



Testimony for the Senate Judicial Proceedings Committee February 25, 2014

SB 364 - Criminal Law – Possession of Marijuana – Civil Offense

SUPPORT with Amendments

The ACLU of Maryland urges a favorable report on SB 364. This bill makes the use or possession of less than 10 grams of marijuana a civil offense, punishable by a fine not exceeding \$100, rather than imprisonment.

Maryland taxpayers spend over \$1.1 billion per year to maintain a bloated prison system; a system that has tripled in size since 1980. In 2010, Maryland spent approximately \$106 million enforcing marijuana possession laws.

In addition to the financial toll, enforcing our marijuana possession laws has taken a tremendous personal toll. On average, from 2008 – 2012, the State of Maryland arrested 24,065 people per year for marijuana possession. In 2010, when we arrested 23,663 people, we had the 7th largest number of raw arrests for marijuana possession, outranking more populous states like Pennsylvania and Ohio.

Those arrests are concentrated in communities of color. Despite comparable rates of use, African Americans in Maryland are 3 times more likely than their white counterparts to be arrested for marijuana possession. This is true in every county across our state from Worcester (1.8x) to Prince Georges (2.5x) to Garrett (6.5x). And it doesn't matter whether the county is majority white or majority black, the racial disparity in the arrest rates is consistent. In 2013, Baltimore was 64% African American, but 91% of all minor marijuana arrests were African American.¹ In 2010, African Americans in Montgomery County were 18% of the population but 46% of all marijuana possession arrests.²

While the General Assembly has begun to reform the laws related to marijuana possession, there is more work to do. We support this bill's efforts to redirect our law enforcement officer's efforts towards violent crime by making marijuana possession a civil, rather than criminal, offense.

In addition, we would urge this committee to consider three amendments to the bill.

Social Sharing—transfer without remuneration—should not be a crime

First, the bill should include transfer without remuneration. In other states that have decriminalized possession of marijuana but not the transfer without remuneration, law enforcement has been able to avoid the possession law by arresting someone with 'possession with intent to distribute.' Despite Massachusetts' residents voting to decriminalize possession of an ounce of marijuana in 2008, law enforcement continued to search and arrest, arguing that social sharing of non-criminal amounts of marijuana equaled criminal distribution—punishable by two years in jail. It took years and finally litigation before criminalizing social sharing was held against the law in Massachusetts.

¹ *Baltimore Mayor 'Appalled' at Disproportionate Marijuana Arrest rates for African Americans*, Fox45 (Feb, 21, 2014), <http://foxbaltimore.com/news/features/top-stories/stories/baltimore-mayor-appalled-at-disproportionate-marijuana-arrest-rates-african-americans-25690.shtml#.Uwn47aU7VBW>.

² The ACLU of Maryland, *The Maryland War on Marijuana in Black and White* (October 2013), http://www.aclu-md.org/marijuana_reform.

SARA N. LOVE
PUBLIC POLICY
DIRECTOR

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

MAIN OFFICE
& MAILING ADDRESS
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
or 240-274-5295
F/410-366-7838

FIELD OFFICE
6930 CARROLL AVENUE
SUITE 610
TAKOMA PARK, MD 20912
T/240-274-5295

WWW.ACLU-MD.ORG

OFFICERS AND
DIRECTORS
COLEMAN BAZELON
PRESIDENT

SUSAN GOERING
EXECUTIVE DIRECTOR

C. CHRISTOPHER BROWN
GENERAL COUNSEL

Commonwealth v. Jackson, 464 Mass. 758 (2013); *Commonwealth v. Pacheco*, 434 Mass. 768 (2013).

Taking the step of decriminalizing possession of marijuana is smart policy. Failing to clarify in the statute that social sharing does not equal distribution will defeat the purpose of this bill by allowing law enforcement to continue to harass and arrest for minor possession, and lead to expensive litigation.

Possessing paraphernalia should not be a crime

For those people who smoke marijuana (as opposed to ingesting it), they will necessarily have accompanying paraphernalia (e.g. rolling papers or pipes). Under current law, possession of paraphernalia is a misdemeanor, punishable with a fine of up to \$500, with a second offense carrying up to two years' incarceration. Md. Crim. Code § 5-619(d). Decriminalizing possession of marijuana but not decriminalizing paraphernalia will defeat the purpose of the bill and continue the arrests—and accompanying damage to individuals lives—that this bill seeks to avoid.

The limit should be one ounce

Second, the amount should be increased to one ounce. 10 grams is the lowest amount of any state that has decriminalized possession, with the majority being one ounce or more (Ohio has decriminalized possession of 3.5 ounces).³ Limiting the civil offense to only 10 grams will leave the door open to law enforcement continuing to stop and frisk individuals, as they will not know how much marijuana an individual has on them.

For the foregoing reasons, the ACLU of Maryland supports SB 364 with the foregoing amendments.

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³ Marijuana Policy Project, <http://www.mpp.org/assets/pdfs/library/State-Decrim-Chart.pdf>