

# **SB653 - Maryland Legal Aid - FAV.pdf**

Uploaded by: Erica LeMon

Position: FAV



**MARYLAND  
LEGAL AID**

*Advancing*  
**Human Rights and  
Justice for All**

March 14, 2023

The Honorable Senator William C. Smith, Jr., Chair  
Judicial Proceedings Committee  
2 East  
Miller Senate Office Building  
Annapolis, Maryland 21401

**RE: Testimony of Maryland Legal Aid in Support of Senate Bill 653 – Child in Need of Assistance – Neglect – Cannabis Use**

Dear Chairman Smith and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill 653, which targets the unnecessary investigation and separation of Maryland families based on cannabis use. Maryland Legal Aid (MLA) is Maryland's largest civil non-profit law firm, providing free legal services to indigent Maryland residents, including vulnerable young people in Child in Need of Assistance (CINA) matters. MLA submits this testimony at the request of Senator Jill P. Carter and urges the committee to issue a favorable report.

Children in, or at risk of being sent to, foster care are one of Maryland's most vulnerable populations. We know because we represent these children via our CINA practice. Too often, our clients suffer abuse at the hands of those who are charged with ensuring they are safe and cared for, and therefore we must argue that the children be removed and placed outside the home. However, we do not take those arguments or their consequences lightly. Removing children from their families based on alleged neglect must be tied to actual harm, or the substantial risk thereof. SB 653 would keep the focus on the safety and well-being of children by limiting the definition of neglect to cases where cannabis use by a parent or guardian causes the child to suffer physical or mental harm or puts them at substantial risk of the same. Without that clear causal link, marijuana use alone should never result in a child welfare investigation, much less a family separation, because that would *cause* significant harm to our state's children and their families. It would also be particularly perverse in a state where marijuana use is now legal.

Historically, people of color and families living in poverty have been overrepresented in child welfare cases<sup>1</sup> some of which have resulted in the separation of families solely due to cannabis.

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<sup>1</sup>African-American and American Indian or Alaska Native children are at greater risk than other children of being confirmed for maltreatment and placed in out-of-home care (Yi et al., 2020). Families of diverse racial and ethnic backgrounds also experience disparate treatment once they are involved with child welfare... and spend more time in foster care (U.S. Government Accountability Office, 2007a) and are less likely to reunify with their families (Lu et al., 2004), and compared with White children, they are less likely to receive services (Garcia et al., 2016). U.S. Department of Health and Human Services. HHS Action Plan to Reduce Racial and Ethnic Disparities: A Nation Free

This despite reams of data that white people and Black people, for example, use cannabis at roughly the same rates. This reflects a persistent, destructive bias and stigma against marijuana use in certain communities, resulting in certain children being torn from their parents or guardians, or remaining in foster care unnecessarily. However, there is no reliable evidence that use of cannabis, by itself, places children at risk of harm or mental injury. There is also inconsistency in determinations across the state. Some jurisdictions in Maryland continue to keep families separated when the only issue is cannabis use with no correlation to the safety and wellbeing of the child. Therefore, the bill will also bring much needed equality, consistency, and clarity to the state's family justice system.

Other states have passed or are considering legislation with the same purpose as SB 653. This even includes states that have yet to legalize recreational cannabis.<sup>2</sup> Maryland should not find itself on the flip side of this coin—legalization in theory, but persecution in fact.

SB 653 will serve to keep the focus on child safety and away from arbitrary, unnecessary, and biased findings of neglect. MLA strongly supports this bill and urges a favorable report and passage of House Bill 232.

Sincerely yours,

/s/ Erica I. LeMon

Advocacy Director for Children's Rights  
Maryland Legal Aid  
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of Disparities in Health and Health Care. Washington, D.C.: U.S. Department of Health and Human Services. April 2011. [http://minorityhealth.hhs.gov/npa/files/Plans/HHS/HHS\\_Plan\\_complete.pdf](http://minorityhealth.hhs.gov/npa/files/Plans/HHS/HHS_Plan_complete.pdf)

<sup>2</sup>Prior to codifying recreational marijuana, Arizona's medical marijuana statute provided that there was no presumption of neglect or child abuse due to marijuana use.) ARIZ. REV. STAT. ANN. § 36-2813(D) cited in <https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=4344&context=sclr>.

