

STATEMENT OF
ERIC E. STERLING, J.D.ⁱ
SUBMITTED TO
THE MARYLAND HOUSE OF DELEGATES
ECONOMIC MATTERS COMMITTEE
HON. C.T. WILSON, CHAIR
HON. BRIAN M. CROSBY, VICE CHAIR
FEBRUARY 17, 2023

**IN SUPPORT OF
556 HB WITH AMENDMENT**

Chair Wilson, Vice Chair Crosby, honorable Delegates, I support HB 556 with amendments because adults who use, grow, process and distribute cannabis do not need to be bothered by the police, and should not be imprisoned, detained, searched or hassled “under color of law.” **The restrictions of HB 556 on home cultivation are excessive, and the economic opportunities to engage in legal cannabis commerce are inadequate.**

I know something about cannabis commerce and legalization. Governor Martin O’Malley appointed me as one of the original members of the Maryland Medical Cannabis Commission in 2013. As the Chair of the Commission’s policy committee, I was the principal author of Maryland’s medical cannabis regulations adopted in 2015.ⁱⁱ My appointment was a capstone of decades of consideration the legalization of cannabis. As early as 1982, I was one of the four co-authors of the report, “The Regulation and Taxation of Cannabis Commerce,” from the National Task Force on Cannabis Regulation. From 1979 to 1989, I was the counsel to the U.S. House of Representatives Committee on the Judiciary, Subcommittee on Crime, responsible for federal drug law enforcement, among many issues. In 1989, Senate Judiciary Committee Chair Joe Biden and I debated the legalization of drugs at Georgetown University Law Center.ⁱⁱⁱ I have never had any economic interest in nor received any compensation from any entity or person involved in the cannabis industry (with the exception of an honorarium for lecturing at Oaksterdam University in 2015).

This legislation is complex because it must meet numerous objectives, some of which are in tension with one another. However, three objectives are paramount.

1. **Ending the disproportionate enforcement** of cannabis laws and regulations against people of color with prosecutions, fines, imprisonment, forfeiture of property, and the life-long handicap of a criminal record.
2. Creating a coherent system of legal cannabis regulation that **recognizes the reality of how marijuana is grown, distributed and used.**
3. **Respecting the liberty and dignity of Marylanders.**

Sadly, HB 556 will not meet those objectives.

Having observed closely legislators, law enforcement, health officials and the general public debate cannabis policy, I have concluded that **all of us are handicapped in our thinking about cannabis policy by our long cultural denigration of cannabis users as deviants and dangerous.** Even when we know that is not true, our views have been shaped by falsehoods, clichés, stereotypes, and myths embedded in movies, television and music, as well as news reports, scientific studies and legislation. Even in a federal case decided this month, the U.S. Department of Justice was arguing that marijuana consumers were not among “the people” of the United States entitled to the protection of the Constitution’s Second Amendment, that they were “presumptively [too] risky” to be permitted to own a firearm, and that they were “unvirtuous.” Fortunately, the Federal court rejected such arguments and held the 1968 Gun Control Act prohibition against persons who use marijuana owning or receiving a firearm is unconstitutional.^{iv} The excessive restrictions that permeate HB 556 reflect those prejudices.

In particular, the home cultivation and personal possession limits are too low and will:

- a. continue unjust racial disparities in enforcement, and
 - b. place tens of thousands of Marylanders in needless jeopardy of being informed against, arrested and prosecuted.
- (1) A limit of two plants for an adult is absurdly low. As any experienced gardener knows, many plantings fail to thrive, and many states explicitly permit the cultivation of many seedlings or immature cannabis plants. Of the 19 states that now permit home cultivation, 18 states do not have a restriction this low. A majority of the legal states allow 6 plants. The secondary sources reporting these numbers are inconsistent, but it appears that of the states that permit medical patients to grow their own, all but Montana permit greater cultivation. Missouri permits 18 plants and Michigan permits a number sufficient to yield a 60-day supply.^v

HB 556 should be amended to permit at least six mature plants and another six immature plants. The current distinction in the number that can be cultivated between patients and non-patients invites investigations and prosecutions over a triviality.
- (2) The difference in permissible personal possession amounts of 1.5 ounces for adults and 4 ounces for medical patients again invites trivial prosecutions. There is a wide variety in the flavors and potencies of cannabis flower. Most adult cannabis users possess a variety of cannabis, obtained at different times and from different sources. Those of you who use and possess alcohol might consider the alcohol inventory in your home right now. Many, if not most of YOU possess a variety of liquors, a variety of wines and a variety of beers. No one expects that you will consume all of this at once. Quite probably you have owned some of those liquors or wines for many years. As proposed these quantity possession restrictions will be widely if not universally violated. **An across-the board four-ounce quantity limit is the minimum that should be adopted.**
- (3) If a person can be discharged from employment because they test positive for having used cannabis – not on the basis of being impaired – then we have not legalized cannabis. Due to the fat soluble character of some cannabinoid metabolites, those chemicals can be detected many days after cannabis is used and after any trace of impairment is gone.

