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POSITION ON PROPOSED LEGISLATION

**BILL: HB 980 Criminal Procedure—Probation, Parole, Pretrial Release Violations—
Cannabis Use**

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: March 7, 2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House Bill 980. With the legalization of cannabis, there must be a fundamental reworking of the structure of our criminal legal system. One of those structures are conditions of release, probation, and parole. This bill recognizes that now that cannabis is legal, it is no longer appropriate for its consumption to be a blanket violation of conditions of release, probation, or parole. Whereas before use of cannabis was a crime and clearly a violation for prohibited persons, now its consumption is no different than alcohol or tobacco. As such, it should no longer be the basis for individuals to lose their liberty.

The Office of the Public Defender strongly supports this bill, particularly following the amendments that will be proposed by the sponsor to address due process concerns with the initial drafting. As the bill was initially introduced, it suggested that a court/the parole commission could revoke a person's liberty at a later hearing because they find at that hearing that the use of cannabis could create a danger to the defendant or others. Fundamental to the notion of due process is that a person must be on notice that conduct could violate a condition of release at the time they are released, so that they know how to comport themselves going forward. Hypothetically under the initial drafting of the bill, a person could be released on probation, test positive for cannabis, and at a later hearing the court could find that the use of cannabis creates a danger to the defendant or others and thus revoke their probation.

This problem is easily fixed by making the following amendment to all three provisions:

“Notwithstanding any other law, a court may not find that a defendant has violated probation based on solely on the use of cannabis or a positive test for cannabis unless, **at the time the defendant is placed on probation, the court finds by clear and convincing evidence that (1) the defendant’s use of cannabis creates a risk of danger to the defendant or others, and (2) orders as a special condition of probation that the defendant may not use cannabis.**”

This amendment ensures that the individual is on notice that they cannot use cannabis or risk revocation of their release status, and also narrowly tailors any prohibition on cannabis use to instances where the court finds it would be a danger to allow the individual to use cannabis.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on HB 980.

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

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