



OFFICE OF THE STATE'S ATTORNEY
FOR BALTIMORE CITY



REFORMING A BROKEN SYSTEM:

RETHINKING THE ROLE OF
MARIJUANA PROSECUTIONS
IN BALTIMORE CITY

MARILYN J. MOSBY
STATE'S ATTORNEY FOR BALTIMORE CITY

© JANUARY 2019

Contents

Introduction.....	3
a. No Public Safety Value	
b. Past Racial Disparities in Enforcement	
c. Present Racial Disparities after Decriminalization	
d. Reform and Future Prosecution of Felony Drug Distribution Case	
Historical Context.....	4
a. A History of Stigmatization With the Recreational Use of Marijuana	
b. Continued Stigmatization with the War on Drugs	
Public Safety and the War on Marijuana.....	5
Public Health and Marijuana.....	6
a. Enforcement of Marijuana Laws in Baltimore City	
Collateral Consequences.....	8
The Prosecutors Role.....	9
Alternatives to incarceration.....	10
a. Drug Treatment Courts	
b. Mental Health Courts	
BCSAO AIM to B’More Diversion Program.....	12
Reform	13
a. BCSAO Marijuana Possession Prosecution, Weight and Criminal History	
b. BCSAO Felony Marijuana Possession Intent to Distribute (PWID) and Articulated Indicium of Distribution	
c. BCSAO Mandates Referrals of all Felony Drug Distribution Offenses to AIM to B’More Diversion Program	
Correcting Past Convictions.....	13
Conclusion.....	14

Introduction

Prosecutors around the country are examining how best to implement criminal justice reform from within. As part of this reform, prosecutors' offices are reconsidering marijuana prosecution policies and their impact on reducing crime. Widespread and reliable data suggests that there is little public safety value related to the current enforcement of marijuana laws. In fact, the data indicates that the disparate enforcement of marijuana 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.

Moreover, given the legitimate public safety concerns that do exist in our nation's cities, when resources are expended to address marijuana possession cases (from docketing to finger printing and general processing of those arrested to the ultimate resolution of charges), those same resources are no longer available to address significant criminal activity. This leaves those communities most affected by serious crime with no punitive, rehabilitative or public safety value gained from the prosecution of marijuana possession cases.

National research 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 both races using marijuana at the same rate. Between 2001 and 2010 there were over 8 million marijuana arrests in the United States, 88% of which were for possession. 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.¹

Today, racial disparities regarding enforcement of marijuana laws continue to exist even where marijuana use has been legalized. 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.² 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.³

Given the lack of a demonstrable public safety benefit, the resource drain that resolving marijuana possession cases places on prosecutors, and the racially unjust manner in which these laws have been, and continue to be, enforced nationally and in Baltimore City specifically, the Office of the State's Attorney for Baltimore City (BCSAO) has reconsidered how we prosecute marijuana cases. This paper outlines our research into national and local enforcement policies and their effects on public safety and minorities in Baltimore City and concludes with our policies for a new path forward.

¹ 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-rel1.pdf at 21.

² Colorado Department of Public Safety, "Marijuana Legalization in Colorado: Early Findings", (March 2016) <http://cdpsdocs.state.co.us/ors/docs/reports/2016-SB13-283-Rpt.pdf>.

³ Drug Policy Alliance, "From Prohibition to Progress: A Status Report on Marijuana Legalization," (January 2018) <http://www.drugpolicy.org/legalization-status-report>.

Historical Context

As history demonstrates, the roots of the disproportionate impact of marijuana criminalization on people of color in the United States can be traced beyond the War on Drugs. A sordid history of marijuana prohibition lies in ethnic and racial bigotry. It has been observed that, “Marijuana gives rise to insanity -- not in its users but in the policies directed against it.”⁴ The genesis of this insanity began in the early part of the twentieth century which brought forth a large influx of Mexicans into America seeking to escape the violence of the Revolution of 1910.⁵

a. A History of Stigmatization with the Recreational Use of Marijuana

Immigrants coming to America as a result of the Revolution of 1910, as part of their culture, smoked cannabis on a recreational basis which they referred to as “marihuana.” Although cannabis was used by Americans at this time as a purported tonic for a variety of ailments, it appears that recreational use was limited.

