

January 14, 2020

The Hon. Ralph Northam
Governor of Virginia
Office of the Governor
Patrick Henry Building, Third Floor
1111 E. Broad Street
Richmond, Va. 23219

Dear Gov. Northam:

We are writing on behalf of the following organizations actively leading efforts across the Commonwealth to assure marijuana justice for all Virginians and, particularly, to Black people and communities who have been harmed directly by the so-called war on drugs: ACLU of Virginia, Marijuana Justice, RISE for Youth, Justice Forward, The Humanization Project, Virginia Justice Democrats, ACLU People Power Fairfax, Empowering Engaged Muslim Americans, United Food and Commercial Workers Union, CASA de Virginia, NAACP Fairfax, RIHD, and other community organizations. Together we urge you to repeal the prohibition on marijuana and stop the harm to communities of color caused by continued imposition of civil or criminal penalties for simple marijuana possession.

Last year, the Virginia State Police reported that nearly 29,000 people were arrested in Virginia for possession of marijuana, up three times from the decade before. The impact of this over-policing does not fall equally on all Virginians. Marijuana laws are disparately enforced against Black people at every level of the criminal legal system, starting with law enforcement interactions. For example, data made public by the City of Charlottesville, show that Black people in that community are five times more likely to be targeted by stop-and-frisk practices than white people, and alleged marijuana violations are often the pretext for such stops. These interactions targeting Black people can lead to unrelated charges for which there otherwise would be no probable cause.

Across the state, data show that Black people are 3.4 times more likely to be arrested than white people, despite similar marijuana usage rates. The rate of disproportion is up from 2.7. Simple marijuana possession is the fourth-highest reason for deportation and is often used as a tool for immigration enforcement that does not make our communities safer. For immigrants, including those who have documentation, even a misdemeanor or civil penalty can trigger harmful consequences.

Decriminalizing marijuana, i.e., simply substituting a civil penalty of any amount (even zero) for a criminal sanction, does nothing to end racist pretextual stops by police. Continuing to allow law enforcement to use marijuana laws for this purpose, coupled with expanded “prosecutorial authority” for city and county attorneys and

proposed higher penalties for public consumption dedicated to drug treatment programs, likely will result in even greater racial disparities in enforcement than we have with existing laws. The only way to stop the harm is to remove the prohibition on marijuana possession and use from the code completely, making it legal for adults to possess and use marijuana now and eliminating this racist policing tool.

Instead of ending the prohibition on possession, however, Del. Charniele L. Herring has introduced – on your behalf – House Bill 972, and Senator Adam Ebbin has introduced Senate Bill 2. Rather than move Virginia toward marijuana legalization and an end to racially biased drug enforcement, these bills, as introduced, set up new civil penalty enforcement mechanisms ripe for abuse. This is not a positive step toward racial equity or legal marijuana.

Neither HB 972 nor SB 2 eliminates penalties or incentives for disparate enforcement. Both bills give county and city attorneys and local prosecutors the power to enforce the new “civil penalty” provision. This sets up a system in which rich people can pay their “tickets” (inclusive of any penalty and court costs without going to court), but poor people who can’t pay in advance or people who want to contest their citations have to go to court on a civil violation without the benefit of a court-appointed lawyer or the constitutional protections that apply in any criminal trial. In addition, HB 972 says that people lose their gun rights for a violation involving possession of marijuana that isn’t criminal. It purports to expunge the record of arrest and conviction on the civil offense, when all it does is create a shadow records system available to everyone in law enforcement even if not to the public.

Worse yet, HB 972 adds a whole new crime for “smoking while driving,” which requires no impairment or evidence of impairment. The proposed penalties for a violation of this new law far exceed driving with an open container of alcohol, which is a class 4 misdemeanor with a maximum fine of \$250. This new crime gives law enforcement officers an additional tool to engage in disparate policing and subjects first time offenders to a fine of up to \$500 and 30 days in jail. Repeat offenses would be escalated to a class 1 misdemeanor which could result in a year in jail. In addition, the higher civil penalty for public consumption included in HB 972 will increase, not decrease, the incentive to “stop and frisk” people on the street because of the smell of marijuana.

Finally, both HB 972 and SB 2 define the civil violation of marijuana possession as a “crime” for juveniles by defining the civil violation as “delinquency.” This puts young people into the flawed juvenile criminal legal system for a civil infraction. In addition, as introduced, both bills mandate that the revocation of the driver’s license of a juvenile who commits the civil infraction of possession for six months and requires them to undergo drug screening.

The Virginia legislature should not delay taking action to end the prohibition on simple possession and bring some racial justice to our system now by taking away

from law enforcement a tool it has wielded disproportionately against Black Virginians. As such, we urge you and Del. Herring and Sen. Ebbin to withdraw HB 972 and SB 2 or conform them to language in House Bill 1507, introduced by Del. Jennifer Carroll Foy, which would move us in the direction of legalization and, more importantly, racial equity by simply repealing the marijuana prohibition.

The organizations supporting this letter agree that study is needed before Virginia can consider or implement an equitable system to regulate the legal sale of marijuana. We also agree, however, that the simple repeal of the prohibition on possession of marijuana is the right first step in that direction. We can and must reform marijuana laws in a way that focuses on the communities harmed most by the war on drugs. Repeal of the marijuana prohibition would do that. The so-called decriminalization approach proposed by HB 972 and SB 2 as introduced will not.

Thank you for considering our concerns. To talk further about the proposed legislation and our concerns, you may contact Ashna Khanna, ACLU of Virginia legislative director, either by calling (248) 231-2551 or emailing akhanna@acluva.org.

Co-signatories:

ACLU of Virginia

Marijuana Justice

RISE for Youth

Justice Forward

The Humanization Project

Virginia Justice Democrats

ACLU People Power Fairfax

Empowering Engaged Muslim Americans (Emgage USA)

United Food and Commercial Workers Union

CASA De Virginia

NAACP Fairfax

Resource, Information, Help for the Disadvantaged and Disenfranchised (RIHD)

cc: Mark Herring, attorney general of Virginia
Brian Moran, secretary of public safety and homeland security
Del. Jennifer Carroll Foy
Del. Joshua Cole