

**Marijuana Laws In America: Racial Justice and The Need for Reform**

July 10, 2019

Written Statement

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## I. INTRODUCTION

Chairwoman Karen Bass, Vice Chair Val Butler Demings, Ranking Member John Ratcliff and members of the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, I am Marilyn Mosby, the State’s Attorney for Baltimore City. It is an honor to appear before the Subcommittee today to discuss the need for federal decriminalization of marijuana, the need for criminal justice reform specific to marijuana enforcement, the necessity of second chances for those who have been involved in the justice system and the necessity for equitable economic participation and reinvestment in communities that have been disproportionately and most adversely affected by the discriminatory enforcement and criminalization of these laws. As the Chief prosecutor of Baltimore city, it is my sworn ethical obligation, as an administrator of justice, to not only seek justice and safety in my community, but to seek to reform and improve the fair administration of criminal justice. When inadequacies or injustices in the substantive or procedural law come to the prosecutor’s attention, he or she should take action to remedy that injustice and create new practices that mitigate further harm.<sup>1</sup> That is the essence of the pursuit of justice and a proactive vision in my role as an elected prosecutor that fortifies community trust integral to the functioning of our justice system.<sup>2</sup> It is this vision that drove my recent implementation of a new marijuana policy, as well as my ongoing efforts to look at the integrity of past convictions and other areas where our justice system has fallen short.<sup>3</sup>

There’s a growing number of prosecutors nationwide who are examining how best to implement criminal justice reform from within.<sup>4</sup> As part of this reform, many elected prosecutors’ are reconsidering marijuana prosecution policies for several reasons including the need to address racially disproportionate punitive approaches to drug use, a desire to achieve more sensible use of scarce resources and the recognition that criminalizing drug use has not led to safer or healthier communities. This thinking is based on increasing evidence that “higher rates of drug imprisonment do not translate into lower rates of drug use, arrests, or overdose deaths.”<sup>5</sup> Instead,

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<sup>1</sup> American Bar Association, fourth edition of the criminal justice standards for the prosecution function, part i. general standards, Standard 3-1.1.

<sup>2</sup> Fair and Just Prosecution. “21 Principles for the 21st Century Prosecutor”, (2019), [https://fairandjustprosecution.org/wp-content/uploads/2018/12/FJP\\_21Principles\\_Interactive-destination.pdf](https://fairandjustprosecution.org/wp-content/uploads/2018/12/FJP_21Principles_Interactive-destination.pdf) and Bazelon and Krinsky, “There’s a New Wave of Prosecutors. And They Mean Justice”, New York Times, (2018) <https://www.nytimes.com/2018/12/11/opinion/how-local-prosecutors-can-reform-their-justice-systems.html>.

<sup>3</sup> National Public Radio, “Baltimore State’s Attorney Will No Longer Prosecute Marijuana Possession”, (2019), <https://www.npr.org/2019/02/03/690975390/baltimore-states-attorney-will-no-longer-prosecute-marijuana-possession-cases>.

<sup>4</sup> New York Times, “A Growing Chorus of Big City Prosecutors Say No to Marijuana Convictions”, (2019), <https://www.nytimes.com/2019/01/29/us/baltimore-marijuana-possession.html>.

<sup>5</sup> The Pew Charitable Trusts, “More Imprisonment Does Not Reduce State Drug Problems”, (2018), [https://www.pewtrusts.org/-/media/assets/2018/03/pspp\\_more\\_imprisonment\\_does\\_not\\_reduce\\_state\\_drug\\_problems.pdf](https://www.pewtrusts.org/-/media/assets/2018/03/pspp_more_imprisonment_does_not_reduce_state_drug_problems.pdf) and Drug Policy Alliance, “The Drug War, Mass Incarceration and Race”, (2018), [http://www.drugpolicy.org/sites/default/files/drug-war-mass-incarceration-and-race\\_01\\_18\\_0.pdf](http://www.drugpolicy.org/sites/default/files/drug-war-mass-incarceration-and-race_01_18_0.pdf).

mass incarceration for drug offenses has devastating consequences for those incarcerated and their families and communities. Excessive punishment of drug crimes perpetuates the cycles of generational trauma and socioeconomic marginalization that, in turn, intensify the social determinants of drug use.<sup>6</sup>

Based on these and other concerns, on January 29<sup>th</sup> of this year, I announced that I was utilizing my discretion as a prosecutor to stop devoting resources to the prosecution of marijuana possession charges, regardless of weight and criminal history. I mandated the referral of every first-time felony drug offender to my offices' job training diversion program.<sup>7</sup> My office moved to vacate the convictions of almost 5,000 marijuana possession convictions dating back to 2011. In tandem with the announcement of my policy, my office also released a detailed white paper entitled, **"Reforming a Broken System: Rethinking Marijuana Prosecution in the city of Baltimore,"** in which we enumerated the lack of public safety value in the prosecution of marijuana possession; the counterproductive nature of utilizing limited law enforcement resources for a crime with no public safety value; and the racially disparate enforcement of marijuana laws resulting in adverse collateral consequences for poor Black and Brown communities in Baltimore.

