Marijuana Policy Project
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March 3, 2022 **SB 692**

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

Dear Chair Kelley, Chair Guzzone, and members of the Senate Finance Committee and Senate Budget and Taxation 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 Senate leadership and Sen. Carter for their leadership on this important issue. Marylanders have long supported moving forward with cannabis legalization, and it is past time Maryland joined the 18 states (and D.C.) that have legalized cannabis for adults.

SB 692 includes many excellent provisions, including home cultivation, vacatur of past cannabis convictions, and community reinvestment. I am here today to discuss the positive impacts cannabis legalization will have and to offer amendments to strengthen SB 692 as it is currently written.

1) Allow possession of excess cannabis harvested from personal 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, if the excess cannabis is stored at the same location where the plants were grown. SB 833 has language that can be used. As SB 692 is currently written, if a person's plants produced more than the four-ounce limit, they would exceed their personal use amounts and be subject to a civil fine.

2) Create a limit specified for cannabis-infused products in personal use amounts

We recommend including a possession limit for cannabis-infused products in the definition of "personal use amount." Without a specified limit for cannabis-infused products, the weight of food ingredients mixed with cannabis may be counted toward the four-ounce limit. Individuals could be cited for possessing edibles weighing over four ounces. (For comparison, three Hershey's bars would weigh over four ounces.) SB 833's definition of "personal use amount" includes "an amount of cannabis products containing delta-9 tetrahydrocannabinol that does not exceed 1,500 milligrams."

3) Improve language to specify that the odor of cannabis is not grounds for a search

We strongly agree that the odor of cannabis should not be grounds for a search. Once cannabis is legal, we expect courts would rule that the Fourth Amendment prohibits a search based on the odor of cannabis, since cannabis would no longer be contraband, and possessing a legal substance does not create probable cause for any criminal violation.[1] Although we believe courts would rule that way, a successful motion to suppress cannot erase the harm done by wrongful stops and searches, which disproportionately target people of color. We support spelling out in statute that odor is not grounds for a search to reduce the chances of wrongful searches.

While we strongly support the goal, we are concerned that the exception included in SB 692 (p. 30, lines 19-27) is so broad that it would swallow the rule. As written, SB 692 appears to allow law enforcement to search most areas of a vehicle while *investigating* if the person is driving while impaired. This appears to allow police to tear apart a vehicle looking for a legal product, if they merely claim they are "investigating" the possibility of impaired driving. (Note: "investigating" is a far weaker standard than "probable cause" or even "reasonable suspicion.") We believe the Fourth Amendment itself would prohibit such a search post-legalization if SB 692 were silent on the matter.

We recommend using language like that in Connecticut's legalization law instead. Connecticut's law does not allow police to search a vehicle based on the odor of cannabis. Instead, it allows law enforcement to test for *impairment* of the driver if the officer reasonably suspects the driver is driving while impaired. The odor can help form the basis for that reasonable suspicion.

For example, the language could read: "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]."

4) Allow more retail licenses to be issued

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[1] *See* Meghan Matt, "In the Age of Decriminalization, is the Odor of Marijuana Alone Enough to Justify a Warrantless Search?," *Southern University Law Review*, April 20, 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3528781; "2021 State Analysis Chart: Probable Cause to Stop and Search Based on the Smell of Cannabis Alone," https://www.mpp.org/assets/pdf/issues/criminal-justice/2021.11.19 State Analysis Chart.pdf.

SB 692 provides that 47 retail licenses would be issued in 2024, with one per senatorial district. This would be less than 50% of the number of medical cannabis dispensaries, even as the number of legal consumers increases by more than five-fold (Maryland has 147,070 medical patients, while 758,000 Maryland adults admit past-year cannabis use according to SAMSHA). This would result in far fewer stores than other states. For example, Washington has a statewide cap of 556, which would be 442 in Maryland if adjusted per capita.

This too-low limit would leave many cannabis consumers without access to safe, lab-tested cannabis and is determinantal to a healthy, competitive market with reasonable pricing. Only 47 retailers in 2023 would mean far fewer opportunities for social equity applicants. It would also mean consumers would have to travel further and have fewer choices of cannabis products. This would also likely lead to more illicit market activity.

5) Allow all qualified applicants to get a micro-cultivation license

SB 692 does not specify the number of cultivation licenses, but it envisions a limited number of licenses with a competitive, scored application process. This repeats the mistakes of medical cannabis licensing.

Capping licenses results in the government picking winners and losers. SB 692 would require applicants to spend large sums on applications to throw their hats in the ring. Avoiding a cap, and instead having discrete application periods, prevents that injustice and related litigation and delays. Many states do not cap cultivators, and more still do not cap micro-cultivators. Uncapped grow licenses give everyone a fair shot to compete. SB 692 could require growers to start fairly small to prevent an oversupply and allow them to expand if they meet conditions.

6) Change "or" to "and" in the possession limit (p. 7, lines 5-16)

Cannabis consumers often possess flower/ usable cannabis, plants, ***and*** concentrates, not just one of them. However, the "personal use amount" definition allows four ounces of cannabis, 24 grams of concentrated cannabis, ***or*** six or fewer plants. It is not clear if a person can even possess an ounce of flower and plants. "Or" must change to "and."

7) Ensure that Black communities benefit from the community reinvestment fund

We strongly support having a bulk of tax revenue from legal cannabis sales reinvested into communities that have been disproportionately impacted by cannabis prohibition. We know that Black communities have borne the brunt of cannabis criminalization, and it is critical for restorative justice and equity that these communities benefit from legalization.

We'd like to flag that, as currently written, SB 692 would disperse funds from the established community reinvestment and repair fund to counties in an amount that is proportionate to their rate of cannabis arrests. As currently drafted, majority Black communities may get far less revenue than majority white communities. The counties with the highest arrest rates are less diverse than Maryland as a whole. They are Worcester (83% white alone, 13% Black alone),

Dorchester (67% white alone, 29% Black alone), and Calvert (81% white alone, 13% Black alone).[2]

Conclusion

Thank you, Sen. Carter, for your leadership on this legislation. Thank you, Chair Kelley, Chair Guzzone, and members of the committees, for your time and attention today.

I respectfully urge the committee to consider our suggested amendments and issue a favorable report of SB 692. 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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[2] *See* https://www.mpp.org/assets/pdf/issues/criminal-justice/tale_of_two_countries_racially_targeted_arrests_in_the_era_of_marijuana_reform.pdf.