

## **Testimony in Support of HB556 with Amendments**

### **Cannabis Reform**

Before the Economic Matters Committee – February 17, 2023

HB556, cross-filed as SB516, would create a regulatory framework for the future of cannabis use and industry in Maryland for citizens, businesses, and regulatory bodies, as well as address critical issues of social justice to avoid perpetuating the harms done by the war on drugs. This bill contains legal protections for parents to prevent the loss of custody or visitation rights due to recreational or medical cannabis consumption or possession.<sup>1</sup> The “parental immunities provision” would prevent denial of parental rights in child custody proceedings based solely on legal cannabis use. While this provision creates legal protections for parents engaged in divorce or custody proceedings, the protections do not extend to families under review by Child Protective Services (CPS). Under current law, CPS may consider cannabis use or possession as a *de facto* finding of neglect. In Maryland, a formal finding of neglect could lead to a child being removed from their home and placed in kinship care or the foster system. Research has shown that children who are removed from their parents’ custody have worse academic performance and have an increased risk of developing PTSD and depressive disorders.<sup>2</sup> Thus, expanding civil immunities to include an explicit provision for parents and guardians who are engaged with the child welfare system and whose responsible cannabis use does not endanger the child, would promote the public health interest of all children in the State by allowing children to remain at home with their families.

### **Separation of Families Has Long-Lasting Negative Impacts on Children**

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<sup>1</sup> HB 556 § 36-1301(B). Page 71, lines 19-22.

<sup>2</sup> Howard K, Martin A, Berlin LJ, Brooks-Gunn J. Early mother-child separation, parenting, and child well-being in Early Head Start families. *Attach Hum Dev*. 2011 Jan;13(1):5-26. doi: 10.1080/14616734.2010.488119. PMID: 21240692; PMCID: PMC3115616.

Stable family units provide young children with the foundation for long lasting mental and physical health and academic success.<sup>3</sup> Research has shown that children separated from their parents show higher rates of emotional distress than those children kept with their parents.<sup>4</sup> While this bill provides families in either divorce or custody proceeding civil protections, the bill does not currently address how the law will apply to families in other contexts, namely child welfare investigations. Under current Maryland law, CPS may use cannabis usage for a *de facto* finding of neglect for initiating removal of a child from their home. The current framework requires parents to overcome complex administrative hurdles to regain custody of their children and a positive drug test for cannabis is enough to prevent an otherwise compliant parent from being reunited with their child. Therefore, even if HB556 becomes law, parents in the child welfare context will be offered no legal protections for engaging in the same responsible and legal conduct as parents in the divorce or custody context. The result is uneven parental protection under law which may result in disproportionate removal of children from minority and low-income families thus placing them in the welfare system, thereby leading to worse physical and mental health.

### **Black Children are Disproportionately Represented Within the Maryland Foster System**

Although cannabis has been legalized, we must acknowledge its historical role in the war on drugs that led to uneven law enforcement and mass incarceration in the African American community. In Maryland, Black people are 2.1 times more likely to be arrested for cannabis possession and some Maryland counties report cannabis arrest rates that are among the highest in the country.<sup>5</sup> 50% of all drug arrests in the state are for cannabis possession, despite decriminalization in 2014. In Maryland, Black children make up only 30% of the population under 18 years of age, however, they account for over 50% of the children in foster care.<sup>6</sup> In 2019, Maryland reported that 30.7% of the children removed from their parents were removed on

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<sup>3</sup> Children First: Why Family Structure and Stability Matter for Children, AEI-Brookings Working Group on Childhood in the United States, February 28, 2022, <https://ifstudies.org/blog/children-first-why-family-structure-and-stability-matter-for-children>.

<sup>4</sup> Howard K, Martin A, Berlin LJ, Brooks-Gunn J. Early mother-child separation, parenting, and child well-being in Early Head Start families.

<sup>5</sup> A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform, ACLU, 2020, [https://www.aclu.org/sites/default/files/field\\_document/marijuanareport\\_03232021.pdf](https://www.aclu.org/sites/default/files/field_document/marijuanareport_03232021.pdf).