I am here today because there is no better illustration of this country's failed "War on Drugs" than the city of Baltimore, MD. A mere 45 minutes away from our nation's capital, Baltimore currently leads the nation in per capita homicides, rising opioid deaths and is one of the most impoverished cities in the nation. Once deemed the "Heroin capital of the World," for decades our government has criminalized substance use as opposed to treating it as the public health crisis we now recognize it to be. In fact, in 2015, the United States spent \$3.96 billion on the enforcement and imprisonment of marijuana users and an additional \$18.47 billion on all other substance users.<sup>8</sup> It is undisputed that the long-standing, well-established discriminatory enforcement of drug laws has disproportionately affected poor Black and Brown communities nationally and has led to widespread collateral consequences that not only severely and adversely impact an individuals' ability to find employment, secure housing and obtain student loans, but these barriers have led to the breakdown of families and the social and economic decimation of communities.<sup>9</sup>

National data has consistently shown that Black people are almost four times more likely to be arrested for marijuana possession in the United States than White people, despite individuals of

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<sup>6</sup> The Pew Charitable Trusts, "Collateral Costs: Incarceration's Effect on Economic Mobility", (2010), [https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs\\_assets/2010/collateralcosts1pdf.pdf](https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1pdf.pdf).

<sup>7</sup> Baltimore City State's Attorneys Office, Full Term Report 2015-2018, (2019), <https://www.stattorney.org/media-center/annual-reports/1676-2015-2018-full-term-report>.

<sup>8</sup> Drug War Facts, "Economics of Drug Policy and The Drug War", <https://www.drugwarfacts.org/chapter/economics>.

<sup>9</sup> Shawn M. Kneipp and Amanda Sheely, "The effects of collateral consequences of criminal involvement on employment, use of Temporary Assistance for Needy Families, and health", (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5763494/>.

both races using marijuana at the same rate.<sup>10</sup> In the city of Baltimore, prior to the decriminalization of 10 grams or less of marijuana, Black people were six times more likely to be arrested for the possession of marijuana.<sup>11</sup> While some had hoped that a movement toward decriminalization would offer a respite to communities of color, flagrant disparities continue to exist in Baltimore city. Since the decriminalization of possession of less than ten grams of marijuana to a civil infraction, Black people have continued to bear the disproportionate weight of enforcement. In 2017, 95% of the citations issued by the Baltimore Police Department were issued to Black people and shockingly, 42% of the citations issued city-wide were issued in a singled district out of nine that cover the city, the Western District. Unsurprisingly, 95% of the residents in this District are Black and disproportionately impoverished.<sup>12</sup>

For far too long, we all have stood by and allowed discriminatory policies and enforcement to destroy families and communities. We have allowed these practices to continue even as we have seen them strip communities of their health, prosperity, and hope. I am here today because I refuse to accept the status quo any longer. I refuse to be complicit in the destruction of our Black and Brown communities.

I come before you today to share the impact of the failed “War on Drugs” that has ravaged my city and far too many other parts of our nation, which served as the impetus and support for the findings and proposals outlined in my white paper. As a prosecutor committed to equitable outcomes and the pursuit of “justice over convictions” in every instance, I welcome any discussions today and thank the members of the subcommittee for your willingness to continue to consider this critical issue.

## **II. PAST AND PRESENT CONSEQUENCES: WAR ON DRUGS**

President Richard Nixon officially declared a “War on Drugs” in 1971. In the 1980s, President Ronald Reagan reinforced and expanded many of Nixon’s “War on Drugs” policies. In 1984, First Lady Nancy Reagan later launched the “Just Say No” campaign with an effort to educate children on the dangers of drug use. As years passed, the “War on Drugs” continued and so did the policies designed to punish substance use. In 1994, President Bill Clinton solidified the United States’ (U.S.) “Tough On Crime” and “War on Drugs” by way of his Violent Crime Control and Law Enforcement Act, which imposed three-strikes mandatory life sentencing,

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<sup>10</sup>American Civil Liberties Union, “The War on Marijuana in Black and White,” (June 2013), [https://www.aclu.org/sites/default/files/field\\_document/1114413-mj-report-rfs-re11.pdf](https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-re11.pdf) at 21.

