



**Testimony for the Senate Finance Committee
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**SB 692- Cannabis - Legalization and Reparations for the War
on Drugs**

Favorable

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The ACLU of Maryland supports SB 692, which legalizes marijuana for Marylanders who are 21 and older and allows for the possession and cultivation of marijuana, clears previous marijuana related convictions, eliminates criminal penalties for marijuana related offenses and establishes community reparations for Black and Brown communities, who have been most impacted by the failed war on drugs.

The war on marijuana has failed. The most damaging aspect of this failure is the way in which the criminalization of marijuana is used as an excuse to over-police Black, Indigenous, and People of Color. While this body seems poised to legalize marijuana, it is critical that legalization be carried out through a racial justice lens to address the onslaught of harms that have been selectively aimed at Black and Latinx communities.

The Maryland General Assembly decriminalized the possession of 10 grams or less of marijuana in 2014 – in large part because of the disparate enforcement of marijuana laws on Black people. However, decriminalization was never enough, and legalization without adequately addressing the racial inequalities of the war on marijuana will not be enough to repair the harm done to communities or reduce disparities in arrests. Despite comparable rates of use among Black and white people, Black people are still significantly more likely to be arrested for marijuana. This is true across *all* states, regardless of whether marijuana has been legalized, decriminalized, or remained illegal. National trends reveal that, on average, a Black person is 3.64 times more likely to be arrested for marijuana possession.¹

¹A Tale of Two Countries Racially Targeted Arrests in The Era of Marijuana Reform".
ACLU, 2020, https://www.aclu.org/sites/default/files/field_document/marijuanareport_03232021.pdf

In Maryland, Black people continue to be arrested overwhelmingly more than whites and at disproportionate rates. In Queen Anne's County, Black people are eight times more likely to be arrested for marijuana. In Carroll County, Cecil, and Frederick, Black people are six times more likely to be arrested for marijuana and five times more likely in Allegany County. Between 2018- 2019, 76% of Marylanders arrested for possession of more than 10 grams of marijuana were Black, despite Black people only making up 30% of the state's population.²

Any association between Black people and marijuana often frames Black people as inherently criminal or bad people. In contrast, white persons continue to use marijuana, which is recreational or medicinal. As a result of this, Black persons are unfairly targeted and criminalized by the enforcement of our marijuana laws. When it comes to reforming our drug laws, policing, which more rightly can be titled over-policing, is at the root of the injustices communities of color suffer. SB 692 seeks to offer proper redress and reparations to Black and Brown communities who have had to endure the racist enforcement of our marijuana laws and entanglement in the criminal legal system.

SB 692 raises the legal possession limit to 4 ounces and creates a presumption that possession of this amount is for personal use, not distribution

Since the decriminalization of possession of 10 grams of marijuana in 2014, the uniform crime reports show an uptick in distribution charges. Specifically—according to the 2015 Uniform Crime Report, as compared to 2014, arrests for possession of marijuana decreased by 37%, while marijuana distribution arrests increased by 5% in 2015. This trend suggests that at least some portion of persons in possession of 10 grams or less are now being charged with a distribution offense, when the offense may, in fact, be more appropriately considered simple possession.³

In other words—law enforcement has found a way around the decriminalization law. Because they can no longer prosecute persons for *possession* of small amounts of marijuana, they are instead prosecuting persons for possession *with the intent to distribute*, for even very small amounts. In order to honor the Maryland General Assembly's goal of

² Id.

³ <https://mdsp.maryland.gov/Document%20Downloads/Crime%20in%20Maryland%202015%20Uniform%20Crime%20Report.pdf>

reducing unnecessary criminalization, there must be a minimum quantity (or a floor) for distribution charges.

SB 692 expands reentry opportunities for persons who have been criminalized by the war on marijuana

SB 692 allows for certain marijuana-related convictions, such as possession with intent to distribute and possession of drug paraphernalia for marijuana, to be vacated. Vacatur goes further than expungement by reversing the actual adjudication or finding of guilt. This is the best way forward because automatic expungement is not ideal for noncitizens.