Marijuana was legalized in Massachusetts in 2016 and the neglect statute was also revised to coincide with the new law. MASS. GEN. LAWS ch. 94G, § 7(d) (2016). <https://www.nbcnews.com/news/us-news/massachusetts-make-history-first-legal-marijuana-shops-east-coast-set-n938136> last visited 3/14/2016.

# **JPC SB 653 Testimony.pdf**

Uploaded by: Jill Carter

Position: FAV



THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**Testimony of Senator Jill P. Carter**

**In Favor of SB653 Child in Need of Assistance –  
Neglect – Cannabis Use**

**Before the Judicial Proceedings Committee**

**on March 15, 2023**

**Chair Smith, Vice-Chair Waldstreicher, and Members of the  
Committee:**

- **As Maryland has decriminalized the use and possession of cannabis, and legalizes the recreational use of cannabis, it is essential that the laws regarding parent use of cannabis in the child welfare system align with decriminalization.**
- **In 2017, 651 children were placed in foster care because of parental drug use. Among that number were children whose parents only used marijuana. While typically not the only issue when children are brought before the court in Child in Need of Assistance (CINA) cases, marijuana is generally used as additional evidence against parents challenging their ability to care for their child.**

- **However, far too often, for many parents, cannabis can be the sole barrier to them regaining custody of their children. Even for parents who have been determined by the court to have successfully addressed issues of parenting, mental health, housing, etc., a positive toxicology for cannabis could be the sole bases for preventing reunification.**
- **It is important to separate cannabis use from allegations of abuse. The two are not synonymous. There is no science or evidence to support family separation based solely upon parental cannabis use. Like alcohol use, cannabis use alone does not predict parental deficiency. It is only when the use of alcohol and/or cannabis causes parental neglect and abuse that such use should be considered.**
- **The use of marijuana as evidence of neglect only contributes to the racial discrimination already widely perpetuated in the child welfare system. While the data is not available for Maryland, “It is understood nationally, that like so many issues involving child welfare, people are often treated differently due to their race when it comes to parents who use marijuana.”**
- **In an article published by The Imprint, it was reported that well off parents have publicly testified to the calming effects of marijuana, openly participating in groups like, “Moms for Marijuana;” while black and Latinx parents are often held to a different standard, finding themselves accused of being unfit to raise their children if they use marijuana even occasionally.**

- **States like Texas, New York and Massachusetts have already passed laws that affirmatively state that a parent may not be found to neglect their children on the sole basis of marijuana use. Maryland needs to do the same.**
- **The law should reflect that the use of cannabis, by itself, is not evidence that parents are unable or unwilling to care for their child. While case law already exist that states there must be a nexus between drug use and the risk of harm, the way parents who use marijuana are treated in the child welfare system varies across jurisdictions. Having a statute that explicitly states that cannabis use alone does not mean a parent is neglectful will better align the child welfare law with what we know to be true about cannabis use, that it alone is not a nexus to abuse or neglect.**
- **This change in the law would also serve to align child welfare with the decriminalization and social acceptance of cannabis in the state and nation at large. And will also work to reduce the racial disparities that are inherent in child welfare.**

**For these reasons, I urge a favorable report of SB653.**

**Sincerely,**



**Jill P. Carter, Esq.**

# **MOPD Written Testimony SB635.pdf**

Uploaded by: Natasha Khalfani

Position: FAV





**NATASHA M. DARTIGUE**  
PUBLIC DEFENDER

**KEITH LOTRIDGE**  
DEPUTY PUBLIC DEFENDER

**MELISSA ROTHSTEIN**  
DIRECTOR OF POLICY AND DEVELOPMENT

**ELIZABETH HILLIARD**  
ACTING DIRECTOR OF GOVERNMENT RELATIONS DIVISION

## **POSITION ON PROPOSED LEGISLATION**

**BILL: Senate Bill 635- Child In Need of Assistance- Neglect- Cannabis Use**

**FROM: Maryland Office of the Public Defender**

**POSITION: Favorable**

**DATE: 03/14/2023**

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The Maryland Office of the Public Defender is in support of SB 0635 and urge a favorable report.

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As Maryland begins the process of decriminalizing cannabis, it is essential that the laws regarding parent use of cannabis in the child welfare system align with decriminalization.

In 2019, an article in *The Appeal*, referring to the national movement to legalize cannabis, reported, “Often missing from this movement has been an effort to ensure that a parent’s use of cannabis is not used unnecessarily to separate children from their parents in child welfare prosecutions.” Without the Passage of SB635, Maryland will continue the mistakes of other states that have legalized cannabis while simultaneously criminalizing parents who legally use cannabis by interfering with their families and separating them from their children.