<sup>11</sup> Ethan McLeod, Andy Friedman and Brandon Soderberg, Baltimore Fishbowl, “Structural Racism and Cannabis: Black Baltimoreans still disproportionately arrested for weed after decriminalization”, (2018), <https://baltimorefishbowl.com/stories/structural-racism-and-cannabis-black-baltimoreans-still-disproportionately-arrested-for-weed-after-decriminalization/>.

<sup>12</sup> Citation records obtained by Baltimore Police Department. Neighborhood ethnicity data found at: Statistical Atlas, “Race and Ethnicity in Baltimore City”, (2018), <https://statisticalatlas.com/place/Maryland/Baltimore/Race-and-Ethnicity#data-map/neighborhood>.

money to hire a 100,000 additional police officers, and funding for prisons, among many other policies.<sup>13</sup>

As a result of decades of escalating penalties and punitive approaches to substance use, from 1980 to 1997, the number of people behind bars for nonviolent drug offenses increased from 50,000 to over 400,000.<sup>14</sup> And between 1981 and 2006, the number of drug arrests in the United States quadrupled to nearly two million per year, disproportionately affecting people and communities of color.<sup>15</sup> Forty-six years since the official declaration of Nixon’s drug war, as of 2017, 1.5 million arrests in the U.S. were due to drug law violations, where 85.4% of those arrested were related to drug possession.<sup>16</sup> While the U.S. continues to lead the world with the highest rates of imprisonment for drug law violations, it is patently clear that drug-related arrests have had little impact on substance use, while having extremely deleterious impacts on communities of color. Although data is clear that the rates of drug use and even sales are comparable across racial and ethnic lines, Black and Latinx people are much more likely to be arrested for drug use and sales than White people. In fact, approximately 80% of people in federal prison and almost 60% of people in state prison for drug offenses are Black or Latinx.<sup>17</sup>

### **III. PRECURSORS TO POLICY DEVELOPMENT**

#### **a. No Demonstrable Public Safety Considerations**

The test of time has provided us with ample data that there is little public safety value related to the current enforcement of marijuana laws. The data indicates that the disparate enforcement of marijuana laws and overall drug laws not only intensifies already existing racial disparities in the criminal justice system, but exacerbates distrust among communities and law enforcement without increasing overall public safety.

As further evidence that marijuana enforcement, in particular, is not creating a significant public safety benefit, one can look to states that have legalized recreational use of marijuana where no demonstrable increase in crime since legalization has been observed. The Manhattan District Attorney’s Office released in 2018, *A Report on the Legalization of Recreational Marijuana in the United States*, and found no evidence of an increase in crime related to the legalization of

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<sup>13</sup> Congressional Research Service, “Crime Control: Federal Initiatives IP310C, found at <https://www.ncjrs.gov/pdffiles1/148292NCJRS.pdf>.

<sup>14</sup> Drug Policy Alliance, “Drug Policy Statistics”, <http://www.drugpolicy.org/issues/drug-war-statistics>

<sup>15</sup> Katherine Beckett, “The Uses and Abuses of Police Discretion: Toward Harm Reduction Policing”, 10 Harv. L. & Pol’y Rev. 77, 81 (2016) and Brian Stauffer, “Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States, Human Rights Watch” (2016), <https://www.hrw.org/report/2016/10/12/every-25-seconds/human-toll-criminalizing-drug-use-united-states>.

<sup>16</sup> Drug Policy Alliance, “Drug Policy Statistics”, <http://www.drugpolicy.org/issues/drug-war-statistics>  
- Cases include those with other charges where the defendant pleads to possession.

<sup>17</sup> Drug Policy Alliance, “Race and the Drug War”, <http://www.drugpolicy.org/issues/race-and-drug-war>.

recreational use of marijuana.<sup>18</sup> The report also looked at similar experiences in other jurisdictions, noting for example, that “Oregon’s legalization law went into effect in July 2015, and the first stores opened in October 2016.<sup>19</sup> [However], the [Federal Bureau of Investigation] FBI data shows that crime rates stayed largely the same between 2015 and 2016.”<sup>20</sup>

In Nevada, the report found that there was an initial increase in burglaries at stores selling marijuana after legalization.<sup>21</sup> In response, these stores increased their security measures, and this substantially decreased the burglaries. The report also noted that in Las Vegas violent crimes did not increase after legalization.<sup>22</sup>

In Washington State, “...crime rates have remained...and continue on a downward trend after retail sales [of marijuana] began in mid-2014.”<sup>23</sup> Interestingly, in Colorado where recreational use was legalized in 2014, there was an increase in crime reported in 2016.<sup>24</sup> State officials though - including the police department, the Department of Public Safety and the Governor - all agree that the evidence is inconclusive concerning whether the increase in crime is related to the legalization of marijuana or other factors.<sup>25</sup> Taken together, this national data fails to

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<sup>18</sup> The Office of Manhattan District Attorney Cyrus R. Vance Jr., “Marijuana, Fairness and Public Safety: A Report on the Legalization of Recreational Marijuana in the United States”, (May 2018)  
<https://www.manhattanda.org/wpcontent/uploads/2018/05/DANY-Report-on-the-Legalization-of-Recreational-Marijuana-Final.pdf>.

