



Testimony for the House Judiciary Committee

February 13, 2024

HB 441- Criminal Law - Cannabis-Related Offenses - Civil Penalties

Favorable

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The ACLU of Maryland supports HB441, which would substitute civil penalties in place of criminal penalties for certain cannabis-related offenses such as possession over the civil use limit, possession with the intent to distribute cannabis, and cultivating cannabis.

Amid a growing understanding of the harm caused to Black and Brown communities by the racist enforcement of the "war on drugs," Maryland voters have decided that the recreational use of cannabis should be legal. However, criminal penalties for marijuana-related offenses are still on the books. Under the current law, cannabis-related offenses such as possession over the civil use limit and possession with intent to distribute (PWID) are misdemeanor offenses. If these criminal penalties are not removed, cannabis will only be partially legalized. Black and Brown people will continue to be disproportionately impacted by targeted enforcement of these laws and saddled with the collateral consequences accompanying entanglement in the criminal legal system and unnecessary police interactions.

"War on Drugs" Rhetoric is Racist, and Enforcement Has Had Catastrophic Effects

The criminalization of cannabis has been an excuse to over-police Black and Brown people for decades. The catastrophic rhetoric of the dangerous "war on drugs" and the campaigns to criminalize cannabis have perpetuated the racist notion that cannabis use and possession among Black and Brown people is indicative of criminal activity. In contrast, the use of cannabis by white people is seen as recreational or medicinal. As a result, Black and brown people continue to face the brunt of the enforcement of Maryland's cannabis laws, despite decriminalization and similar rates of use among white and Black people. In Queen Anne's County, Black people are eight times more likely to be arrested for marijuana. In Carroll County, Cecil, and Frederick, Black people are six times more likely to be arrested for marijuana and five times

more likely in Allegany County.¹ Between 2018- 2019, 76% of Marylanders arrested for possessing more than 10 grams of marijuana were Black, despite Black people only making up 30% of the state's population. From 2018 to 2019, of those arrested for possession in Maryland, 75% were Black. Black people were more than three times as likely to be arrested for cannabis.²

Moreover, Black people are sentenced to incarceration more often and for more extended periods for felony and misdemeanor cannabis.³ A misdemeanor conviction hinders an individual's access to employment, stable housing, and a range of public benefits. Misdemeanor conviction records can also bar individuals from residing at certain homes and exclude individuals with low income from utility payment plans and food stamps. With higher conviction rates, Black and Brown people bear the brunt of collateral consequences stemming from misdemeanor convictions. Exclusion from the job market, stable housing, and countless other crucial services perpetuate the cycle of racialized imprisonment. Without gainful employment and stable housing, individuals are forced into livelihoods of criminality.

Furthermore, the vast majority of those currently selling marijuana are subsistence dealers selling to survive. They do not make a substantial profit and will not have access to a license to distribute marijuana lawfully. It is unfair to continue to levy any punishment against them when wealthy, mostly white Marylanders will be able to engage in the same conduct legally and for profit.

Legalization Will Not Be Enough to Reduce Racial Disparities in Maryland

Decriminalization was never enough. As seen in many states, the legalization of recreational cannabis uses without eliminating criminal penalties for other cannabis-related offenses will not be enough either. Disparate arrest rates between Black and white people exist in all states, regardless of whether cannabis has been legalized, decriminalized, or remained illegal. Disturbingly, while in states that legalized cannabis, arrest rates decreased after legalization, racial disparities sometimes worsened. For example, in Washington, D.C., despite legalizing cannabis.⁴ Therefore, eliminating the

¹ American Civil Liberties Union. (2020). A Tale of Two Countries Racially Targeted Arrests in the Era of Marijuana Reform. American Civil Liberties Union. Retrieved November 30, 2022, from <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>

² 2020 Statistics and Data Request for Possession of Marijuana over 10 Grams by Delegate Nick Mosby

³ https://msccsp.org/Files/Sentencing_Snapshot/Issue7.pdf

⁴ Elwood, K., & Harden, J. D. (2022, October 16). After Virginia legalized pot, majority of defendants are still black. The

criminal penalties for cannabis-related offenses is highly critical to undoing the harms caused by the failed war on cannabis.

For the foregoing reasons, the ACLU of Maryland urges a favorable report on HB441.

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