Marijuana, on the other hand, became the basis of a xenophobic campaign of government-sponsored fear mongering against the new immigrants. Dire warnings were published of the “Marijuana Menace” and of crimes committed by Mexican immigrants while ostensibly under the influence of marijuana. By 1931, twenty-nine states had passed laws outlawing the possession of marijuana.⁶ The 1933 repeal of alcohol prohibition did nothing to slow the train of marijuana criminalization. Driving that train was one Harry Anslinger, commissioner of the then-nascent National Bureau of Narcotics. Anslinger described marijuana users as follows, “most are Negroes, Hispanics, Filipinos, and entertainers. Their Satanic music, jazz, and swing, result from marijuana use.” Furthermore, “the primary reason to outlaw marijuana is its effect on the degenerate races.”⁷

In 1937, largely in response to testimony provided by Commissioner Anslinger, Congress passed the Marijuana Tax Act, effectively outlawing marijuana by imposing heavy taxes on the sale, possession, and transportation of cannabis. The final descent into legislative madness occurred in 1970 when the United States Congress passed the Controlled Substances Act,⁸ which repealed the Marijuana Tax Act, but classified cannabis in the same category as heroin, as a Schedule 1 drug. Maryland thereafter followed suit and maintains this schedule I classification to this very day.⁹

⁴ Eric Shlosser, The Atlantic, “More Reefer Madness,” (April 1997)

<https://www.theatlantic.com/magazine/archive/1997/04/more-reefer-madness/376827/>.

⁵ Marijuana is the term used in this paper, as this is the term used in current laws. The BCSAO acknowledges that while the terms marijuana and cannabis are used interchangeably, the term marijuana is associated with past racial and ethnic injustices.

⁶ See www.pbs.org/wgbh/pages/frontline/shows/dope/etc/cron.html.

⁷ Common Sense for Drug Policy, “The Devil Weed and Harry Anslinger”, www.csdp.org/publicservice/anslinger.htm.

⁸ Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

⁹ See §5-402(d) (23) of the Criminal Law Article of the Maryland Code.

b. Continued Stigmatization with the “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 Drug policies. In 1984, his wife 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 drug users. By 1997, the number of people behind bars for nonviolent drug offenses increased from 50,000 in 1980 to over 400,000 within a span of only seventeen years. Forty-six years since the official declaration of Nixon’s Drug War, as of 2017, 1.5 million arrests in the United States (U.S.) were due to drug law violations, where 85.4% of those arrested were related to drug possession.¹⁰

And 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 the most impact on communities of color. Although data suggests 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.¹¹

Public Safety and the War on Marijuana

While racial disparities are evident when considering the manner in which marijuana laws are enforced, the problem is even more compounded when such enforcement produces no demonstrable public safety benefit. For example, since 2014 the BCSAO has closed 1,128 District Court cases for simple marijuana possession. Seventy three of those individuals were found guilty, five not guilty, 49 cases were steted, and 1,001 (88%) cases were nolle prosequi.¹² As a matter of consequence, no public safety benefit was seemingly gained in the overwhelming majority of these cases, yet they required the extensive use of limited city resources, including resources from not only the BCSAO but also resources from the Baltimore Police Department

¹⁰ Drug Policy Alliance, “Drug Policy Statistics”, <http://www.drugpolicy.org/issues/drug-war-statistics> - Cases include those with other charges where the defendant pleas to possession.

¹¹ Drug Policy Alliance, “Race and the Drug War”, <http://www.drugpolicy.org/issues/race-and-drug-war>.

¹² BCSAO data collected regarding closed simple marijuana possession cases is reflective only of convictions captured within the Judicial Information Systems (JIS). We do not profess to have captured every case, this is only what our data illustrates. In a recent article published in Baltimore Fishbowl (2018) it was found that there were a total of 3,200 misdemeanor marijuana possession charges filed between 2015 and 2017 in Baltimore City, of which 95% were issued to Black people. <https://baltimorefishbowl.com/stories/structural-racism-and-cannabis-black-baltimoreans-still-disproportionately-arrested-for-weed-after-decriminalization/>.

(BPD), the Department of Public Safety and Correctional Services (DPSCS) and the Baltimore City Circuit and District Courts.

