care for children. Yet unlike alcohol, tobacco, and prescribed controlled dangerous substance use – which carry significant risks and harms - the use of cannabis carries a lingering heightened stigma grounded in racial prejudice as the result of the misguided War on Drugs. Child custody and visitation rights are just one of a myriad of areas in which cannabis users have faced undue prejudice and damage. Similar

discrimination against those who use cannabis exists in employment, housing, education, and other major life areas. There are approximately 150,000 medical cannabis patients in Maryland and personal adult-use cannabis legalization is likely in the near future. Given the increased prevalence and acceptance of both medical and adult-use cannabis, courts should be expressly prohibited from considering cannabis use alone as a factor for determining parental fitness.

At least nine (9) states already provide the similar child custody and visitation protections as those afforded under SB 772. (See – Attachment – Legal Protections for Cannabis Users in Child Custody and Visitation) The Commission believes that social justice in cannabis reform should extend to the family courts by guaranteeing legal protections in child custody and visitation cases to individuals who lawfully use cannabis.

I hope this information is useful. If you would like to discuss this further, please contact me at (410) 487-8069 or [william.tilburg@maryland.gov](mailto:william.tilburg@maryland.gov).

Sincerely,

A handwritten signature in blue ink that reads "William Tilburg". The signature is written in a cursive style and is followed by a long, horizontal flourish.

William Tilburg, JD, MPH  
Executive Director  
Maryland Medical Cannabis Commission

*This position does not necessarily reflect the position of the Maryland Department of Health or the Office of the Governor.*

## Attachment

### Legal Protections for Cannabis Users in Child Custody and Visitation

State	Legal Protections
<b>California</b>	<p>Medical Marijuana Program. The status and conduct of a qualified patient who acts in accordance with the Compassionate Use Act shall not, by itself, be used to restrict or abridge custodial or parental rights to minor children in any action or proceeding under the jurisdiction of family or juvenile court.</p> <p><i>See CA HLTH &amp; S § 11362.84</i></p>
<b>Hawaii</b>	<p>No qualifying patient or primary caregiver under this part shall be denied custody of, visitation with, or parenting time with a minor, and there shall be no presumption of neglect or child endangerment, for conduct allowed under this part; provided that this subsection shall not apply if the qualifying patient's or primary caregiver's conduct created a danger to the safety of the minor, as established by a preponderance of the evidence.</p> <p><i>See Title 19 Health §329-125.5(c)</i></p>
<b>Illinois</b>	<p>Patients' authorized use of marijuana cannot disqualify a person from receiving organ transplants or other medical care and will not result in the denial of custody or parenting time unless the patient's actions created an unreasonable danger to the minor's safety.</p> <p>Discrimination prohibited. Neither the presence of cannabinoid components or metabolites in a person's bodily fluids nor possession of cannabis-related paraphernalia, nor conduct related to the use of cannabis or the participation in cannabis-related activities lawful under this Act by a custodial or noncustodial parent, grandparent, legal guardian, foster parent, or other person charged with the well-being of a child, shall form the sole or primary basis or supporting basis for any action or proceeding by a child welfare agency or in a family or juvenile court, any adverse finding, adverse evidence, or restriction of any right or privilege in a proceeding related to adoption of a child, acting as a foster parent of a child, or a person's fitness to adopt a child or act as a foster parent of a child, or serve as the basis of any adverse finding, adverse evidence, or restriction of any right of privilege in a proceeding related to guardianship, conservatorship, trusteeship, the execution of a will, or the management of an estate, unless the person's actions in relation to cannabis created an unreasonable danger to the safety of the minor or otherwise show the person to not be competent as established by clear and convincing evidence. This subsection applies only to conduct protected under this Act.</p> <p><i>See PUBLIC HEALTH – Cannabis Regulation and Tax Act, 410 ILCS 705 and 10-30.</i></p>
<b>Maine</b>	<p>Title 22: HEALTH AND WELFARE Subtitle 2: HEALTH Part 5: FOODS AND DRUGS Chapter 558-C: MAINE MEDICAL USE OF MARIJUANA ACT 4. Person may not be denied parental rights and responsibilities or contact with a minor child.</p> <p>A person may not be denied parental rights and responsibilities with respect to or contact with a minor child as a result of acting in accordance with this chapter, unless the person's conduct is contrary to the best interests of the minor child as set out in Title 19-A, Section 1653, Subsection 3.</p>

	<p>Title 19-A: DOMESTIC RELATIONS, Part 3: PARENTS AND CHILDREN, Chapter 55: RIGHTS AND RESPONSIBILITIES § 1653-A Parental rights and responsibilities.</p> <p>Individuals whose conduct is authorized by the law “may not be denied any right or privilege or be subjected to arrest, prosecution, penalty or disciplinary action.” Unless the person’s behavior is contrary to the best interests of the child, “a person may not be denied parental rights and responsibilities with respect to or contact with a minor child.”</p>
<b>New Hampshire</b>	<p>A qualifying patient’s authorized use of cannabis in accordance with this chapter shall be considered the equivalent of the authorized use of any other medication ... and shall not constitute the use of an illicit substance.” Further, “a person otherwise entitled to custody of, or visitation or parenting time with, a minor shall not be denied such a right solely for conduct allowed under this chapter, and there shall be no presumption of neglect or child endangerment.” <i>See</i> NH ST § 126-X:3</p>
<b>New Jersey</b>	<p>Cannabis use was addressed in an Appellate Division case concerning parental rights termination. In <i>New Jersey Division of Child Protection and Permanency v. D.H.</i>, a trial court upheld the removal of child from their parents based on substance use issues as well as the mother’s mental health issues. The Appellate Division held that a parent’s status as a recreational marijuana user cannot suffice as the sole primary reason to terminate a parent’s rights unless the Division can prove with case-specific evidence, that the marijuana usage endangers the child or children.</p> <p><i>See New Jersey Division of Child Protection and Permanency v. D.H.</i>, 469 N.J. Super. 107, 262 A.3<sup>rd</sup> 427 (A.D. 2021)</p>
<b>New Mexico</b>	<p>Participation in the medical cannabis program is not, in itself, grounds for “intervention, removal or placement into state custody” of a child. A person “shall not be denied custody of or visitation or parenting time with a child, and there is no presumption of neglect or child endangerment” for conduct allowed under the medical marijuana law.</p> <p><i>See</i> NM ST § 32A-3A-15</p>
<b>Massachusetts</b>	<p>Absent clear, convincing and articulable evidence that the person's actions related to marijuana have created an unreasonable danger to the safety of a minor child, neither the presence of cannabinoid components or metabolites in a person's bodily fluids nor conduct permitted under this chapter related to the possession, consumption, transfer, cultivation, manufacture or sale of marijuana, marijuana products or marijuana accessories by a person charged with the well-being of a child shall form the sole or primary basis for substantiation, service plans, removal or termination or for denial of custody, visitation or any other parental right or responsibility.</p> <p><i>See</i> MA ST 94G § 7(d)</p>
<b>Washington</b>	<p>A qualifying patient or designated provider may not have his or her parental rights or residential time with a child restricted solely due to his or her medical use of cannabis in compliance with the terms of this chapter absent written findings supported by evidence that such use has resulted in a long-term impairment that interferes with the performance of parenting functions as defined under RCW 26.09.004.</p> <p><i>See</i> WA ST 69.51A.120</p>