



**Testimony for the House Judiciary Committee
February 9, 2016**

HB 334 - Criminal Law – Marijuana Consumption in Public Place - Prohibition

OPPOSE

The ACLU of Maryland opposes HB 334, which would make it a crime to smoke or consume marijuana in a public place or a vehicle. We oppose this bill for many reasons.

First, HB 334 is a step backwards. The General Assembly passed SB 517 last session and overrode the Governor's veto this session. SB 517 made smoking marijuana in public a civil fine. To now change that penalty to a criminal fine makes a mockery of the override and all those who argued towards keeping a civil fine.

Second, making smoking in public a crime will undo the step that the General Assembly took towards addressing racially biased policing. In 2014, the General Assembly decriminalized possession of a minor amount of marijuana. It did so in large measure due to the disparate way the possession law was enforced. Despite comparable rates of use, Black Marylanders were arrested disproportionately to White Marylanders in every county in the state.¹ Making it a crime to smoke marijuana in public will enable the same racially biased policing to occur.

Black people being accused of smoking marijuana when they are, in fact, smoking a cigarette is not unheard of. For example, Alberto Willmore was a public school teacher, accused of and arrested for smoking marijuana when he was smoking a cigarette. He was a beloved teacher but could no longer teach due to his arrest. That arrest devastated his life.² As Maryland moves forward with the Justice Reinvestment Coordinating Council reviewing our bloated criminal justice system, and the Legislative policing workgroup trying to amend the abyss between police and communities of color, it simply makes no sense to go backwards and re-criminalize people – mostly of color.

Third, it is unclear what problem HB 334 seeks to solve. Of the four states that have full tax and regulate structures, three have civil fines for smoking in public.³ Of the 10 states other than Maryland that have pure decriminalization statutes, only 2 make smoking in public a crime.⁴ If there were a problem with people smoking marijuana in public, there would be widespread criticism of those statutes and those states would have moved to criminalizing smoking in public.

¹ http://www.aclu-md.org/marijuana_reform

² http://www.huffingtonpost.com/2013/12/09/alberto-willmore_n_4412610.html

³ Alaska Statutes, 17.38.040; Oregon Initiative 91, Section 54; Washington Statutes, RCW § 69.50.445.

⁴ New York Pen. Code §221.10; Delaware Code, Title 16, §4764;

<https://www.mpp.org/issues/decriminalization/state-laws-with-alternatives-to-incarceration-for-marijuana-possession/>

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Fourth, the section prohibiting smoking or consuming marijuana in a car is overbroad. Section (B) prohibits a person from smoking or otherwise consuming marijuana in a public place or in a “vehicle that is on a highway, in a parking lot, or otherwise in an area accessible to the public.” What about a parent who is giving their child cannabis medicine for her seizures? Are we really going to make that parent a criminal for giving her child medicine, just because that family is in a public place? How are the police going to know that it is marijuana? Such uncertainty is unfair to medical patients and leads us back to the biased policing we are trying to escape.

Furthermore, what if someone is smoking or consuming in a car that isn’t moving, and/or isn’t going to move? What if someone is prohibited from smoking marijuana in their home, and must do so in their car that is parked on the street? Again, such broad language will allow for targeting of those in urban areas – more likely people of color.

Fifth, the entire section regarding smoking in the car opens the door to racially biased enforcement, yet again. Maryland’s history shows us that not only are African Americans arrested for marijuana possession at higher rates than Whites,⁵ but they also are pulled over at higher rates than Whites.⁶ This bill does not require that someone be impaired to be pulled over; it simply allows law enforcement to target someone if they think they are smoking marijuana. If the intent here is to go after impaired driving, then the language should address that point.

Finally, the section relating to someone being impaired by marijuana and endangering safety is overly broad and vague. What does it mean to “endanger the safety of the person, another person or property?” Does that mean that I might endanger my safety by eating too much? Laughing too hard and falling over? Again, if the intent is to address impaired driving, this is what should be addressed.

For the foregoing reasons, the ACLU of Maryland opposes HB 334.

⁵ http://www.aclu-md.org/marijuana_reform

⁶ <https://www.aclu.org/racial-justice/landmark-settlement-reached-maryland-state-police-driving-while-black-case>