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POSITION ON PROPOSED LEGISLATION

BILL: House Bill 232- Child In Need of Assistance- Neglect- Marijuana Use

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 01/31/2023

The Maryland Office of the Public Defender is in support of HB 0232 and urge a favorable report.

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

In 2019, an article in The Appeal referring to the movement 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 HB232, 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 HB232, 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 HB232.

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

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