<sup>19</sup> The Office of Manhattan District Attorney Cyrus R. Vance Jr., “Marijuana, Fairness and Public Safety: A Report on the Legalization of Recreational Marijuana in the United States”, (May 2018)  
<https://www.manhattanda.org/wpcontent/uploads/2018/05/DANY-Report-on-the-Legalization-of-Recreational-Marijuana-Final.pdf>.

<sup>20</sup> The Office of Manhattan District Attorney Cyrus R. Vance Jr., “Marijuana, Fairness and Public Safety: A Report on the Legalization of Recreational Marijuana in the United States”, (May 2018)  
<https://www.manhattanda.org/wpcontent/uploads/2018/05/DANY-Report-on-the-Legalization-of-Recreational-Marijuana-Final.pdf>.

<sup>21</sup> <sup>21</sup> The Office of Manhattan District Attorney Cyrus R. Vance Jr., “Marijuana, Fairness and Public Safety: A Report on the Legalization of Recreational Marijuana in the United States”, (May 2018)  
<https://www.manhattanda.org/wpcontent/uploads/2018/05/DANY-Report-on-the-Legalization-of-Recreational-Marijuana-Final.pdf>.

<sup>22</sup> The Office of Manhattan District Attorney Cyrus R. Vance Jr., “Marijuana, Fairness and Public Safety: A Report on the Legalization of Recreational Marijuana in the United States”, (May 2018)  
<https://www.manhattanda.org/wpcontent/uploads/2018/05/DANY-Report-on-the-Legalization-of-Recreational-Marijuana-Final.pdf>.

<sup>23</sup> The Office of Manhattan District Attorney Cyrus R. Vance Jr., “Marijuana, Fairness and Public Safety: A Report on the Legalization of Recreational Marijuana in the United States”, (May 2018)  
<https://www.manhattanda.org/wpcontent/uploads/2018/05/DANY-Report-on-the-Legalization-of-Recreational-Marijuana-Final.pdf>.

<sup>24</sup> The Office of Manhattan District Attorney Cyrus R. Vance Jr., “Marijuana, Fairness and Public Safety: A Report on the Legalization of Recreational Marijuana in the United States”, (May 2018)  
<https://www.manhattanda.org/wpcontent/uploads/2018/05/DANY-Report-on-the-Legalization-of-Recreational-Marijuana-Final.pdf>.

<sup>25</sup> The Office of Manhattan District Attorney Cyrus R. Vance Jr., “Marijuana, Fairness and Public Safety: A Report on the Legalization of Recreational Marijuana in the United States”, (May 2018)  
<https://www.manhattanda.org/wpcontent/uploads/2018/05/DANY-Report-on-the-Legalization-of-Recreational-Marijuana-Final.pdf>.

conclusively establish that the legalization of marijuana has resulted in any material increase in crimes related to its cultivation or sale.

### **b. Marijuana Laws Drain Limited Law Enforcement and Criminal Justice Resources**

In Baltimore, the lack of public safety benefits and the drain on the resources of our criminal justice system are easy to illustrate. Arrests for simple possession of marijuana are a drain on scarce resources and produce no apparent rehabilitative, deterrent or other public safety benefits. In 2017, Baltimore had the highest per capita murder rate of any American city with more than 500,000 people by way of 343 homicides and a year-end clearance rate of 31%.<sup>26</sup> In 2018, there were 309 homicides with a year-end clearance rate of 26%.<sup>27</sup> With the number of homicides that occur in Baltimore City annually, the majority of them going unsolved, limited law enforcement resources are far better utilized to address violent crime and target the perpetrators of that crime rather than continuing to enforce laws for behavior that has been shown to have no real public safety implications. The prosecution of marijuana possession does not make a city safer; instead, it uses scarce resources to implement ineffectual policies.

