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TO: The Honorable Luke Clippinger, Chair, Judiciary Committee
FROM: Jer Welter, Assistant Attorney General
RE: HB 135 - Controlled Dangerous Substances - Volume Dealers and Drug Kingpins - Cannabis
(FAVORABLE WITH AMENDMENTS)

The Office of the Attorney General urges the Judiciary Committee to issue a favorable report, with amendments, on House Bill 135.

House Bill 135 lowers the penalties for the controlled dangerous substance offenses of volume dealer (Crim. Law § 5-612) and drug kingpin (Crim. Law § 5-613), where the controlled dangerous substance at issue is cannabis. Both offenses concern persons who participates in distribution or manufacture of specified very large amounts of controlled dangerous substances. In light of the partial legalization and further decriminalization of cannabis possession, some reduction of the penalty associated with criminal distribution of large amounts of cannabis is sensible.

However, two amendments to the bill as it concerns the volume dealer penalties are appropriate to avoid unintended consequences and to clarify the provisions of the statutes:

1. Lowering the penalty for volume dealer of cannabis to five years, as House Bill 135 does, would exacerbate a potential sentencing merger problem when a person is convicted of both volume dealer and ordinary distribution, manufacture, and possession with intent to distribute under Crim. Law § 5-608 for. Those § 5-608 offenses (even as to cannabis) carry a higher potential penalty (up to 20 years for a first offense) but at least in some circumstances are arguably lesser included offenses of volume dealer, because volume dealer has the same elements with the addition of the specified high amount. Particularly if the penalty for volume dealer of cannabis is to be lowered, it would be advisable to add an anti-merger

provision to the volume dealer statute to ensure that it allows imposition of a larger penalty for large-amount distribution. Otherwise, a prosecutor by charging the volume dealer offense would paradoxically reduce the maximum available penalty for distribution below what it otherwise would be if volume dealer were not charged. An anti-merger provision would specify that conviction under § 5-612 does not merge for sentencing with a conviction for any other offense under this title.

2. Second, this bill would partially but not fully address a lack of clarity that was created in the volume dealer statute when it was made a standalone offense rather than a penalty enhancement, as discussed in *Johnson v. State*, 467 Md. 362 (2020). Specifically, although this bill would clarify that the offense is a felony, it would not specifically address the maximum penalty for a non-cannabis volume dealer, which is not currently stated in the statute. *Johnson* holds that the maximum penalty is 20 years. But in *Johnson*, the Maryland Supreme Court nevertheless urged the legislature to “reconsider the wording of [the volume dealer statute’s] penalty provision in future legislation.” If the volume dealer statute is to be amended, it would be prudent to add an express maximum penalty for the non-cannabis offense. This could be accomplished by amending page 2 line 28 to read: “imprisonment for not less than 5 years AND NOT EXCEEDING 20 YEARS and is subject to a fine not exceeding \$100,000.”

With these amendments, the Office of the Attorney General supports HB 135.

cc: Members of the Committee