Some people facing drug tests will use unreliable drugs or herbs believing that they can purge their urine of traces of cannabinoid metabolites. A law that purports to legalize cannabis, pursuant to a state Constitutional amendment(!), should **protect adults who use cannabis from being discharged due to a positive urine screen absent evidence of actual impairment.** Without such protection discriminatory employment practices will continue, based on who passes or doesn't pass a drug test. Certainly, an accident is grounds for an immediate drug test and evidence of impairment is ground for discharge, particularly in safety sensitive positions.

- (4) Most members of this committee are aware the enormous interest in experimenting with the varieties of flavors and techniques available in brewing beer, vinting wine and distilling spirits and the growth in the craft beer, craft distillery and craft winery businesses. Cannabis users are similar. There is enormous variety and a large demand among consumers to experiment with that variety. **If we respect the people of Maryland, including those who use cannabis – and those who are passionate about cannabis – then we should respect their desire to experiment.** To meet this demand the legislation **should permit the creation of a cottage industry for cannabis cultivation and distribution that is analogous to the Maryland cottage industry that exists for food production.**

Maryland, of course, strictly regulates commercial food production. But it has created pursuant to COMAR 10.15.03 a vital and vibrant cottage food industry in which a person can earn as much as \$50,000 annually without a commercial food license.^{vi} This exemption from the usual rules to protect public health exists notwithstanding the fact that annually, about 48 million Americans are sickened from foodborne pathogens, 128,000 are hospitalized and 3000 die, according to the CDC.^{vii} Cannabis has a very high safety profile. While people who ingest cannabis unwittingly or without proper labeling are sometimes hospitalized when they are alarmed by the very unpleasant sensations of a cannabis overdose, there is very rarely any lasting consequence and never a fatality. With legalization, the opportunity for more effective education and accurate product labeling can minimize the risks of overdose. The risks exist not from cannabis producers operating under the authority of a cottage industry but from out-of-state and illegal operators whose opportunities are created by excessive regulation.

If you create an unrealistic drug regulation program you will not eliminate the crime associated with the large-scale criminal market including money laundering and tax evasion. More importantly, you won't get the police out of the lives of cannabis consuming Marylanders who commit minor regulatory violators, and thus *you won't end the egregious racial disparity that has dominated marijuana enforcement for one hundred years.*

I urge a report that includes the adoption of the amendments I have suggested.

Thank you very much.

ⁱ Eric E. Sterling was Executive Director of the Criminal Justice Policy Foundation (1989-2020). He has lived in Maryland 30 years and the 18th legislative district over 25 years.

ⁱⁱ COMAR 10.62.01.01 et seq. (Effective Sept. 14, 2015, 42:18 Md. R.1176).

ⁱⁱⁱ <https://youtu.be/a5EnRh8GPpw>

^{iv} *United States v. Jared Harrison*, Case. No. CR-00328-PRW, U.S.D.C. W. D. Okla., Feb. 3, 2023; Kyle Jaeger, “Federal Court Strikes Down Gun Ban For People Who Use Marijuana, Calling Government’s Justification ‘Concerning’” MarijuanaMoment.Net, Feb. 6, 2023, <https://www.marijuanamoment.net/federal-court-strikes-down-gun-ban-for-people-who-use-marijuana-calling-governments-justification-concerning/> (includes motions for the United States and the Plaintiff).

^v Andrew Ward, “Cannabis Cultivation Laws: State-by-State Marijuana Growing Guide”, December 4, 2021, <https://potguide.com/blog/article/cannabis-cultivation-laws-state-by-state/> (accessed Feb. 15, 2023); Editorial Team, “The State-By-State Guide to Growing Cannabis at Home,” wayofleaf.com, January 9, 2023, <https://wayofleaf.com/cannabis/growing/state-by-state-guide-to-growing-marijuana> (accessed, Feb. 15, 2023); C. Hansen, H. Alas, and E. Davis, “Where Is Marijuana Legal? A Guide to Marijuana Legalization,” U.S.News.com, Jan. 20, 2023, <https://www.usnews.com/news/best-states/articles/where-is-marijuana-legal-a-guide-to-marijuana-legalization> (accessed Feb. 15, 2023).

^{vi} Maryland Department of Health, Office of Food Protection, “Maryland Cottage Food Businesses,” <https://health.maryland.gov/phpa/OEHFP/OFPCHS/Pages/Cottagefoods.aspx>, Feb. 3, 2023, (Accessed, Feb. 15, 2023)

^{vii} Centers for Disease Control and Prevention, “Estimates of Foodborne Illness in the United States,” Nov. 5, 2018, <https://www.cdc.gov/foodborneburden/2011-foodborne-estimates.html> (Accessed, Feb. 15, 2023).