

Written Testimony in Support of Senate Bill 772

Child in Need of Assistance – Neglect – Marijuana Use

Before the Judicial Proceedings Committee: March 10, 2022

Senate Bill 772 protects the parental rights of responsible cannabis users and the integrity of their family unit. Maryland is moving away from harmful punitive policies, having legalized medical cannabis and decriminalized small amounts of cannabis. This bill continues to refine this policy by recognizing that cannabis use that does not endanger a child’s physical or mental health should not qualify as neglect of a child. It also acknowledges that the harm caused by separating families is a more significant public health threat than a parent’s responsible cannabis use. Passage of SB772 would place Maryland among the increasing number of states which protect the sanctity of the family, and public health, by excluding the consideration of non-endangering cannabis use by a parent in cases of children in need.

SB772 Protects Public Health by Keeping Families Intact

Separating children from their parents is rarely warranted. The consequences of separating children from their parents are grave and lasting, negatively affecting the welfare of children for their entire lives. Family separation is a well-documented adverse childhood experience, characterized by enduring trauma.¹ Trauma in childhood contributes to a range of serious health problems over one’s life.² Separated children exhibit heightened rates of anxious behavior, distress, and symptoms of post-traumatic stress disorder.³ Both the American Academy of Pediatrics and the American Medical Association have adopted policies opposing family

¹ Mia Strange & Bret Stark, *The Ethical and Public Health Implications of Family Separation*, J. L. MED. & ETHICS (Jan 2021).

² *Id.*

³ *Id.*

separation based on a body of literature “replete with evidence of the irreparable harm and trauma to children caused by separation from their parents.”⁴

Family separation also punishes parents, subjecting parents to serious health consequences. The decision to separate children from their parents violates the fundamental legal and ethical rights of parents to participate in all the decisions relating to the wellbeing of their children. Research on mothers who have been separated from their children due to immigration policies shows significant and enduring symptoms of depression, anxiety, and stress.⁵ The separation of families for a parent’s cannabis use that does pose a risk to their children threatens deep and lasting harm to parents and children, damaging communities for generations.

SB772 Continues Maryland’s Shift Away from Harmful and Punitive Drug Policy

Maryland has decriminalized small amounts of cannabis and legalized medical cannabis as a legitimate treatment for various conditions. These two policy changes reflect the State’s broader effort to recognize that the risks posed by cannabis do not warrant the harsh and punitive treatment by past policy. SB772 is a natural progression from these policies and buttresses the effectiveness of the medical cannabis program.

Medical cannabis patients should not be treated any differently from other patients who use similarly legal and legitimate medication. If a qualified medical provider has determined the patient requires the use of medical cannabis, the patient should be allowed to take their medication without risk of losing their children. Without SB772, the threat of family separation undermines the state’s policy objectives of allowing licensed providers to recommend, and patients to use, medical cannabis. SB772 would allow parents to use state sanctioned medicine without the risk losing their children.

⁴ U.S. District Court of California, Ms. L v. ICE, Case No. 18cv0428 (2018), “Declaration of A.J. Shapiro,” available at https://www.aclu.org/sites/default/files/field_document/memorandum_iso_motion_for_preliminary_injunction_and_updated_exhibits_3_3_2018.pdf.

⁵ A. Miller et al., *Understanding the Mental Health Consequences of Family Separation for Refugees: Implications for Policy and Practice*, AM. J. OF ORTHOPSYCHIATRY (2018).

Other States Have Provided Similar Protections for Parents

Maryland would not be the first state to provide that cannabis use alone is insufficient to terminate parental rights. Nineteen states have enacted laws protecting the parental rights of responsible cannabis user-parents. For instance, Texas passed HB567 in 2021. Similar to SB772, Texas HB567 provides that child protective services officials can no longer remove a child from their family just because a parent tested positive for cannabis.

Eighteen states provide that medical or recreational cannabis use cannot be the sole basis for denying custody or visitation rights. For instance, New York law provides that no person may be denied custody, visitation, or parenting time solely for legal recreational cannabis use unless it is in the best interest of the child and the child's physical, mental, or emotional condition has been impaired or is imminent danger of becoming impaired.⁶ These laws recognize that cannabis use by itself is not a reason to separate a child from their parents or to terminate parental rights, much like SB772.

Conclusion

Maryland has legalized medical cannabis and decriminalized small amounts of cannabis, recognizing that access to cannabis is less harmful to the public's health than the punitive policies that used to govern cannabis in the state. This bill continues to refine this policy by recognizing that cannabis use that does not endanger a child's physical or mental health should not qualify as neglect of a child. The protection of families with parents that use cannabis also recognizes that the harm caused by separating families is a greater public health threat than a parent's responsible cannabis use. Passage of SB772 would place Maryland among the increasing number of states which protect the sanctity of the family, and public health, by excluding the consideration of non-endangering cannabis use by a parent in cases of children in need.

⁶ NY Canbs. Law § 127 (McKinney's 2021).