



March 23, 2022

HB 1 and HB 837

Testimony from Olivia Naugle, senior policy analyst, MPP, favorable with amendments

Dear Chair Kelley and members of the Senate Finance Committee:

My name is Olivia Naugle, and I am senior policy analyst for the Marijuana Policy Project (MPP), the largest cannabis policy reform organization in the United States. MPP has been working to improve cannabis policy for 27 years; as a national organization, we have expertise in the various approaches taken by different states.

MPP has played a leading role in most of the major cannabis policy reforms since 2000, including more than a dozen medical cannabis laws and the legalization of marijuana by voter initiative in Colorado, Alaska, Maine, Massachusetts, Nevada, Michigan, and Montana. MPP's team spearheaded the campaigns that resulted in Vermont and Illinois becoming the first two states to legalize marijuana legislatively and played an important role in the recent Connecticut legalization effort.

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.

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 *how*.

We applaud House and Senate leadership for their commitment to ensure equitable legalization is achieved in Maryland. Marylanders have long supported moving forward with cannabis legalization, and there's no doubt that it is past time Maryland joined the 18 states (and D.C.) that have legalized cannabis for adults.

Here, I will discuss the positive impacts cannabis legalization will have and offer amendments to strengthen HB 1 and HB 837 as they are currently written.

I. Legalization should go into effect immediately upon voter approval.

As currently written, HB 1 and HB 837 would not legalize adult-use cannabis possession until July 2023 — eight months after voter approval. This delay would mean thousands of

Marylanders — disproportionately Black Marylanders¹ — will continue to be subjected to police interactions, citations, and arrests for cannabis for months *after* voters adopt legalization. There should not be a delay between voter approval and ending penalties and police interactions for cannabis.

New Jersey is the only other state that has taken the constitutional amendment route to legalize cannabis, and Maryland has an opportunity to learn from New Jersey's experience. New Jersey's voters approved legalization on the ballot in 2020, but that alone did not make cannabis legal. The legislature still had to come back and implement a law months later. In the three months between two-thirds of voters approving legalization and Gov. Phil Murphy signing implementing legislation, **more than 6,000 charges** for minor cannabis possession were filed. Maryland must not repeat New Jersey's mistake. When voters legalize cannabis in Maryland, cannabis needs to actually become legal.

II. Provide that the odor of cannabis is not grounds for a search

To further reduce police interactions for cannabis, it should be explicitly included in statute that the odor of cannabis is not grounds for a search.

We recommend using language like Connecticut's P.A. 21-1, § 18 to ensure cannabis is not grounds for a search, but to also allow the odor of burnt cannabis to form part of the basis for a DRE examination to determine whether a driver is impaired.

We do not recommend the language in SB 692's 1-211 (B), which creates an exception that swallows the rule, by seemingly allowing searches of areas, "(1) readily accessible to the driver or operator; or (2) reasonably likely to contain evidence relevant to the condition of the driver or operator" when an officer claims they are investigating a suspected DUI.

A DUI exception closer to Connecticut's allows officers to use the odor if it's relevant to probable cause for a sobriety test for driver *impairment* rather than to allow them to tear apart a car looking for legal cannabis.

For the DUI exception, we recommend language along the lines of:

"A law enforcement official may conduct a test for impairment based in part on the odor of burnt cannabis if such official reasonably suspects the operator of a motor vehicle of violating [DUI statutes]."

III. Increase possession and cultivation limits

We suggest legalizing personal cultivation of up to six plants, rather than two, which is more in line with other states.

¹ Black Marylanders are still twice as likely to be arrested for simple possession than white Marylanders. *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform*, American Civil Liberties Union, 2020.

We also recommend allowing personal possession of four ounces to mirror the medical law. Having consistency in the possession limits between adult-use and medical cannabis will protect patients, who may not have their card on them or have an expired card. Further, other adult-use states have possession limits greater than two ounces. In New Jersey, for example, adults can possess up to six ounces of cannabis. Allowing for a higher possession limit will further reduce arrests, citations, criminalization, and police interactions for cannabis possession. There is no limit on how many bottles of wine one can have in their cellar.

IV. Allow possession of excess cannabis one harvests from their own plants

We recommend explicitly including in the definition of “personal use amount” any cannabis that is harvested from the plants an individual legally grows for personal cultivation, as long as the excess cannabis is stored at the same location where the plants were grown. SB 833 has language that can be used. As HB 837 is currently written, if a person’s plants produce more than the 1.5 ounce limit, they would exceed their personal use amounts and be subject to a civil fine.

V. Change “or” to “and” in the possession limit (p. 8, line 25; p. 9, line 5; p. 11, line 20; p. 11, line 28; p. 42, line 7; and p. 42, line 31)

Cannabis consumers often possess and purchase flower, plants, edibles, **and** concentrates, not just one or the other. However, the limit says a person can possess 1.5 ounces, 12 grams of concentrates, products with 750 mg of THC, **or** two or fewer plants. It is not clear if a person can even possess a gram and an edible. “Or” must change to “and” to ensure a person is not subject to a citation or criminal penalty if they have edibles and flower (or both two plants and some usable cannabis, etc.).

VI. Reduce penalties for other offenses, such as low-level sales

As currently written, possession with intent to distribute (PWID) and selling cannabis carry up to three years of imprisonment. The bill should reduce penalties for low-level sales.

Most of the earlier legalization laws removed state penalties for possession of a modest amount of cannabis and regulated commercial activity but did not reduce penalties for unlicensed sales. In several cases, even low-level sales remained felonies. Now, legalization states are increasingly working to reduce the harsh penalties for low-level sales to avoid harshly penalizing individuals who are simply trying to make ends meet. At least seven states reduced penalties for some or all unregulated sales either as part of legalization or shortly thereafter. Three of those states — Connecticut, New Jersey, and New York — “decriminalized” low-level sales as part of legalization. (Connecticut and New Jersey’s laws apply to first offenses only.)²

² <https://www.mpp.org/assets/pdf/issues/legalization/Sales-Penalties-After-Legalization.pdf>

VII. Provide that parole, probation, and pre-trial release cannot be revoked for state-legal cannabis activity

The bill should provide that parole, probation, and pre-trial release cannot be revoked for state-legal cannabis activity, including testing positive for cannabis, unless there is a specific finding that the individual's use of cannabis could create a danger to the individual or other persons.

VIII. Legalize safe home production of cannabis products, effective upon voter approval

Adults should be able to safely make cannabis-infused products (such as brownies) at home. HB 837 imposes up to three years in jail for home production of cannabis products.

Conclusion

HB 1 and HB 837 are a promising start, but with these equity-driven recommendations, the legislature can deliver immediate relief to cannabis consumers and patients across the state.

Thank you, Chair Kelley and members of the committee, for your time and attention. I urge you to consider our suggested amendments and issue a favorable report on HB 1 and HB 837.

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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