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POSITION ON PROPOSED LEGISLATION

BILL: HB 413 Controlled Dangerous Substances and Firearms

FROM: Maryland Office of the Public Defender

POSITION: Favorable with Amendments

DATE: January 31, 2024

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report only after amendments on House Bill 413. The Office of the Public Defender supports the portion of HB 413 dealing with provisions involving the adult sharing of cannabis and reducing the maximum penalties for crimes involving certain amounts of cannabis. The Office of the Public Defender does not support the provisions of this bill, or any other bill, that increase the classification of handgun offenses from a misdemeanor to a felony or raise carceral penalties, we respectfully request the handgun provisions be removed from the bill.

This bill allows adults to manufacture and share personal use amounts of cannabis in a private residence. This bill also limits the maximum criminal penalties for those who sell large amounts of cannabis. It removes the mandatory minimum penalty for manufacturing, distributing, dispensing, or possessing greater than 50 pounds of cannabis and reduces the current felony conviction to a misdemeanor conviction and permits a maximum penalty of 10 years. For those “drug kingpins” who organize the manufacturing, distribution, dispensing, or importing of cannabis, it reduces the penalties from a mandatory minimum sentence of 20 years and a maximum of 40 years, to a felony conviction with a maximum penalty of 20 years.

These changes acknowledge that cannabis is now part of the legal economic market in Maryland, and that accordingly cannabis is not the same as the other enumerated substances in the statute

and should not be treated in the same manner. It would be contradictory for the State to benefit from the large financial gains of the legal cannabis market while sentencing individuals for the unlicensed sale of large amounts of cannabis commensurate with cocaine, fentanyl, methamphetamine, and other illegal and dangerous substances. This bill appropriately balances holding those accountable who sell cannabis outside of the regulated market, while not over-penalizing those engaged in conduct that is now lawful.

While we support the changes in the statute relating to cannabis. The Office of the Public Defender requests the committee amend HB413 by removing all the provisions of the bill that change the classification of certain gun crimes from misdemeanors to felonies.

According to the U.S. Department of Justice, increasing the severity of penalties does not deter crime. People who commit crime are often not aware of the penalties attached to their offense. Also, when crimes are committed out of issues of necessity or insecurity, an increase in penalty does not address the underlying root cause of the crime. While there are many causes for gun possession, the most common reason that people carry guns are because they do not feel safe and want to protect themselves. Turning a misdemeanor gun offense into a felony does nothing to address the underlying issue of safety and will not prevent people from carrying guns.

Changing the classification of crimes from misdemeanors to felonies does not prevent crime and does not improve public safety.¹ Creating more felonies only increases the collateral consequences of convicted people, which results in increasing the possibility of recidivism and further diminishing public safety in the communities.

Collateral consequences are legal restrictions that disqualify people convicted of crimes from accessing certain needs and benefits available to other citizens.² Many of the collateral consequences experienced by people with felony convictions involve their very basic needs including employment, housing and public food benefits.³ Without the possibility of stable housing and income to provide for food and other necessities, people are not safe and

¹ <https://www.ojp.gov/pdffiles1/nij/247350.pdf>

² <https://niccc.nationalreentryresourcecenter.org/>

³ Other collateral consequences specific to Maryland are prohibitions of professional licensing, ineligibility for some civil legal assistance, prohibition from state retirement benefits, no voting rights and disqualification of jury to name a few.

communities are not safe. When people do not have what they need the possibility of crime dramatically increases.

Felonies are the highest level of crime. As such, people with felony convictions face increased challenges in gaining employment. Eighty-seven percent of employers conduct background checks. Most employers do not hire people with felony convictions and/ or who have served time in prison. Sixty percent of incarcerated people remain unemployed one year after their release. This inability to gain employment desperately impacts a person's quality of life and ability to establish a livelihood without committing crime.

Similarly, without employment, a person re-entering society cannot provide him or herself housing if they have no income to pay for it. At the same time, people with felony convictions are unable to access public housing and housing voucher programs. Most, if not all, government housing disqualifies applicants with felony convictions. Furthermore, families that live in public housing or have housing through a government voucher, are often not allowed to have family members with felony convictions live with them. Additionally, most landlords often do background checks and do not rent to people with criminal backgrounds and specifically felony charges. This means that a person with a felony conviction not only faces significant barriers accessing housing but is most likely unable to access affordable housing because of their conviction. They could also be prohibited from reunifying with their families if their family lives in any form of public housing.

Lastly, people with felony convictions are excluded from participating in food supplement programs in Maryland. With the prices of food on the rise, limited income and no access to food supplement programs, the options for a convicted felon to survive and meet their basic needs without reoffending are little to none.

Often people who carry guns illegally are from communities that are impoverished, underserved, over-policed and made up of citizens who have experienced high instances of trauma. Guns are often being carried as a means to safety. When gun crimes involving purchasing, possessing, distributing and manufacturing guns are made to be felonies, these reclassification only creates, maintains and perpetuates conditions that create crimes and violence. If the Maryland General Assembly is serious about public safety, instead of reclassifying gun crimes as more serious felony offenses, it will invest in reentry programs for people being released from incarceration

that will assist in accessing employment, housing and other necessities while at the same time investing in the communities that are unsafe and creating a need for guns in the first place.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report only after amending House Bill 413.

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