The Department of Social Services (DSS) 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 the 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 substances.

Still, marijuana use alone is commonly considered as evidence of neglect 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 SB635, 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 DSS and the court currently uses parental marijuana use to separate children from their families is Ms. B. Ms. B. is a single mother. Ms. B came to the DSS' attention because she left her older children home to care for the younger while she went to work. During DSS' investigation Ms. B self- reported that she occasionally smoked marijuana. While there were no allegations that she smoked in front of her children or that her marijuana use negatively impacted her parenting, Ms. B could not get her children back because of her marijuana use.

Ms. B would eventually get her children returned to her, but her children were harmed by their time in the system. Two of her children were moved to several foster homes, encountered the Juvenile Justice system and stopped attending school while in care, consistently stating they wanted to be home with their mother.

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 equivalent rates of use), also draws families of color disproportionately into the child welfare system. HB232 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 SB635.**

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

**Authored by:** Natasha Khalfani, Esq. Assistant Public Defender, (301) 580-3786,  
**Natasha.Khalfani@maryland.gov**

Maryland Office of the Public Defender, Government Relations Division, 45 Calvert St, Suite 108, Annapolis MD 21401  
*For further information please contact Elizabeth Hilliard, [Elizabeth.hilliard@maryland.gov](mailto:Elizabeth.hilliard@maryland.gov) 443-507-8414.*

**Written Testimony - SB653-Trivedi[58].pdf**

Uploaded by: Shanta Trivedi

Position: FAV

## Support SB 0653

Child in Need of Assistance – Neglect – Marijuana Use

Testimony of Shanta Trivedi, Esq.

Tuesday, March 14, 2023

Judicial Proceedings Committee

Dear Senator Smith and Members of the Committee:

I am an Assistant Professor at the University of Baltimore School of Law where I teach courses on Family Law and the Child Welfare System and write on child welfare issues, particularly as it affects low-income and minority families. I have also represented hundreds of parents who have been separated from their children or who were at risk of being separated. In addition, I serve as the Faculty Director of the Sayra and Neil Meyerhoff Center for Families, Children, and the Courts (CFCC). CFCC's mission is to create, foster, and support a national movement to integrate communities, families, and the justice system in order to improve the lives of families and the health of the community. **I urge you to support SB653.**

SB653 would clarify that marijuana use alone is insufficient for a finding of neglect. While the law, as written, already requires that any alleged neglect cause harm, experience, and data tell us that this is not how it is understood by those enforcing it. Children across the country and here in Maryland are frequently removed or prevented from reunifying with their families if their parents test positive for marijuana.<sup>1</sup> This is true even when there is no evidence that the parent used marijuana while caregiving or that it impaired their ability to safely care for their child in any way. And most often, those parents are low-income and Black.<sup>2</sup> Marijuana use can be a gateway for bias, an easy entry point to discriminate against low-income and marginalized parents. Maryland reflects a nationwide trend<sup>3</sup>: Black children are disproportionately represented in foster care<sup>4</sup> and bias permeates the child welfare system at every level.<sup>5</sup> This should come as no surprise as this is the way that criminal laws were enforced during the war on drugs that led to mass incarceration and the destruction of Black and Brown communities.

The child welfare system's goal is to protect children from harm - all harm. As the Supreme Court has stated, "the State registers no gain towards its declared goals when it separates children from the custody of fit parents. Indeed, if [the parent is] fit...the State spites its own articulated goals when it needlessly separates him from his family."<sup>6</sup> Removal from one's parent has devastating and long-term impacts on children causing trauma, anxiety, and toxic stress.<sup>7</sup> If children are later placed into foster care, they are faced with the possibility of being moved from home to home, higher likelihood of behavioral and mental health issues and worse long-term educational outcomes. They are more likely than their peers to be poor, to be unhoused, to have juvenile justice involvement, to have substance use disorders or to become parents as teenager.

SB653 makes explicit that there must be a connection between marijuana use and harm to children. Because I believe that this is a necessary step in rectifying the effects of a misguided war on drugs that has caused irreparable harm to families of color, **I urge you to support SB653.**

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<sup>1</sup> Miriam Mack & Elizabeth Tuttle Newman, Parents Threatened with Losing Children Over Cannabis Use, Sep. 9, 2019, <https://theappeal.org/parents-threatened-with-losing-kids-over-cannabis-use/>

<sup>2</sup> See Generally, Movement for Family Power, *Whatever They Do, I'm Her Comfort, I'm Her Protector: How the Foster System Has Become Ground Zero for The US Drug War*, June 2020, available at <https://www.movementforfamilypower.org/ground-zero>.

