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**Testimony for the Senate Judicial Proceedings Committee
January 25, 2018**

**SB 128 Criminal Law - Possession With Intent to Distribute Marijuana -
Rebuttable Presumption**

FAVORABLE

The ACLU of Maryland urges a favorable report on SB 128, which would create a rebuttable presumption that someone in possession of one ounce or less of marijuana does not intend to distribute or dispense the marijuana.

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**Possession with the Intent to Distribute (PWID) has been the top driver of
prison sentences**

In 2015, the Justice Reinvestment Coordinating Council learned that possession with intent to distribute was the #1 crime for which persons were sentenced to prison.¹

Additionally, there appears to have been an uptick—more pronounced in some jurisdictions—in marijuana distribution arrests since the decriminalization of marijuana possession of 10g or less. According to the 2015 Uniform Crime Report, as compared to 2014, arrests for possession of marijuana decreased 37% while marijuana distribution arrests increased 5% in 2015.² This trend suggests that at least some portion of persons in possession of 10 grams or less are now being charged with a distribution offense, when the offense may in fact be more appropriately charged as possession. SB 128 is a reasonable response to this dynamic—it allows for the possibility of a conviction if there truly are indicia of distribution, while preserving the presumption that possession under the civil amount is in fact simple possession.

**SB 128 has the potential to save precious taxpayer dollars and avoid the
collateral consequences of convictions**

The rebuttable presumption proposed in SB 128 can potentially divert some distribution charges toward simple possession charges, which can save precious taxpayer dollars. The average cost of incarcerating a person in a state facility is approximately \$870 per month. Operating costs of local detention facilities

¹ Justice Reinvestment Coordinating Council, Presentation—Maryland Prison Drivers (July 29, 2015).

² Crime in Maryland, 2015 Uniform Crime Report (p. 110)

range from \$40 to \$170 per inmate. These are persons who engaged in consensual adult conduct and pose no real public safety threat

Moreover, for those who are not actually incarcerated for criminal possession of marijuana, there nonetheless remain the costs of judicial resources expended adjudicating these cases.

Finally, SB 128 has the potential to reduce the negative collateral consequences of criminal convictions, including loss of wages, employment consequences, and household instability. Therefore, SB 128 has the potential to reduce the jail population, conserve judicial resources, save taxpayer dollars, and avoid the disruption in lives caused by unnecessary entanglement with the criminal justice system.

Drug offenses disproportionately affect communities of color

Marijuana arrests—like nearly all other criminal justice indicators—disproportionately affect communities of color. Regardless of whether the county is majority White or majority Black, the racial disparity in the arrest rates is consistent.³ In 2013, Baltimore was 64% African American, but 91% of all minor marijuana arrests were of African Americans.⁴ In 2010, Montgomery County was 18% African American but 46% of all marijuana possession arrests were of African Americans.⁵

Studies consistently show that people of all races use and possess marijuana at similar rates. In spite of this fact, African Americans in Maryland are 3 times more likely than their white counterparts to be arrested for marijuana possession.

SB 128 is a reasonable remedy to the uptick in distribution arrests since the decriminalization of simple possession. For the foregoing reasons, we urge a favorable report on SB 128.

³ *Id.*

⁴ *Baltimore Mayor ‘Appalled’ at Disproportionate Marijuana Arrest rates for African Americans*, Fox45 (Feb, 21, 2014). Available at: <http://foxbaltimore.com/news/features/top-stories/stories/baltimore-mayor-appalled-at-disproportionate-marijuana-arrest-rates-african-americans-25690.shtml#.Uwn47aU7VBW>.

⁵ ACLU of Maryland, *The Maryland War on Marijuana in Black and White* (October 2013), http://www.aclu-md.org/marijuana_reform.