<sup>6</sup> Maryland, Child Welfare Outcomes, HHS, Administration for Children and Families, <https://cwoutcomes.acf.hhs.gov/cwodatasite/pdf/maryland.html>.

charges of parental drug or alcohol use.<sup>7</sup> Despite a 2017 policy directive from the Maryland Department of Human Services to not use substance use as a pretext for a CPS visit, CPS continues to use cannabis use as a reason to begin a child welfare investigation.<sup>8</sup> Adoption of this provision would begin to ameliorate the effects of the uneven enforcement of cannabis laws by granting parents statutory protections from a finding of neglect for lawful cannabis consumption.

### **Adoption of Parental Protections in the Child Welfare Context is the National Trend**

Adoption of civil protections for parents in the child welfare context would not be the first of its kind in the United States. It would be consistent with other states that have decriminalized or legalized cannabis. In New York, the Marijuana Regulation and Taxation Act states that parents and guardians cannot be found to have neglected children simply due to cannabis use, absent a separate finding of harm or risk.<sup>9</sup> In Texas, child protective authorities are no longer able to remove children from their parent's home because of their parent testing positive for cannabis.<sup>10</sup> As a matter of science, cannabis metabolites, unlike alcohol, remain detectable in the urine days after consumption.<sup>11</sup> Thus, a parent may test positive for cannabis while with their child, even if the parent is not currently intoxicated. Under Texas law, parental cannabis use by itself can no longer be the basis for termination of parental custody, unless the child welfare agency has evidence that the parent's heavy cannabis use had caused significant impairment to the child's physical or mental health or emotional development. A related bill, HB232, has been introduced that would prohibit CPS from using responsible and legal cannabis consumption to make a formal finding of neglect unless the "child's health or welfare is harmed or placed at risk."<sup>12</sup> This would be in keeping with the national trend of prioritizing family health and safety by preventing unnecessary child removal.

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<sup>7</sup> Parental Alcohol or Other Drug Abuse as an Identified Condition or Removal by State, 2019, <https://ncsacw.acf.hhs.gov/images/statistics/2-aod-removal-by-state.pdf>.

<sup>8</sup> MDDHS, Policy Directive # SSA-CW #18-06.

<sup>9</sup> As New York Legalizes Marijuana, Parent Advocates Push Child Welfare Agencies to Adapt, May 11, 2021, <https://imprintnews.org/child-welfare-2/as-new-york-legalizes-marijuana-parent-advocates-push-child-welfare-agencies-to-adapt/54235>.

<sup>10</sup> New Texas Law Makes It Harder to Remove Kids From Parental Home, The Imprint, June 8, 2021, <https://imprintnews.org/news-briefs/new-texas-law-makes-it-harder-to-remove-kids-from-parental-home/55820>

<sup>11</sup> Dahlgren MK, Sagar KA, Lambros AM, Smith RT, Gruber SA. Urinary Tetrahydrocannabinol After 4 Weeks of a Full-Spectrum, High-Cannabidiol Treatment in an Open-label Clinical Trial. *JAMA Psychiatry*. 2021;78(3):335–337. doi:10.1001/jamapsychiatry.2020.3567

<sup>12</sup> HB232, Article – Courts and Judicial Proceedings, § 3-801(s)(2)(I).

### **Conclusion**

Family separation has a long-lasting impact on children and results in trauma, worse mental and physical health, and lower academic achievement. The war on drugs disproportionately affected families of color through uneven enforcement of laws and led to incarceration and family separation. While HB556 ensures that adults who responsibly use cannabis will not face legal liability relating to their custody or child visitation rights, that same protection is not offered to guardians in the child welfare context. The addition of protections for guardians in the child welfare context would prevent unnecessary family separation and would lead to better health and more opportunity for these children.

*This testimony is submitted on behalf of the Public Health Law Clinic at the University of Maryland Carey School of Law and not by the School of Law, the University of Maryland, Baltimore, or the University of Maryland System.*