<sup>3</sup> <https://cwoutcomes.acf.hhs.gov/cwodatasite/pdf/maryland.html>

<sup>4</sup> Child Welfare Info. Gateway, U.S. Dept of Health & Human Servs., *Racial Disproportionality and Disparity in Child Welfare*, ISSUE BRIEF, Nov. 2016, at 1, 6.

<sup>5</sup> Sheila D. Ards, Samuel L. Myers Jr., Patricia Ray, Hyeon-Eui Kim, Kevin Monroe, & Irma Arteaga, *Racialized Perceptions and Child Neglect*, 34 CHILD. & YOUTH SERVS. REV. 1480 (2012) (research explores racialized perceptions of child protective service workers and finds that respondents who see a neglectful situation with a Black baby are more likely to say that the depiction meets the definition of neglect and is reportable than when the same neglect situation involves a white baby); Katherine Elliott & Anthony Urquiza, *Ethnicity, Culture, and Child Maltreatment*, 62 J. SOC. ISSUES 787, 795 (2006).

<sup>6</sup> *Stanley v. Illinois*, 405 U.S. 645, 652–53, 92 S. Ct. 1208, 1213, 31 L. Ed. 2d 551 (1972)

<sup>7</sup> Press Release, Colleen Kraft, Am. Acad. of Pediatrics, AAP Statement Opposing Separation of Children and Parents at the Border (May 8, 2018), <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/StatementOpposingSeparationofChildrenandParents.aspx> [https://perma.cc/25QX-B2ZA];

**8 - SB 653 - HGO - MMCC - LOS.pdf**

Uploaded by: State of Maryland (MD)

Position: FAV



March 15, 2023

The Honorable William C. Smith  
Chair, Judicial Proceedings Committee  
2 East, Miller Senate Office Building  
Annapolis, Maryland 21401

**RE: Senate Bill 653 – Child in Need of Assistance – Neglect –  
Cannabis Use – Letter of Support**

Dear Chairman Smith and Committee Members:

The Maryland Medical Cannabis Commission (the Commission) is submitting this letter of support for Senate Bill 653 – Child in Need of Assistance – Neglect – Cannabis Use.

Senate Bill (SB) 653 would prohibit cannabis use by a parent or guardian from impacting child custody or visitation rights unless as a result of the use of cannabis: 1) the child’s health or welfare is harmed or placed at substantial risk of harm; or 2) the child has suffered mental injury or been placed at a substantial risk of mental injury. The bill’s legal protections would extend to both medical cannabis patients and those who use cannabis for personal adult use.

Currently, there is no uniformity and consistency in how courts consider cannabis use in child custody and visitation cases. Absent clear statutory direction it is left up to the substantial discretion of the judge. Depending on the Court and judge, a parent or guardian may lose custody or visitation for cannabis use. Although Maryland law is not explicit with respect to how cannabis use may impact child custody and visitation, State statute offers broad protection for medical cannabis patients by stating that a medical cannabis patient “may not be subject to arrest, prosecution...or any civil or administrative penalty...or may not be denied any right or privilege” for the use of medical cannabis. This broad protection could reasonably be interpreted to apply to child custody and visitation rights. (*See* Health-General Article §13-3313(a))

There is no evidence that cannabis use itself impacts an individual’s ability to care for

children. Yet unlike alcohol, tobacco, and prescribed controlled dangerous substance use – which carry significant risks and harms - the use of cannabis carries a lingering heightened stigma grounded in racial prejudice as the result of the misguided War on Drugs. Child custody and visitation rights are just one of a myriad of areas in which cannabis users have faced undue prejudice and damage. Similar discrimination against those who use cannabis exists in employment, housing, education, and other major life areas. There are approximately 160,000 medical cannabis patients in Maryland and personal adult-use cannabis legalization was approved by the voters under Question 4 this past November.

MMCC - Letter of Support - SB0653

Given the increased prevalence and acceptance of both medical and adult-use cannabis, courts should be expressly prohibited from considering cannabis use alone as a factor for determining parental fitness.

