



February 17, 2023

HB 556

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

Dear Chair Wilson, Vice Chair Crosby, and members of the House Economic Matters Committee:

My name is Olivia Naugle, and I am the 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 12 of the 21 campaigns to enact legalization laws, including the first two states to legalize cannabis through the state legislature, rather than the ballot box — Illinois and Vermont.

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.

MPP supports HB 556 with amendments

This past election, Maryland voters voted overwhelmingly in favor (67.2 percent) of Question 4 — a constitutional amendment to legalize cannabis for adults in Maryland beginning July 1, 2023. In fact, the passage of Question 4 was the highest margin of any ballot measure to legalize cannabis.

However, Question 4 did nothing to regulate sales of cannabis to adult consumers. We're grateful the General Assembly has made implementing an equitable adult-use cannabis market a goal for this legislative session. I am here today to discuss the positive impacts this policy change will have for Maryland, offer some suggestions to improve the bill as currently written, and encourage the legislature to move forward with this important reform.

Cannabis regulation is a better policy than prohibition

More than 700,000 Marylanders admit to having used cannabis in the last year. Allowing legal businesses to meet that demand eliminates the vast majority of illicit market sales and leads to safer outcomes for communities and consumers. In the illicit market, both parties are vulnerable to armed robbery, and disputes cannot be solved in the courts.

Replacing prohibition with legalization, taxation, and sensible regulation is also far better for workers. In the illicit market, workers are vulnerable to exploitation, and they risk felony convictions and prison time. A regulated market offers important protections to workers, from health and safety regulations to unemployment insurance and social security, and all the advantages of working in a legal industry instead of the sometimes-dangerous illicit market.

Finally, prohibition guarantees cannabis won't undergo quality control testing, resulting in possible contamination by pesticides, fertilizers, molds, bacteria, or the lacing of cannabis with other drugs or additives, unnecessarily putting consumers at risk. HB 556 would replace cannabis prohibition with regulation. It takes marijuana production and sales off the streets and ensures regulated, labeled, and lab-tested products while creating thousands of new jobs; new small businesses; and hundreds of millions of dollars in annual tax revenue to serve the community.

Proposed amendments to HB 556

While there are several areas of the bill that are worthy of praise, there are others that we hope are improved before passage.

Prioritizing Medical Cannabis Access and Prices During the Transition

We understand the desire for legal cannabis access for adult consumers when possession becomes legal on July 1. However, we urge that this be done in a way that ensures medical cannabis patients do not face skyrocketing prices and shortages during the transition.

HB 556 requires dispensaries to set aside certain hours for patients and caregivers and requires dispensaries to ensure they have an adequate supply for medical use. While these are important, they are not sufficient.

Demand for legal cannabis in Maryland will go up dramatically on July 1, but there will be no immediate increase in the number of growers or processors. 162,300 Marylanders are registered medical cannabis patients¹, while 4.7 times that number — 758,000 adults — admit to consuming cannabis at least once in the past year². Meanwhile, none of Maryland's border states have legal cannabis access for adults, so it will also have significant cross-border demand. We can expect the laws of supply and demand to result in higher prices.

Dispensaries' obligation to ensure an adequate supply does not appear to have an enforcement mechanism and supply is often largely out of dispensaries' hands. Even before the transition to adult-use, independent Maryland dispensaries have had times of shortages when they could not obtain an adequate supply of some products. There is no provision to ensure growers and processors avoid shifting more cannabis to their own, affiliated dispensaries, nor is there a

¹ https://mmcc.maryland.gov/Documents/2023%20PDF%20Files/Patient%20Stats/commision_stats_patients_Bi-weekly%20%28Jan23%29.pdf

² <https://www.samhsa.gov/data/sites/default/files/reports/rpt32879/NSDUHsaeTotal2019/2019NSDUHsaeTotal.pdf>

provision to avoid skyrocketing wholesale (or retail) prices that would be passed on to patients. Many patients already struggle to afford cannabis, which is not covered by insurance.

As a condition of converting to serve adults before any other licensee, HB 556 should require concrete actions from growers and processors, in addition to dispensaries, to ensure an adequate supply of medical cannabis, with strong enforcement. All licensees have a responsibility to do their part to ensure medical prices do not increase during the transition. To reduce issues, the state could also consider a temporary, lower cap on purchases from adult-use consumers and/or a delay in out-of-state residents' purchases. Maryland could also suspend adult-use sales in the event of shortages or price hikes for patients. In times of limited supply, patients need to be the priority.