Even in the instances where civil citations are issued pursuant to the 2014 law that decriminalized the possession of less than 10 grams of marijuana, if an individual is without identification when cited for possession of marijuana, the extensive use of limited resources still exist; whereby this individual is arrested, booked and processed within the criminal justice system.

As further evidence that marijuana enforcement is not creating a significant public safety benefit, states that have legalized recreational use of marijuana do not exhibit an increase in crime since legalization. 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 recreational use of marijuana.¹³ The report noted, for example, that, "Oregon's legalization law went into effect in July 2015, and the first stores opened in October 2016. [However], the [Federal Bureau of Investigation] FBI data shows that crime rates stayed largely the same between 2015 and 2016."¹⁴

In Nevada the report found that there was an initial increase in burglaries at stores selling marijuana after legalization. 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.¹⁵

In Washington State, "...crime rates have remained... and continue on a downward trend after retail sales [of marijuana] began in mid-2014."¹⁶ Interestingly, in Colorado where recreational use was legalized in 2014, there was an increase in crime reported in 2016. 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.¹⁷ Taken together, this national data fails to conclusively establish that the legalization of marijuana has resulted in any material increase in crimes related to its cultivation or sale.

¹³ 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/wp-content/uploads/2018/05/DANY-Report-on-the-Legalization-of-Recreational-Marijuana-Final.pdf>.

¹⁴ 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/wp-content/uploads/2018/05/DANY-Report-on-the-Legalization-of-Recreational-Marijuana-Final.pdf>.

¹⁵ 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/wp-content/uploads/2018/05/DANY-Report-on-the-Legalization-of-Recreational-Marijuana-Final.pdf>.

¹⁶ 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/wp-content/uploads/2018/05/DANY-Report-on-the-Legalization-of-Recreational-Marijuana-Final.pdf>.

¹⁷ 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/wp-content/uploads/2018/05/DANY-Report-on-the-Legalization-of-Recreational-Marijuana-Final.pdf>.

In sum, arrests for simple marijuana possession are a drain on limited resources and produce no rehabilitative, deterrent or other public safety benefit. In a city where there were 343 homicides in 2017 and a year-end clearance rate of 31% of homicides that occurred that year, and in 2018 there were 309 homicides with a year-end clearance rate of 26% for homicides that occurred in 2018, resources are scarce.¹⁸ The scarcity of resources is being wasted to deter a problem that is not threatening the safety or security of Baltimore City residents.

Public Health and Marijuana

Marijuana decriminalization and legalization as a public health concern is an evolving debate with little irrefutable evidence on marijuana's effects – good or bad. While there is limited data-driven research beyond anecdotal reports on the public health risks and benefits of marijuana decriminalization and legalization, marijuana remains illegal under federal law -prohibiting its sale, use or transport - and is classified as a Schedule 1 drug with zero medicinal value and high probability for abuse.¹⁹

According to the Centers for Disease Control and Prevention with data from the Substance Abuse and Mental Health Services Administration, marijuana is the most commonly used illegal drug in the United States, with 37.6 million users in 2017.²⁰ Marijuana is believed to possess a wide range of health effects, including: addiction; brain health; cancer; chronic pain; heart health; lung health; mental health; poisoning; and is also an alleged risk for the use of other drugs. In fact, opponents of decriminalization and legalization argue that marijuana is a “gateway drug,” that fuels the prospective use of heroin and other drugs and increases the accessibility and likelihood of youth consumption. According to the data, these arguments are not founded in fact. The Drug Policy Alliance notes, the majority of marijuana users do not go on to use other drugs, but instead cease drug use with marijuana.²¹

And while opponents of reform assert that the decriminalization and legalization of marijuana promotes alcohol abuse, impaired driving and that marijuana stores are criminally enticing, supporters of reform argue that marijuana decriminalization and legalization dissolves racial injustices in drug arrests; weakens the black market associated with violent crime; decreases crime, whereby police resources are reallocated to pressing public safety concerns; improves doctor-patient relations (where patients are more willing to openly communicate marijuana use); and reduces alcohol use (where alcohol is a substance with severe direct and collateral consequences).²²

¹⁸ 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.

¹⁹ 21 U.S.C § 801 et seq.

²⁰ Center for Disease Control and Prevention, “Marijuana: How Can It Affect Your Health”

<https://www.cdc.gov/marijuana/health-effects.html>.

