



Testimony for the House Judiciary Committee

January 27, 2026

HB 171 – Criminal Law – Drug Trafficking Crime – Definition

UNFAVORABLE

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The ACLU of Maryland urges an unfavorable report on HB 171, which alters the definition of a “drug trafficking crime” to require the lengthy incarceration of a person convicted of what could amount to the mere presumption of engaging or conspiring in unlawful cannabis operations while generally possessing or using a firearm, regardless of any legal right to have the firearm and despite the broad legalization of cannabis.¹

While cannabis-based imprisonment has been increasingly disfavored alongside the growing legitimacy of the legal cannabis industry, HB 171 seeks to reverse this progress by warehousing people for conduct that may be otherwise lawful for those with access to the proper paperwork. This needless incarceration is unjustly and especially levied against Black and Brown entrepreneurs, who have been historically shut out of legal cannabis commerce² and thus at greater risk of the harsh punishment imposed by HB 171 for the same conduct that may be lawful for those who can afford to operate a legal cannabis business.³ Such stark inequity would reverse recent advancements by the General Assembly toward more fair and

¹ Maryland legalized adult-use cannabis through the Cannabis Reform Act of 2022 (HB 837), following voter approval of Question 4 in the November 2022 general election.

² Data released by the Maryland Medical Cannabis Commission in the years leading up to the Cannabis Reform Act indicated that only 10 percent of investors in Maryland’s cannabis industry were people of color. See Meghan Thompson, *Data reveal lack of minority investors in Maryland cannabis industry*, Baltimore Fishbowl (May 26, 2020), <https://baltimorefishbowl.com/stories/data-reveal-lack-of-minority-investors-in-maryland-cannabis-industry/>. More recent reports by the Maryland Cannabis Administration thankfully offer hope with increasing rates of minority participation in opportunities for legal marijuana business operations. See Maryland Cannabis Administration, *2023 Annual Report – Women and Minority Participation in the Cannabis Industry* (2023), https://cannabis.maryland.gov/documents/2024_pdf_files/legislative%20reports/2023%20women_and_minority_36-801.pdf. However, as this progress continues to overcome decades of racial disparities in cannabis enforcement, it must not be set back by the onerous provisions of HB 171.

³ See generally, Maryland Cannabis Administration, *Laws, Regulations and Reports*, <https://cannabis.maryland.gov/pages/law.aspx>.

effective drug policies, and must be wholly rejected to continue protecting Marylanders from such excessive criminalization.

Increased incarceration presents as the sole goal of HB 171, which targets people with firearms suspected of unlawful cannabis distribution, cultivation, or related conspiracy by imposing a sentence of at least five years for just the first violation. This mandatory minimum doubles to 10 years for each subsequent violation. While the high cost of starting and running a legal cannabis business can derail efforts to obtain the government's stamp of approval, such lack of procedural compliance does not amount to a crime warranting an extensive prison sentence. Although HB 171 only elevates this conduct to a felony requiring mandatory imprisonment when accompanied by the broadly-defined possession, use, wear, carry, or transport of a firearm, this fails to account for (1) any legal right to have the firearm and (2) the reality that many entrepreneurs keep a firearm as a simple safety precaution when operating a cash business like cannabis production, food sales, cleaning services, etc.

As a lack of malintent is easily conceivable among many who may be subject to HB 171's draconian punishments, the ultimate outcome would be needless suffering in the same Black and Brown communities targeted by the General Assembly's efforts to remedy the disproportionate impact of the failed War on Drugs when passing legislation to broadly legalize cannabis under the Cannabis Reform Act of 2022. Following the enactment of its provisions expanding the expungement of cannabis-related criminal records and establishing a fund to redirect tax revenues to the communities devastated by failed cannabis prohibition, the General Assembly continued to advance needed reforms by passing legislation in 2023 to bar police from initiating a stop or search solely based on the alleged smell of cannabis.⁴

Even before these reforms, the Legislature engaged in work to begin alleviating unjust criminalization surrounding cannabis, including provisions enacted in 2018 under SB 101. Per the enacted amendments to this bill, possession with intent to distribute cannabis (PWID) under Md. Code Ann., Crim. Law § 5-602(2) was specifically excluded as a crime subject to the provision defining the "use of a firearm in the commission of a felony...or other crime violence" as a "crime of violence" under § 14-101(a)(14). This ultimately barred the mandatory minimum provisions for crimes of violence under § 14-101(d) from applying to the use of a firearm in concert with PWID (as specifically defined under § 5-602(2)).

However, HB 171 seeks to work around this intentional exclusion by amending the separate definition of a "drug trafficking crime" under § 5-621(a)(2) to include:

⁴ *Criminal Law and Procedure — Cannabis — Fines for Smoking in Public, Stops, and Searches*, H.B. 1071/S.B. 51, 2023 Gen. Assemb., Reg. Sess. (Md. 2023), ch. 802 (codified at Md. Code Ann., Crim. Law & Crim. Proc.).

- (1) conduct related to the cultivation and manufacturing of cannabis and cannabis products with intent to produce, sell, or dispense it (as defined under § 5-603(b)), and
- (2) the general possession of cannabis in a “sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense cannabis” as provided under § 5-602(b)(1) and not excepted by other provisions under Title 5 of Maryland’s criminal law code.

This workaround subjects these specific categories of presumed cannabis operation to the particular mandatory minimum requirements offered under § 5–621(c) when it occurs during or in relation to the firearm conduct specifically defined under § 5–621(b).⁵ This is subtle distinction between the punishment applicable to this particular conduct under HB 171, and the PWID protections enacted under SB 101, covertly undermines the General Assembly’s clear intent to progress toward less punishment for this type of conduct.

In reversing the Legislature’s positive course toward less punitive cannabis regulation, HB 171 would undermine the progress these recent reforms have achieved in the Black and Brown communities that are often disproportionately subject to undue criminal punishment similar that proposed by this bill.⁶ The cost of allowing HB 171 to proceed amounts to no less than the lives of the many Black and Brown Marylanders that have historically kept out of the state’s legal cannabis industry, as it perversely strips the freedom of people engaged in conduct that may be otherwise sanctioned for those who simply have more resources. Such intolerable inequity effectively turns back the clock, and must be rejected to maintain Maryland’s advancement toward fair drug policies that achieve genuine public safety for all.

For the foregoing reasons, the ACLU of Maryland urges an unfavorable report on HB 171.

⁵ This pertains to the use, wear, carry, or transport of a firearm, as well as the possession of a firearm under “sufficient circumstances to constitute a nexus to the drug trafficking crime.”

⁶ See, e.g., *Racial Equity Impact Note for S.B. 833, Maryland General Assembly Department of Legislative Services 1–14* (2022), <https://mgaleg.maryland.gov/Pubs/BudgetFiscal/2022RS-SB0833-REIN.pdf>