



Maryland Cannabis Policy Coalition Opposes Re-criminalizing Public Consumption



Recognizing the dramatically shifting public opinion favoring marijuana legalization, two years ago, the General Assembly took the measured step of decriminalizing possession of small amounts of marijuana — reducing the penalty for possessing less than 10 grams to a civil fine. This was in large measure due to the disparate way that the law was enforced: Despite comparable rates of use, black Marylanders were arrested far more often than white Marylanders. In addition, the General Assembly recognized that a criminal record was a disproportionate punishment for possessing cannabis.

The legislature already considered the issue of how to penalize public smoking when it debated SB 517, and it correctly concluded that a civil penalty of up to \$500 would provide an adequate deterrent without unnecessarily branding Marylanders with a lifelong criminal record. Of the 16 other states that have removed criminal penalties for marijuana possession, only four make smoking in public a criminal offense.[\[1\]](#)

Six out of the eight states with legal, regulated systems have public smoking classified as a civil fine; nine of the 11 states (excluding Maryland) that have pure decriminalization laws make public smoking a civil fine. If smoking marijuana in public was a problem, it would be all over the news, and these states would have moved towards criminal penalties.

Re-criminalizing smoking marijuana in public would unnecessarily criminalize Marylanders for conduct that is already subject to a hefty civil fine. With SB 517's enactment into law, law enforcement officials who see individuals smoking in public and possessing less than 10 grams of marijuana will retain the authority to impose a civil fine for possession and a second civil fine of up to \$500 for smoking in public. They can confiscate the cannabis, ask individuals to disperse, and arrest those who fail to comply for disorderly conduct or loitering. They can also utilize public intoxication laws. For repeat offenders, there are already graduating fines and a must-appear upon a third offense for possession. Those caught in possession of more than 10 grams can be arrested.

Criminalizing public smoking will continue to result in disparate enforcement of the law. Black Marylanders were [arrested or cited](#) for marijuana possession 2.9 times more often than white Marylanders, despite similar usage rates. It is highly likely that the crime of smoking cannabis in public would be disparately enforced as well.[\[2\]](#) In addition, low-income people are more likely to smoke “in public” because smoking may be forbidden by their apartment

building or they cannot smoke in their public housing without risking eviction. This may also be the case for some who use marijuana for medical purposes but cannot do so in a venue like a nursing home or rehabilitation facility.

The General Assembly's decision to decriminalize possession was a good one that will ensure police can focus on solving violent crime and property crime as well as reduce the racial disparity in enforcement. Given that we already have adequate deterrents in place, re-criminalizing smoking cannabis anywhere outside of a private home is a step backward. It is also unnecessary; although decriminalization was passed three years ago, there is no evidence that there have been an increased number of cases of smoking in public.

Absent disorderly conduct, the criminal justice system should not be charged with the obligation of randomly enforcing criminal laws targeting marijuana/cannabis users. **The harm to the public and the correlated erosion of trust between the community and the police create tensions that are counterproductive to improving public safety.**

Marylanders should not face the more than 150 collateral consequences that result from a misdemeanor conviction simply for consuming marijuana. Misdemeanor convictions can prevent someone from getting a job, housing, or education.

For those that speak of the hypothetical possibility of future "expungement," we should remember that many people are unaware of their legal options and unable to afford legal counsel to support their efforts. The Office of the Public Defender is not required to handle expungement requests. Many private counsel in Baltimore charge \$1,000 for filing expungements, and individuals who attempt to file on their own face serious difficulties.^[3] In addition, a criminal record, even if later expunged, may have severe immigration consequences — including **deportation of people lawfully in the United States, tearing families apart.**

An overwhelming majority of Marylanders support removing criminal penalties for small-amount marijuana offenses. **SB 517 was supported by labor groups, the Libertarian Party, Law Enforcement Against Prohibition, our state chapter of the NAACP, the ACLU of Maryland, and the Maryland Chapter of the National Council on Alcoholism and Drug Dependence, to name a few.**

Public opinion regarding marijuana/cannabis prohibition has shifted significantly over the past five years. Poll after poll show a majority of Marylanders support outright legalization of marijuana, not new criminal sanctions.^[4] This amendment is a completely unnecessary affront to the will of the people.

^[1] Connecticut, Delaware, Mississippi, Nebraska, New York, Nevada, Ohio, Rhode Island, and Vermont have all removed criminal sanctions for marijuana possession. Only Delaware and New York make smoking in public a criminal offense, and New York has become notorious nationwide for the abusive enforcement of its ban of possession in "public view." Washington, Oregon, Alaska, California, Maine, and Massachusetts, which have made marijuana legal for adults, impose a fine for public smoking; only Colorado and Nevada make it a crime.

^[2] There were five overarching findings in the ACLU's analysis:

- Maryland now has one of the **highest rates of arrests for marijuana possession** in the nation.
- Between 2001 and 2010, arrests for marijuana possession increased dramatically in Maryland — **by 34%**.
- Even though Blacks and Whites use marijuana at comparable rates, **police arrest Blacks for marijuana possession at higher rates than Whites in every county in Maryland**.
- Racial disparities in marijuana arrests worsened dramatically in Maryland from 2001 to 2010. During that time, the number of **black arrests increased by 5,614 — but white arrests increased by only 371**.
- Maryland spent approximately **\$106 million enforcing marijuana possession laws** in 2010 alone.

[3] In addition to long delays or a failure to process paperwork, there is at least one case of someone being prosecuted for perjury in Maryland for incorrectly filling out the expungement form. If the prosecutor objects to the expungement, a hearing will be held which a *pro se* individual will be ill-equipped to handle.

[4] Most recent poll, from January, via Gonzalez, shows 53% in support.

</files/uploads/2016/01/MPP-Maryland-Survey-Results-January-2016.pdf>