SB 692 also creates opportunities for persons to have their cases reconsidered if marijuana improperly contributed to their conviction. Reconsideration hearings are a “look-back” to give some relief to those who the war on drugs has already harmed. There are so many people currently saddled with criminal records. It is crucial that those who have already gone through the criminal legal system have an opportunity to clear their records if their convictions were marijuana-related or the charges arose from an officer detecting the odor of marijuana.

SB 692 prohibits police from using the odor of marijuana, without other legitimate cause for suspicion, as probable cause to arrest and perform a warrantless search of a person or vehicle.

Marijuana is often used an excuse for police to stop and search people, disproportionately persons of color. SB 692 specifically includes a ban on using the odor of marijuana as a justification for stops, searches, and seizures. In the marijuana DUI context, just as with alcohol, there needs to be some evidence of impairment first before an officer conducts an arrest or additional searches. That is why the odor of marijuana alone is insufficient to support that type of stop. Those searches will also be limited to areas of the car where an officer would reasonably find evidence of a DUI. Legalization must do more than just allow for the recreational use of marijuana. To be equitable, legalization must disincentivize pretextual police searches and seizures, which result in all sorts of convictions, marijuana-related or not.

The criminalization of marijuana has not proven to be an effective public safety strategy. Between 2018-2019, Prince George's County arrested nearly 3,000 people for the possession of marijuana, over 10 grams— 90% of whom were Black. Of those 3,000 cases, only 20 cases resulted in a guilty conviction.⁴ That same year, only 18% of all violent crimes in Prince George's were cleared.⁵ Meaning that police spent more time arresting people for the possession of marijuana than they did for all violent crimes.

Public safety is of the utmost importance for all our communities, but diligent law enforcement can and should solve a crime using honest and evidence-based techniques without relying on pretextual bases (like the odor of marijuana) for stopping and searching people.

SB 692 will ensure that the legal use of marijuana cannot be the basis for denying someone housing, making child custody or visitation determinations, or negatively impacting someone's parole or probation status.

Criminal penalties are only the tip of the iceberg; convictions negatively impact people in countless ways, from access to stable housing to custody rights. SB 692 begins to address some of the ripple effects of the criminalization of marijuana by ensuring that the legal use of marijuana cannot be the basis for denying someone public benefits, child custody, or negatively impacting someone's parole or probation status.

Annually, 600,000 people return to jail nationally. At least 45% of these persons are re-incarcerated for violations of their terms of parole. 1 in 4 people returns to prison for technical violations, not for committing a crime⁶. In Maryland, nearly 60 percent of those sentenced to prison in 2014 were behind bars for breaking the rules of their community supervision. Technical violations, such as failing a drug test or missing a meeting accounted for more than 70 percent of parole and mandatory supervision returns to prison and over 40 percent of probation

⁴ Requested court data of marijuana possession over 10 grams from 2018-2019 made by Delegate Mosby in 2020.

⁵ Id

⁶ Handelman, S., Theriault, M., & Crime and Justice News. (2020, March 6). Recidivism's Hidden Drivers: 'Technical Violations' of Probation or Parole. Retrieved March 9, 2020, from <https://thecrimereport.org/2020/03/05/the-hidden-driver-of-recidivism-technical-violations-of-probation-or-parole/>

revocations.⁷ As Maryland finally legalizes marijuana, its use should not be grounds for reincarcerating individuals.

Community investment

State revenue generated through the marijuana industry must be reallocated directly to communities most harmed by the war on drugs. Financial redress should not be limited to those looking to participate in the cannabis industry but rather to all those who have been negatively impacted by cannabis prohibition and enforcement.

SB 692 establishes a community restoration fund that allocates 60% of the tax revenues directly to the local jurisdictions impacted by the failed war on marijuana. The proportion of those revenues each jurisdiction gets is based on what percentage of the overall marijuana-related arrest over the last 30 years that they contributed to.

For the foregoing reasons, the ACLU of Maryland supports SB 692 and urges the committee to give this bill a favorable vote.

⁷ Maryland's 2016 Criminal Justice Reform. (2017). Retrieved 9 March 2020, from <http://goccp.maryland.gov/wp-content/uploads/justice-reinvestment-advisory-20180220-supplemental-materials.pdf>



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