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POSITION ON PROPOSED LEGISLATION

BILL: Senate Bill 0772- Child In Need of Assistance- Neglect- Marijuana Use

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 04/4/2022

The Maryland Office of the Public Defender is in support of SB 0772 and urge a favorable report.

The Department of Social Services too often files Children In Need of Assistance petitions in which marijuana use by the parent(s) is a reason for removal. Further along the CINA process, unsupervised visitation and eventual reunification between parent and child is too often hindered by unwarranted concern over parental marijuana use. These practices are increasingly out of step with current research and societal acceptance of marijuana use. This has been recognized by decriminalization of marijuana use and recognition of the disproportionate impact punishment for this use has had on black and brown communities.

Maryland case law supports the notion that drug use of a parent, without a separate finding that the use of the drug has affected the parenting capacity of the user, is not sufficient grounds for a neglect finding. Additionally, case law also requires not only that there be a nexus between drug use and parental capacity, but also provides tacit acknowledgement from the highest court in Maryland that marijuana use on its face presents less concern than other illicit substances.

Still, marijuana use is commonly considered as evidence when determining whether a parent requires the oversight of the court, and is commonly used as the sole bases for prohibiting unsupervised visitation and reunification. That the law requires a nexus between use and harm of the child, is not enough to safeguard the interests of Maryland families. Without a clear legislative statement like SB772, allegations of marijuana use will continue to serve as a way the system imposes moral judgment and race and class-based prejudices on families.

A good example of how the Department of Social Services and the court currently uses parental marijuana use to separate children from their families is Ms. B. Ms. B. is a single

mother of six. To financially support all of her children, Ms. B would at times leave the older children to care for the younger while she would go to work. Consequently, she came to the attention of the department of social services due to a lack of appropriate supervision. As a result, Ms. B. lost custody of her children. The younger three children were placed in the custody of their father. The older children were placed in foster care. During the department's investigation, it was learned that Ms. B smoked marijuana. There were no allegations that she smoked in front of her children or that her marijuana use negatively impacted her parenting. Nevertheless, Ms. B was required to complete drug treatment. Ms. B would eventually successfully complete services except for drug treatment. Ms. B had improved her situation and was ready to receive her children. Although all three of her children were now pre-teen or teenaged, desperately wanted to return to her care and two of the three were declining in every way in foster care, Ms. B was denied reunification because she continued to test positive for marijuana even though she was in treatment. As a result, her children were forced to languish in care.

Ms. B would eventually get her children returned to her. This bill however, would have allowed Ms. B to rescue her children from months and even years of the devastating impact that continuing in foster care caused them.

Unfortunately Ms. B's case is not unique. In 2019, thirty percent of the children placed in foster care were placed due to substance use by their parent or guardian. While the state is not required to report data disaggregated by the substance involved, it is widely understood that marijuana allegations are a huge driver of child welfare decisions.

Additionally, 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. SB0772 would prevent this from happening.

There is no science or evidence to support family separation based upon adult marijuana use alone. Marijuana use alone does not predict parental deficiency. Targeting parents for marijuana use poses greater burdens on families from marginalized communities who are more likely to face scrutiny by government oversight. Diminishing parental access and removal of children based on Marijuana use alone traumatizes both the parents who are kept away from their children and the children deprived of the stability and love of a capable and protective parent.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report with amendments SB 0772.

Submitted by: Government Relations Division of the Maryland Office of the Public Defender.

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