Issuing Enough New Licenses for Social Equity & to Outcompete the Illicit Market

Maryland should issue a large number of social equity licenses to create a diverse and equitable industry. It is vital to their success that new dispensaries and producers have an adequate supply at competitive prices. An adequate supply, affordable prices, and easy access throughout the state are also essential to outcompeting the illicit market and thus reducing the number of felony arrests and violence related to illicit sales, and to ensuring consumers have safer, lab-tested products.

We urge the following to serve those goals:

- The number of licenses issued in round one, two, and overall should be the *minimum* — not the maximum — number of licenses the Division can issue. As drafted, the numbers are the *maximums* and there is no minimum number to be issued. (If there is a concern about oversupply, the Division could consider tiering cultivation licensing and having a reasonable statewide canopy cap that is adjusted. Many cultivators will not grow the full 300,000 square feet.)
- The market demand study should be required to solicit input from patients, consumers, independent dispensaries, and processors on prices and access.
- The bill should remove the cap on total licenses, which is imposed regardless of market conditions. They should require the Division to issue as many licenses as are needed for an adequate, affordable supply that outcompetes the illicit market statewide.

Increasing and Continuing Funding for Social Equity and Community Reinvestment

Cannabis prohibition was borne of racism more than 80 years ago and has been enforced in a racially biased manner for its long history.³ The bulk of cannabis tax revenue should be

³ A Tale of Two Countries: Racially Targeted Arrested in The Era of Marijuana Reform. *ACLU* 2020.

Dan Baum, "Legalize It All," *Harper's Magazine*, Apr. 2016. (Quoting top Nixon aide John Ehrlichman, "The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and Black people. You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes,

directed to reparative justice, hard-hit communities, and to creating an equitable, diverse industry at all levels, as most recent legislatively enacted legalization laws have done.

Under HB 556, only 31.5% of the tax revenue is redirected to community reinvestment, social equity start-up, and training. The bill also allocate \$5 million per year for businesses partnering with social equity applicants. Other than that, all funding for community reinvestment and social equity ends within 10 years. We recommend:

- Funding for community reinvestment, which currently ends in FY 2033, should not sunset.
- Funding for the Cannabis Assistance Fund, which currently ends in FY 2028, should not sunset. (The fund is used for grants to small, minority-owned, or women-owned businesses; license application assistance; training for the adult-use industry; and grants to HBCUs for cannabis-related programs and business development).
- Especially since it is the only source of equity-related funding that does not sunset, the \$5 million per year for Social Equity Partnerships should be available for social equity applicants that wish to operate *independently*, instead of being limited to partnerships between existing (mostly white) businesses and social equity licenses.
- The legislature should make additional allocations well above 31.5% of tax revenue to support communities hardest hit by prohibition and racism. They should not sunset.

Including Employment Protections

While HB 556 includes some anti-discrimination protections for testing positive for cannabis (including in organ transplants and child custody), the bill explicitly allows employers to keep firing workers for responsible cannabis use, including for metabolites that stay in one's system for 30 days. This stands in contrast to many recent legalization laws, including in New York, New Jersey, Rhode Island, and recent revisions to California's laws.

We recommend including language to prevent employers from firing workers for testing positive for THC — or at least inactive metabolites — as long as they do not work while impaired and federal law does not require otherwise. At a bare minimum, state and local government employers should not be able to fire workers for using cannabis off-hours.

Cannabis use can be detected for weeks after ingestion, meaning drug screens in no way correlate with impairment.⁴ Thus, marijuana patients and users will be subject to unfair discrimination when they are not impaired, for purely legal off-duty conduct.

break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.")

⁴ "How long can you detect marijuana (cannabis) in the body?," *Medical News Today*

Conclusion

Thank you Chair Wilson and Chair Atterbeary for your leadership on this important issue and commitment to establishing an equitable cannabis industry in Maryland. We urge the committee to consider our proposed amendments and issue a favorable report of HB 556.

Thank you for your time and attention. 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,

Olivia Naugle
Senior Policy Analyst
Marijuana Policy Project
onaugle@mpp.org
202-905-2037