²¹ Drug Policy Alliance, “Is Marijuana a Gateway Drug” <http://www.drugpolicy.org/marijuana-gateway-drug>.

²² Drug Policy Alliance, “Is Marijuana a Gateway Drug” <http://www.drugpolicy.org/marijuana-gateway-drug>.

Notwithstanding this public health debate, there is widespread consensus that the criminalization of marijuana possession significantly impacts communities of color often without addressing any public health-related concerns in a meaningful way. The American Civil Liberties Union (ACLU), relying on federally collected data and broad accredited references, found that Black men are four times more likely to be arrested for marijuana possession than Whites, even though both groups use the drug at similar rates.²³ Furthermore, the ACLU Maryland's *Blueprint for Smart Justice: Maryland* Report argues that Maryland over relies on incarceration, particularly for offenses that are best treated as public health concerns.²⁴

a. Enforcement of Marijuana Laws in Baltimore City

In 2010, the American Civil Liberties Union (ACLU) reported that Maryland's arrest rate for marijuana possession was the fourth highest in the nation. In fact, police arrested one out of every 250 Maryland residents for possession of marijuana. In addition, while Black people only comprised 30% of the State's population in 2010, 58% of those arrested for marijuana possession were Black.²⁵

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.²⁶ And 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 Baltimore Police Department BPD records, in 2015 45 citations were issued and 39 of those were given to Black people (89%). In 2016, records indicate that BPD issued 199 citations for marijuana possession and 187 (94%) were issued to Black people. In 2017, BPD issued 431 citations for marijuana possession, where 410 (95%) were issued to Black people. Shockingly, approximately 42% of the aforementioned citations were issued in the Western District, where approximately 95% of the residents in this District are Black.

When taken together, these statistics are incredibly alarming and elucidate the crisis of disparate treatment of Black people for marijuana possession and other offenses without any seeming regard for the possible adverse public health effects resulting from such enforcement. As such, these statistics provide further support for creating policies that offer alternatives to incarceration for individuals who commit offenses that have not been shown to have a significant impact on the overall health and well-being of communities.

²³ American Civil Liberties Union, "Blueprint for Smart Justice: Maryland" (2018) <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-MD.pdf>.

²⁴ American Civil Liberties Union, "Blueprint for Smart Justice: Maryland" (2018) <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-MD.pdf>.

²⁵ American Civil Liberties Union, "Blueprint for Smart Justice: Maryland" (2018) <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-MD.pdf>.

²⁶ American Civil Liberties Union, "Blueprint for Smart Justice: Maryland" (2018) <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-MD.pdf>.

Collateral Consequences

Collateral consequences are legal, social, and economic debilities 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, welfare, immigration, employment, professional licensure, property rights, mobility, education and other opportunities—the collective effect of which increases recidivism and undermines meaningful reentry of the convicted for a lifetime.²⁷

Although sweeping adverse ramifications flowing from collateral consequences exists, defendants are generally not entitled, as a matter of due process, to be warned of these consequences, either before entering a guilty plea or upon conviction.

In a city like Baltimore, the collateral consequences of an inequitable criminal justice system are apparent. According to the United States Census Bureau, in 2017 an estimated 39.7 million (12%) of the country's 327.16 million Americans lived in poverty.²⁸ In Baltimore City - home to 622,454 residents, 62% of which are Black – 28% of families live in poverty.²⁹ Specifically, Baltimore's Western District, home to much of the city's Black population and where health and wellness indicators sit well below the city's total performance, 42% of marijuana citations were issued despite the reality of unsupported human capital.

Moreover, data from the Baltimore City Health Department's *Baltimore City 2017 Neighborhood Health Profile*, shows that in Baltimore's Western district (comprised of several historic neighborhoods such as Sandtown-Winchester, Penn-North, and Druid Hill) – where approximately 95% of the residents are Black – the median household income is \$24,374 compared to the city's overall median income of \$41,819.³⁰ In addition, the unemployment rate in this district is 20% as compared to a 13% city rate overall, and the poverty rate is 50% as compared to a 28% rate citywide.³¹ Despite these numbers, or maybe because of them, the BPD disproportionately issued over approximately 42% of its 2017 marijuana citations to Black people in this District.

²⁷ 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>.

²⁸ United States Census Bureau <https://www.census.gov/en.html>.

