

Support HB 0232

Child in Need of Assistance – Neglect – Marijuana Use

Testimony of Shanta Trivedi, Esq.

Tuesday, January 31, 2023

House Judiciary Committee



Dear Del. Clippinger and Members of the House Judiciary Committee:

I am an Assistant Professor of Law at the University of Baltimore School of Law where I teach courses on Family Law and the Child Welfare System. I research and write extensively 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 separation. 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 believe that HB 0232. is a necessary step in rectifying the effects of a misguided war on drugs that has wreaked irreparable havoc on families of color. I urge you to issue a favorable report on HB0232.

HB0232 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 tells us that this is not how it is understood. When I practiced in New York, children would frequently be removed or have reunification delayed as a result of a positive test - even when there was 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 were low-income and Black. My colleagues at the Office of the Public Defender confirm that this phenomenon is not unique to New York and is pervasive here in Maryland. Here in Maryland, marijuana use or even suspicion of marijuana use is frequently used as a basis for removal or as a reason not to reunify families.

As we know, the way that criminal laws were enforced during the war on drugs led to mass incarceration and the destruction of Black and Brown communities. But simultaneously, the war on drugs permeated the child welfare system leading to unnecessary and excessive removals, despite the fact that 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."¹ Marijuana use should not be conflated with marijuana misuse and parents who use marijuana should not be automatically branded unfit.

Removal from one's parent has devastating and irreparable impacts on children causing trauma, anxiety and toxic stress. 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 teenagers.² We should all be working to ensure that children suffer these traumatic effects as infrequently as possible.

Because it would eliminate one of the many sources of unnecessary removals of children, **I urge you to support HB0232.**

¹ *Stanley v. Illinois*, 405 U.S. 645, 652–53, 92 S. Ct. 1208, 1213, 31 L. Ed. 2d 551 (1972)

² Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. Rev. Law & Soc. Change 523 (2019)