In contrast, there is increasing recognition of non-punitive harm reduction approaches as a proven response to substance use disorder globally, and numerous U.S. law enforcement organizations have similarly recognized that harm reduction strategies address substance use disorder and the overdose epidemic more effectively than arrests and prosecution. For example, 36 jurisdictions have implemented a Law Enforcement Assisted Diversion (LEAD) model, which enlists police and prosecutors to work with community groups and social service agencies to provide harm reduction interventions in lieu of a punitive criminal justice response.<sup>28</sup>

### **c. Disparate Enforcement versus Non-Disparate Use**

Along with the lack of legitimate public safety considerations and the resource drain that enforcing marijuana laws places on communities, national research consistently illustrates that Black people are almost four times more likely to be arrested for marijuana possession in the United States than White people.<sup>29</sup> This racial discrepancy remains despite the fact that

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<sup>26</sup> Luke Broadwater & Ian Duncan, The Baltimore Sun, “Neighborhoods are crying out’: Baltimore has highest homicide rate of U.S. big cities”, (2018), found at <https://www.baltimoresun.com/news/crime/bs-md-ci-fbi-data-20180924-story.html>. It is important to note that BPD utilizes a cumulative clearance rate in which the numerator is all cleared homicide cases that were cleared in a given year, including clearances for homicides that occurred in earlier years, and the denominator is only the number of homicides that occurred in the given year. Consequently, the actual clearance rate for murders that took place in that same year will always be lower than the cumulative rate.

<sup>27</sup> BPD utilizes a cumulative clearance rate in which the numerator is all cleared homicide cases that were cleared in a given year, including clearances for homicides that occurred in earlier years, and the denominator is only the number of homicides that occurred in the given year. Consequently, the actual clearance rate for murders that took place in that same year will always be lower than the cumulative rate.

<sup>28</sup> LEAD Bureau, [www.leadbureau.org](http://www.leadbureau.org) (last visited May 9, 2019).

<sup>29</sup> American Civil Liberties Union, “The War on Marijuana in Black and White”, (June 2013), [https://www.aclu.org/sites/default/files/field\\_document/1114413-mj-report-rfs-rell-pdf](https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-rell-pdf).

individuals of both races use marijuana at the same rate.<sup>30</sup> Between 2001 and 2010 there were over eight million marijuana arrests in the United States, 88% of which were for possession.<sup>31</sup> Where marijuana arrests increased and accounted for over half (52 %) of all drug arrests in the United States, Blacks accounted for nearly half (46 %) of those same arrests.<sup>32</sup>

Even today when 11 States and the District of Columbia have legalized recreational use of marijuana and 33 States have legalized the use of marijuana for medicinal purposes, evidence suggests that racial disparities regarding enforcement of marijuana laws continue to exist. For instance, in Colorado after legalization of marijuana for recreational use, there was a 51 % decrease in Whites being arrested but only a 33 % decrease for Latinx and a 25 % decrease for Blacks.<sup>33</sup> Comparatively, Washington State's post legalization arrest rate for Blacks is double the arrest rate for others and a Black person in Washington, D.C. is 11 times more likely than a White person to be arrested for public consumption of marijuana.<sup>34</sup>

Baltimore City, like other jurisdictions, shows alarming disparities in arrest rates and in the distribution of civil citations for marijuana possession. In 2010, the American Civil Liberties Union (ACLU) reported that Maryland's arrest rate for marijuana possession was the fourth highest in the nation.<sup>35</sup> In addition, while Black people only comprised 30% of the State's population in 2010, 58% of those arrested for marijuana possession were Black.<sup>36</sup> In that same time period, Baltimore City had the largest rate of disparity among marijuana arrestees, with Black people being almost six times more likely to be arrested for marijuana possession than Whites.<sup>37</sup>

Even with Maryland's October 1, 2014 decision to decriminalize possession of less than ten grams of marijuana to a civil infraction, racial disparities continue to exist in Baltimore City. According to BPD records, in 2015 89% of all citations issued were given to Black people. In 2016, records indicate that BPD issued 94% of the marijuana citations to Black people. In 2017, BPD issued 95% of the citations to Black people. Shockingly, approximately 42% of the aforementioned citations were issued in the Western District, where less than 9% of all city

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<sup>30</sup> American Civil Liberties Union, "The War on Marijuana in Black and White", (June 2013), [https://www.aclu.org/sites/default/files/field\\_document/1114413-mj-report-rfs-rell-pdf\\_at\\_21](https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-rell-pdf_at_21).

<sup>31</sup> American Civil Liberties Union, "The War on Marijuana in Black and White", (June 2013), [https://www.aclu.org/sites/default/files/field\\_document/1114413-mj-report-rfs-rell-pdf](https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-rell-pdf).