At least fifteen states already provide the similar child custody and visitation protections as those afforded under SB 653 for individuals participating in the medical program, or for cannabis-use more broadly. (See – Attachment – Legal Protections for Cannabis Users in Child Custody and Visitation) The Commission believes that social justice in cannabis reform should extend to the family courts by guaranteeing legal protections in child custody and visitation cases to individuals who lawfully use cannabis.

I hope you and the committee find this information useful. If you would like to discuss this further please contact Andrew Garrison, MPA, Deputy Director, Office of Policy and Government Affairs at [andrew.garrison@maryland.gov](mailto:andrew.garrison@maryland.gov) or (443) 844-6114.

Sincerely,

A handwritten signature in blue ink that reads "Will Tilburg". The signature is written in a cursive style and is followed by a long horizontal flourish.

Will Tilburg, JD, MPH  
Executive Director  
Maryland Medical Cannabis Commission

*This position does not necessarily reflect the position of the Maryland Department of Health or the Office of the Governor.*

## Attachment

### Legal Protections for Cannabis Users in Child Custody and Visitation

State	Legal Protections
<b>Arizona</b>	<p>No person may be denied custody of or visitation or parenting time with a minor, and there is no presumption of neglect or child endangerment for conduct allowed under this chapter, unless the person's behavior creates an unreasonable danger to the safety of the minor as established by clear and convincing evidence.</p> <p><i>See ARS §36-2813</i></p>
<b>Arkansas</b>	<p>A person otherwise entitled to custody of, or visitation or parenting time with, a minor shall not be denied custody, visitation, or parenting time solely for conduct allowed under this amendment, nor shall there be:</p> <p>(1) A finding of abuse solely for conduct allowed under this amendment; or (2) A presumption of neglect or child endangerment for conduct allowed under this amendment.</p> <p><i>See Arkansas Constitution of 1874 Amendment 98, § 3. Protections for the medical use of <u>marijuana</u></i></p>
<b>California</b>	<p>Medical Marijuana Program. The status and conduct of a qualified patient who acts in accordance with the Compassionate Use Act shall not, by itself, be used to restrict or abridge custodial or parental rights to minor children in any action or proceeding under the jurisdiction of family or juvenile court.</p> <p><i>See CA HLTH &amp; S § 11362.84</i></p>
<b>Delaware</b>	<p>A person otherwise entitled to custody of or visitation or parenting time with a minor shall not be denied such a right, and there shall be no presumption of neglect or child endangerment, for conduct allowed under this chapter, unless the person's actions in relation to marijuana were such that they created an unreasonable danger to the safety of the minor as established by clear and convincing evidence.</p> <p><i>See 16 Del. Code § 4905A</i></p>
<b>Hawaii</b>	<p>No qualifying patient or primary caregiver under this part shall be denied custody of, visitation with, or parenting time with a minor, and there shall be no presumption of neglect or child endangerment, for conduct allowed under this part; provided that this subsection shall not apply if the qualifying patient's or primary caregiver's conduct created a danger to the safety of the minor, as established by a preponderance of the evidence.</p> <p><i>See Title 19 Health §329-125.5(c)</i></p>



<b>Illinois</b>	<p>Patients’ authorized use of marijuana cannot disqualify a person from receiving organ transplants or other medical care and will not result in the denial of custody or parenting time unless the patient’s actions created an unreasonable danger to the minor's safety.</p> <p>Discrimination prohibited. Neither the presence of cannabinoid components or metabolites in a person's bodily fluids nor possession of cannabis-related paraphernalia, nor conduct related to the use of cannabis or the participation in cannabis-related activities lawful under this Act by a custodial or noncustodial parent, grandparent, legal guardian, foster parent, or other person charged with the well-being of a child, shall form the sole or primary basis or supporting basis for any action or proceeding by a child welfare agency or in a family or juvenile court, any adverse finding, adverse evidence, or restriction of any right or privilege in a proceeding</p>
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MMCC - Letter of Support - SB0653

