

SB0772 - Favorable

Child in Need of Assistance – Neglect – Marijuana Use

Testimony of Stephanie K. Glaberson, Esq.

Thursday, March 10, 2022

Senate Judicial Proceedings Committee

Dear Senator Smith and Members of the Committee:

I am a Maryland resident, voter, and parent. I am also a Visiting Professor and Director of the Civil Litigation Clinic at Georgetown University Law Center where I research and write on topics related to today's bill. I previously worked as an attorney with Brooklyn Defender Services' Family Defense Practice in New York, representing more than one hundred parents in child welfare proceedings, many of whom faced marijuana-related allegations. As part of my work, I have studied Maryland's Child in Need of Assistance statutes and worked on CINA matters. I submit this testimony in support of SB0772, because I believe it is necessary to reduce the number of Maryland children and families, particularly families of color, who experience unnecessary surveillance or separation due to allegations of marijuana use. **I urge you to issue a favorable report on SB0772.**

SB0772 is a racial justice issue. As the drug war drove mass incarceration and racial disparities in the criminal system, it also helped spur disproportionate family regulation and separation. Although "[c]hildren of all races are equally as likely to suffer from abuse and neglect,"¹ Black children are more than twice as likely to enter foster care, and stay in out-of-home care longer than White children. Here in Maryland, Black children make up only about 30% of the state's child population, but in 2019 accounted for more than 50% of children in foster care.² In 2019, Maryland reported that parental alcohol or drug abuse was a reason for 30% of child removals.³ States are not required to report data disaggregated by the substance involved, but based on my and my colleague's experience, marijuana allegations are a huge driver of child welfare decisions. The same unequal surveillance and policing that results in Black people being arrested for marijuana possession at three times the rate of White people (despite roughly equivalent rates of use), also draws families of color disproportionately into the child welfare system and keeps them there longer. SB0772 would work to close one avenue through which the harms of family surveillance and separation are disproportionately visited on these families.

SB0772 makes explicit what is implicit in current CINA law. The power Maryland exercises through its CINA laws can only be defended to the extent it furthers the state's interest in the welfare of its children. Absent any allegation that a parent's substance use risks impacting their child, that state interest is lacking. For this reason, I believe that Maryland law as written must already permit family interference only on a showing that parental substance use is connected to a risk of harm to the child. That the law implicitly contains this requirement, however, is not enough to safeguard the interests of Maryland families.⁴ Without a clear legislative statement like SB0772, allegations of marijuana use will continue to serve as way for the system to impose moral judgment and race and class-based prejudices on families.

SB0772 prioritizes child safety. SB0772 would ensure that Maryland's child protective system distinguishes between parents' and caregivers' thoughtful and safe marijuana use and the kind of *misuse* that may place children at risk of harm. By doing so, it will keep all children safer in at least three ways. First, by preserving resources—like DSS worker attention and drug treatment program slots—for those families that need them. Second, by avoiding unnecessary burdens on families that don't: the immense time burden posed by unnecessary mandated treatment, for example, often limits parents' ability to seek and maintain employment, pursue education, and spend necessary time with and energy on their children. And third, by avoiding unnecessary prolonged stays in foster care, which itself harms children.⁵

A clear legislative statement that marijuana use alone cannot amount to neglect is vital to working toward racial equity for Maryland's families, *and* to safeguarding the welfare of Maryland's children. I therefore urge you to **support SB0772.**

¹ US GAO, Additional HHS Assistance Needed to Help States Reduce the Proportion in Care <https://www.gao.gov/assets/gao-07-816.pdf>

² Maryland, <https://cwoutcomes.acf.hhs.gov/cwodatasite/pdf/maryland.html>

³ Parental Alcohol or Other Drug Abuse as an Identified Condition or Removal by State, 2019 <https://ncsacw.samhsa.gov/images/statistics/2-aod-removal-by-state.pdf>. Note that "[s]tates often anecdotally report that the percentage of" removals involving alcohol and drug use "is much higher in their state than indicated in the data." *Id.*

⁴ My experience from New York is illustrative. New York law has been clear for years that marijuana use cannot be the sole basis for removing a child from a parent or denying a parent visitation. Yet we continued to see these outcomes regularly.

⁵ Shanta Trivedi, *The Harm of Child Removal*, 43 NYU Rev. L. & Soc. Change 523, 541-52 (2019).