<sup>32</sup> American Civil Liberties Union, "The War on Marijuana in Black and White", (June 2013), [https://www.aclu.org/sites/default/files/field\\_document/1114413-mj-report-rfs-rell-pdf\\_at\\_21](https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-rell-pdf_at_21)

<sup>33</sup> Colorado Department of Public Safety, "Marijuana Legalization in Colorado: Early Findings", (March 2016) <http://edpsodocs.state.co.us/ors/docs/reports/2016-SB13-283-Rpt.pdf>.

<sup>34</sup> Drug Policy Alliance, "From Prohibition to Progress: A Status Report on Marijuana Legalization", (January 2018) <http://www.drugpolicy.org/legalization-status-report>.

<sup>35</sup> American Civil Liberties Union, "Blueprint for Smart Justice: Maryland" (2018) <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-MD.pdf>

<sup>36</sup> American Civil Liberties Union, "Blueprint for Smart Justice: Maryland" (2018) <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-MD.pdf>.

<sup>37</sup> American Civil Liberties Union, "Blueprint for Smart Justice: Maryland" (2018) <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-MD.pdf>.

residents reside (one of the nine police districts in Baltimore City), and where approximately 95% of the residents in this District are Black and disproportionately impoverished.<sup>38</sup> When taken together, these statistics are incredibly alarming and elucidate the crisis of disparate treatment of Black people for marijuana possession.

#### **d. Collateral Consequences**

The disparate enforcement of marijuana laws is exacerbated when one considers the collateral consequences a marijuana possession conviction has on an individual and an individual's family. Collateral consequences are legal, social, and economic debilities that are imposed as a result of a criminal conviction regardless of whether a convicted individual serves any time incarcerated. These consequences create social and economic barriers for individuals reentering into society by denying or restricting benefits otherwise available to all citizens. Collateral consequences are known to adversely affect adoptions, housing, healthcare access, welfare, immigration, employment, professional licensure, property rights, mobility, education, voting rights, and other opportunities—the collective effect of which marginalizes the individual, extinguishes hope and a positive pathway forward, and thereby increases recidivism and undermines meaningful reentry of the convicted individual for a lifetime.<sup>39</sup> Neither the individual nor is the community benefitted as a result.

Instead of improving the safety of our communities, our marijuana laws make criminals out of millions of otherwise law-abiding individuals and impose a lifetime of punishment on those convicted. A minor marijuana possession conviction subjects an individual to a system of legal discrimination that makes it difficult or impossible to secure employment, housing, student loans, or even a driver's license. Even without a conviction, the collateral consequences of an arrest can include untold stigma, disruption and humiliation, the unmanageable financial burden of posting bail and hiring a lawyer, and lost hours at work or school. Employers frequently do not hire those with a criminal record, and it has been shown that individuals with a criminal record earn 40% less than those without.<sup>40</sup> Additionally, student financial aid can and is often denied to those convicted of marijuana possession. Federal law temporarily bars a student convicted of marijuana possession for the first or second time from receiving government-funded financial aid for higher education, and the third offense triggers a permanent disqualification.<sup>41</sup>

In Baltimore city, there is no better illustration of the blatant long-term collateral consequences that the disparate enforcement of marijuana laws have had on poor Black and Brown

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<sup>38</sup> Baltimore city Population. (2019-05-12). Retrieved 2019-07-06, from <http://worldpopulationreview.com/maryland-counties/baltimore-city/>

<sup>39</sup> American Bar Association Criminal Justice Section “Collateral Consequences of Criminal Convictions Judicial Bench Book,” (March 2018) <https://www.ncjrs.gov/pdffiles1/nij/grants/251583.pdf>.

<sup>40</sup> Drug Policy Alliance “Marijuana Reform Collateral Consequences”, [http://www.drugpolicy.org/sites/default/files/New\\_Solutions\\_Marijuana\\_Reform\\_Collateral\\_Consequences.pdf](http://www.drugpolicy.org/sites/default/files/New_Solutions_Marijuana_Reform_Collateral_Consequences.pdf).

<sup>41</sup> Drug Policy Alliance “Marijuana Reform Collateral Consequences”, [http://www.drugpolicy.org/sites/default/files/New\\_Solutions\\_Marijuana\\_Reform\\_Collateral\\_Consequences.pdf](http://www.drugpolicy.org/sites/default/files/New_Solutions_Marijuana_Reform_Collateral_Consequences.pdf).

communities. While overall, 28% of Baltimore city residents live in poverty (16% more than the national average), the most impacted district regarding the enforcement of marijuana possession laws, is the Western Police District. Here 95% of the residents are Black, the median household income is \$24,374, more than twice as low than the citywide median household income (\$41,819) and the unemployment rate is 20% compared to the citywide unemployment rate of 13%. As cited above, 42% of the marijuana possession citations issued city-wide were issued in this district which means those most dependent on public housing, student aid, and living in poverty are the ones frequently targeted and most impacted.