	<p>related to adoption of a child, acting as a foster parent of a child, or a person's fitness to adopt a child or act as a foster parent of a child, or serve as the basis of any adverse finding, adverse evidence, or restriction of any right of privilege in a proceeding related to guardianship, conservatorship, trusteeship, the execution of a will, or the management of an estate, unless the person's actions in relation to cannabis created an unreasonable danger to the safety of the minor or otherwise show the person to not be competent as established by clear and convincing evidence. This subsection applies only to conduct protected under this Act.</p> <p><i>See PUBLIC HEALTH – Cannabis Regulation and Tax Act, 410 ILCS 705 and 10-30.</i></p>
<b>Maine</b>	<p>Title 22: HEALTH AND WELFARE Subtitle 2: HEALTH Part 5: FOODS AND DRUGS Chapter 558-C: MAINE MEDICAL USE OF MARIJUANA ACT 4. Person may not be denied parental rights and responsibilities or contact with a minor child.</p> <p>A person may not be denied parental rights and responsibilities with respect to or contact with a minor child as a result of acting in accordance with this chapter, unless the person's conduct is contrary to the best interests of the minor child as set out in Title 19-A, Section 1653, Subsection 3.</p> <p style="padding-left: 40px;">Title 19-A: DOMESTIC RELATIONS, Part 3: PARENTS AND CHILDREN, Chapter 55: RIGHTS AND RESPONSIBILITIES § 1653-A Parental rights and responsibilities. Individuals whose conduct is authorized by the law “may not be denied any right or privilege or be subjected to arrest, prosecution, penalty or disciplinary action.” Unless the person’s behavior is contrary to the best interests of the child, “a person may not be denied parental rights and responsibilities with respect to or contact with a minor child.”</p>

<b>Massachusetts</b>	Absent clear, convincing and articulable evidence that the person's actions related to marijuana have created an unreasonable danger to the safety of a minor child, neither the presence of cannabinoid components or metabolites in a person's bodily fluids nor conduct permitted under this chapter related to the possession, consumption, transfer, cultivation, manufacture or sale of marijuana, marijuana products or marijuana accessories by a person charged with the well-being of a child shall form the sole or primary basis for substantiation, service plans, removal or termination or for denial of custody, visitation or any other parental right or responsibility. <i>See MA ST 94G §7(d)</i>
<b>Michigan</b>	A person shall not be denied custody or visitation of a minor for acting in accordance with this act, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated. <i>See MI ST § 33.2642(d)</i>
<b>Minnesota</b>	A person shall not be denied custody of a minor child or visitation rights or parenting time with a minor child solely based on the person's status as a patient enrolled in the registry program under sections 152.22 to 152.37. There shall be no presumption of neglect or child endangerment for conduct allowed under sections 152.22 to 152.37, unless the person's behavior is such that it creates an unreasonable danger to the safety of the minor as established by clear and convincing evidence. <i>See MI ST § 152.32 Subd.</i>
<b>New Hampshire</b>	NH Rev. Stat. § 126-X:2 (2019). Therapeutic Use of Cannabis Protections. –

## MMCC - Letter of Support - SB0653

	VI. A person otherwise entitled to custody of, or visitation or parenting time with, a minor shall not be denied such a right solely for conduct allowed under this chapter, and there shall be no presumption of neglect or child endangerment.
<b>New Jersey</b>	Cannabis use was addressed in an Appellate Division case concerning parental rights termination. In <i>New Jersey Division of Child Protection and Permanency v. D.H.</i> , a trial court upheld the removal of child from their parents based on substance use issues as well as the mother's mental health issues. The Appellate Division held that a parent's status as a recreational marijuana user cannot suffice as the sole primary reason to terminate a parent's rights unless the Division can prove with case-specific evidence, that the marijuana usage endangers the child or children. <i>See New Jersey Division of Child Protection and Permanency v. D.H.</i> , 469 N.J. Super. 107, 262 A.3 <sup>rd</sup> 427 (A.D. 2021)

<b>New Mexico</b>	Participation in the medical cannabis program is not, in itself, grounds for “intervention, removal or placement into state custody” of a child. A person “shall not be denied custody of or visitation or parenting time with a child, and there is no presumption of neglect or child endangerment” for conduct allowed under the medical marijuana law. <i>See NM ST § 32A-3A-15</i>
<b>Pennsylvania</b>	The fact that an individual is certified to use medical marijuana and acting in accordance with this act shall not by itself be considered by a court in a custody proceeding. In determining the best interest of a child with respect to custody, the provisions of 23 Pa.C.S. Ch. 53 (relating to child custody) shall apply. <i>See 35 PA ST § 10231.2103</i>
<b>Washington</b>	A qualifying patient or designated provider may not have his or her parental rights or residential time with a child restricted solely due to his or her medical use of cannabis in compliance with the terms of this chapter absent written findings supported by evidence that such use has resulted in a long-term impairment that interferes with the performance of parenting functions as defined under RCW 26.09.004. <i>See WA ST 69.51A.120</i>