#### **IV. A NEW PATH FORWARD**

While contemporary attitudes and public policies toward marijuana have changed dramatically in the past few years, the enforcement of marijuana laws- as well as drug laws more generally- remains grossly disproportionate in its impact on communities of color. My office understands this and, coupled with the overwhelming evidence showing that the “War on Drugs” has only served to further intensify existing racial biases across our country’s criminal justice system without securing any significant net gains, I have utilized my prosecutorial discretion to change how marijuana laws are enforced in Baltimore City and, in so doing, have begun to rebalance the criminal justice system one individual, one family, at a time.

##### **a. Marijuana Policy Reform Utilizing the Judicial Process**

Because I am committed to holistic criminal justice reform, and in an effort to develop policies that better address systemic racial disparities and more efficiently allocate the scarce resources of the justice system, my office studied the national best practices and recommendations from accredited and innovative organizations to find ways to address what we saw as the uneven enforcement of marijuana laws borne, most significantly, by communities of color. Armed with the data, and using my discretion as an elected State’s Attorney, I implemented the policy of no longer prosecuting individuals for marijuana possession (regardless of weight or of an individual’s criminal history).

Concurrent with the implementation of this new policy, my office filed a *Writ of Coram Nobis* (legal remedy to “right an extraordinary wrong”) in thousands of cases in both the Circuit and District Courts for Baltimore City, arguing that the discriminatory enforcement of marijuana laws violate the Equal Protection Clause of the 14<sup>th</sup> Amendment. Those writs sought to “right past wrongs” and vacate the convictions of almost 5,000 individuals dating back to 2011 that have suffered or continue to suffer the collateral consequences of the disparate enforcement of marijuana laws.

Unfortunately, both Courts denied our petition, but we have recently filed a Motion for Reconsideration, which is currently under review.

## **b. Marijuana Policy Reform Utilizing the State Legislative Process**

Additionally, my office successfully advocated for the enactment of Maryland State HB 874 during the Maryland General Assembly's 2019 Legislative Session. The bill proposed to give prosecutors in the State of Maryland the legal ability to affirmatively file motions to vacate convictions where "fairness and justice" interests so warranted. Having passed, the law becomes effective October 1, 2019, but unfortunately was significantly revised and limited during the legislative process. In its original iteration, prosecutors across the State would have had a tool to vacate convictions (1) where a conviction was based on a crime that is no longer a crime, (2) in claims of actual innocence and (3) in those instances where, due to unforeseen circumstances, vacating a conviction would be in the "interest of fairness and justice."

The original language of Maryland State HB 874 also included a provision allowing the State to file a motion to vacate in instances where an individual had been convicted of possession of marijuana but where such possession was no longer a criminal offense. Unfortunately, the Maryland State's Attorney Association testified against the legislation and lobbied to add language to the bill to preclude prosecutors from utilizing it specifically for the purpose of vacating convictions for marijuana possession. I will continue, however, to advocate for the ability to vacate marijuana charges through any and all of the legal mechanisms available to my office.<sup>42</sup> These efforts parallel those of other prosecutors around the nation seeking to address post-conviction justice and create vehicles to revisit past unjust convictions or excessive sentencing.<sup>43</sup>

## **V. RECOMMENDATIONS: CONGRESSIONAL CONSIDERATIONS AND PROPOSED NEXT STEPS**

Understanding Congress' fundamental role in leading the country in the right direction on issues of pressing national importance such as this one, knowing the trickle down effects of federal laws to state laws, and coupled with my own prosecutorial experience, I can imagine no better moment than now to significantly and positively impact communities of color by righting the wrongs of the past as it pertains to the disproportionate application of federal marijuana laws to those populations most affected and as it relates more generally to drug policies and mechanisms for correcting past injustices.

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<sup>42</sup> Baltimore Sun Editorial, "If the courts won't allow Marilyn Mosby to throw out marijuana convictions, what about the legislature?," Baltimore Sun, 05/01/2019, <https://www.baltimoresun.com/opinion/editorial/bs-ed-0502-marilyn-mosby-marijuana-convictions-20190501-story.html>.

<sup>43</sup> Ferner, Matt, Huffington Post, "Some Prosecutors Are Erasing Old Weed Convictions. Why Isn't Yours?," (2018), [https://www.huffpost.com/entry/prosecutors-can-help-erase-old-weed-convictions-so-why-arent-they\\_n\\_5ae9e76fe4b06748dc8ed3da](https://www.huffpost.com/entry/prosecutors-can-help-erase-old-weed-convictions-so-why-arent-they_n_5ae9e76fe4b06748dc8ed3da).