# **ZC SB0653 Testimony.pdf**

Uploaded by: Zina Charles

Position: FAV



**NATASHA DARTIGUE**  
PUBLIC DEFENDER

**KEITH LOTRIDGE**  
DEPUTY PUBLIC DEFENDER

**MELISSA ROTHSTEIN**  
CHIEF OF EXTERNAL AFFAIRS

**ELIZABETH HILLIARD**  
ACTING DIRECTOR OF GOVERNMENT RELATIONS

## POSITION ON PROPOSED LEGISLATION

**BILL: SB0653: Child in Need of Assistance- Neglect- Cannabis Use**

**FROM: Maryland Office of the Public Defender**

**POSITION: Favorable**

**DATE: 03/13/2023**

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 0653.

I am Zina Charles, a licensed social worker with the Maryland Office of the Public Defender Parental Defensive Team. I am writing this letter in support of Senate Bill 0653: Child in Need of Assistance- Neglect- Cannabis Use.

Research has shown that cannabis is not a “gateway” drug and is accurately described as a “terminus” drug due to the majority of people who use cannabis do not go on to use other illicit drugs<sup>1</sup>. Cannabis use is known to help reduce anxiety, enhance mood, and be an alternative for pain management instead of using prescription opioids<sup>2,3</sup>.

In 2022, the people of Maryland voted and received a 67.2% favor to legalize cannabis use in the State of Maryland for adults 21 and over<sup>4</sup>. Maryland has taken the steps to decriminalize cannabis use and we need to continue by not considering cannabis use as a form of neglect.

In my position, I have seen cannabis use presented in court as a reason to find children in need of assistance (CINA) even with a medical card. I have witnessed arguments about what is a reasonable amount of cannabis use when the user is under the direction of a doctor. Parents/caregivers successfully completed court-mandated services and still are not reunited with their children due to positive urinalysis of cannabis.

Starting July 1, 2023, adults will be able to legally use and possess cannabis<sup>4</sup>. Families should not be separated due to the legal use of cannabis. Passing this bill will help to keep families together and protect parents/caregivers from facing legal consequences of neglect for the legal use of cannabis. **For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on Senate Bill 0653.**

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

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**SB0653\_DHS\_INFO.docx.pdf**

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Position: INFO

**Date:** March 15, 2023

**Bill number:** SB0653

**Committee:** Senate Judicial Proceedings Committee

**Bill Title:** **Child in Need of Assistance - Neglect - Cannabis Use**

**DHS Position:** **LETTER OF INFORMATION**

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The Maryland Department of Human Services (DHS) thanks the Committee for the opportunity to provide written information for Senate Bill 653 (SB 653).

Senate Bill 653 would amend the definition of neglect under Courts and Judicial Proceedings Section 3-801(s) to exclude the use of cannabis by a parent or other individual with care or custody or responsibility for supervising the child unless the use of cannabis results in harm or a substantial risk of harm to the child or mental injury or a substantial risk of mental injury.

Under current law, the use of cannabis or any controlled substance alone does not lead to an indicated finding of neglect. When the Department is evaluating a child neglect report that involves caregiver substance use, there is an assessment conducted in order to gather information. If the assessment determines there is no harm or substantial risk of harm to the child, the Department would not make a neglect finding or remove a child from the caregiver. If the Department received a report of a caregiver using marijuana with no impact on their ability to parent, no harm or substantial risk of harm to the child, and no other allegations, then this report would be screened out for CPS intervention.

Senate Bill 653 would alter the definition of “neglect” in the Court and Judicial Proceedings Article, but does not alter the same definition provided in Family Law Article § 5-701(s). Consequently, this could create ambiguity in the statute that does not currently exist. Further, under current law, the definitions of neglect for purposes of CINA proceedings and for purposes of conducting child abuse and neglect investigations are “defined in precisely the same terms,”<sup>1</sup> which aids the Department and courts in interpreting the meaning of “neglect” in a consistent manner.

The Department appreciates the opportunity to provide the aforementioned information to the committee for consideration during your deliberations. DHS welcomes collaboration with the committee on SB 653.

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<sup>1</sup> *Montgomery County Dep’t of Soc. Servs. v. Tamara A.*, 178 Md. App. 658, 699 (2008), *rev’d on other grounds*, 407 Md. 180 (2009)