To that end, I respectfully offer the following proposals below as ideas to consider that I believe, if implemented, will begin to significantly undo past and present harm where the application of federal marijuana laws and other laws relating to drug policy are concerned.

1. First and foremost, I fully support the federal decriminalization of marijuana which should include the removal of marijuana from the schedule of Controlled Substances Act (CSA) outlined in the U.S. Code of Federal Regulations (C.F.R.) at 21 U.S.C. § 801 and elsewhere throughout the C.F.R. because I believe that matters of marijuana legalization, regulation, and taxation are best left to the states to determine for many reasons.
  - a. Chief among them is the reality that the needs of a populous vary greatly from state to state. Thus, state legislators are in the best position to provide guidance and oversight on matters of marijuana policy because they know their constituents and constituents' needs on a direct and personal level.
  - b. We must eliminate federal criminal penalties in states where marijuana has already been legalized. It is illogical to impose federal penalties upon individuals that act in compliance with state law under the 10<sup>th</sup> Amendment of the Constitution (this is especially pertinent to foreign nationals in fear of deportation or other federal reprisal for complying with state law).
2. The federal regulation of marijuana should be very much analogous to the federal regulation of alcohol to ensure public and consumer safety standards.
3. Federal economic incentives and relief are critical to addressing racial injustice resulting from the discriminatory enforcement of marijuana laws. It is unrefuted that when individuals cannot meet their basic needs due to the lingering collateral consequences of a conviction, we are all less safe. Hence, in furtherance of efforts to implement racial justice, and in an attempt to “right the wrongs of the past” wherever possible, I believe that another facet of this change must include consideration of creating federal economic incentives for states that create mechanisms for automatic or mass expungement, vacatur, post-conviction relief and/or re-sentencing opportunities for those already convicted. As previously discussed, the long-standing, well-established discriminatory enforcement of marijuana laws disproportionately affecting poor black and brown communities has led to widespread collateral consequences severely and adversely impacting individuals' ability to find employment, secure housing and obtain student financial aid which have led to the breakdown of families and the social and economic decimation of communities.
  - a. Eliminate federal restrictions on school loans/Financial Aid
  - b. Eliminate federal restrictions in Housing

4. Finally, and working in tandem with the proposals outlined above, I would ask that Congress consider the swift reallocation of federal resources currently directed at continuing to sustain the United States' failed "War on Drugs" to those communities most adversely affected. This two-step approach of decriminalizing marijuana possession while, at the same time, providing much needed federal support and economic incentives to those communities most adversely affected by these failed policies – by:
  - a. Creating job opportunities;
  - b. Including equitable access and inclusion of people of color in the marijuana industry;
  - c. Increasing reentry services for formerly incarcerated individuals;
  - d. Promotion of harm reduction models/Pre-trial Diversion and approaches to substance use disorder, including medication-assisted treatment and other public health responses
  - e. Developing community centers capable of providing educational support and wraparound health and social services for some of our nation's most at-risk youth – is key to creating lasting change.

## **VI. CONCLUSION**

These proposed legislative approaches are aimed at successfully addressing past injustices while providing better, brighter futures and more equitable outcomes. Because righting the wrongs of the past must be a priority when developing future approaches to reforming marijuana laws in this country, federal policy can and should start by working to address the collateral consequences facing individuals who have been impacted by disparate marijuana policy enforcement. No longer should the government be complacent or encouraging in the discriminatory enforcement of laws that hold no public safety value but, instead, affirmatively act to improve the lives of those who have been most deeply and disproportionately impacted. Congress has the power and the ability to "right the wrongs" of a failed "War on Drugs," which we now know was really a "War on poor Black and Brown communities." I only hope that you will.

Thank you again for the honor of testifying before you today. I am happy to answer any questions that you may have.

**VII. APPENDIX**

- a. Marilyn Mosby, *Reforming A Broken System: Rethinking The Role of Marijuana Prosecutions In Baltimore City*, 01/29/2019,  
[https://www.stattorney.org/images/MARIJUANA\\_WHITE\\_PAPER\\_FINAL.pdf](https://www.stattorney.org/images/MARIJUANA_WHITE_PAPER_FINAL.pdf)
- b. Marilyn Mosby, *Full Term Report: 2015 – 2018*, 02/01/2019,  
[https://www.stattorney.org/images/Annual\\_Report/2018\\_Full\\_Term\\_Report.pdf](https://www.stattorney.org/images/Annual_Report/2018_Full_Term_Report.pdf)