²⁹ Baltimore City Health Department, “Baltimore City 2017 Neighborhood Health Profile” [https://health.baltimorecity.gov/sites/default/files/NHP%202017%20-%2047%20Sandtown-Winchester-Harlem%20Park%20\(rev%206-9-17\).pdf](https://health.baltimorecity.gov/sites/default/files/NHP%202017%20-%2047%20Sandtown-Winchester-Harlem%20Park%20(rev%206-9-17).pdf).

³⁰ Baltimore City Health Department, “Baltimore City 2017 Neighborhood Health Profile” [https://health.baltimorecity.gov/sites/default/files/NHP%202017%20-%2047%20Sandtown-Winchester-Harlem%20Park%20\(rev%206-9-17\).pdf](https://health.baltimorecity.gov/sites/default/files/NHP%202017%20-%2047%20Sandtown-Winchester-Harlem%20Park%20(rev%206-9-17).pdf).

³¹ Baltimore City Health Department, “Baltimore City 2017 Neighborhood Health Profile” [https://health.baltimorecity.gov/sites/default/files/NHP%202017%20-%2047%20Sandtown-Winchester-Harlem%20Park%20\(rev%206-9-17\).pdf](https://health.baltimorecity.gov/sites/default/files/NHP%202017%20-%2047%20Sandtown-Winchester-Harlem%20Park%20(rev%206-9-17).pdf).

These statistics are staggering evidence of an intimate and vivid relationship between discriminatory marijuana law enforcement and the absence of investment in human capital where the root causes of poverty are not alleviated. If individuals are provided quality education, workforce development, housing and income stability, they become productive, contributing and law-abiding citizens not simply for society but themselves and families – both of which are mutually benefiting. If, however, large swatches of the community are disproportionately and negatively impacted by having to engage with the criminal justice system to address marijuana possession charges that show no significant public safety threat and, instead, cause prosecutors' offices to expend extensive resources, then the cost/benefit analysis is clear and those disproportionately-affecting policies should be changed.

The Prosecutor's Role

Given the foregoing statistics, many in the United States are progressively rethinking and reconsidering how the "War on Drugs" has impacted the country on personal and systemic levels. A survey conducted by the *Pew Research Center* found that 67% of Americans believe that drug policy should focus more on treatment and less on prosecution.³² The continued criminalization of marijuana possession and use has become even more troubling as states decriminalize and legalize these activities.³³

Prosecutors have a sworn duty to "seek justice, not merely convict."³⁴ Also, they are expected to improve the criminal justice system. This duty to seek justice, not simply convict, and to improve the system in which they work, has led many District Attorneys across the country to change how they prosecute, whether they prosecute, and how they address marijuana enforcement in their districts. Manhattan, Brooklyn, Philadelphia, Nueces County (TX), and others, are declining to prosecute marijuana possession, diverting marijuana drug violators, and implementing many other progressive policies surrounding enforcement of marijuana violations.

Prosecutors are beginning to address the War on Marijuana and offer more effective solutions to the problems that marijuana violations cause in the communities they affect. In this way, prosecutors can begin to change the narrative surrounding marijuana violations by recognizing and remedying the conscious and collateral impact it can have on individuals, particularly people of color. Certainly, prosecutors decide what charges to bring, when to bring them, which plea deals to offer, when to divert, and when to not charge enhancements.³⁵ This immense amount of power is best utilized to socially, politically and behaviorally reform and mandate marijuana legislation and policy.

³² Pew Research Center: U.S. Politics and Policy "America's New Drug Policy Landscape," (April 2014) <http://www.people-press.org/2014/04/02/americas-new-drug-policy-landscape/>.

³³ Mike Males & Lizzie Buchen, "Reforming Marijuana Laws: Which Approach Best Reduces the Harms of Criminalization: A Five State Analysis, Center on Juvenile and Criminal Justice," (Sept. 2014), http://www.cjcj.org/uploads/cjcj/documents/cjcj_marijuana_reform_comparison.pdf.

³⁴ Fair and Just Prosecution "Marijuana Policy Reform," (2017) <https://fairandjustprosecution.org/wp-content/uploads/2017/09/FJPBrief.Marijuana.9.25.pdf>.

³⁵ Fair and Just Prosecution "Marijuana Policy Reform," (2017) <https://fairandjustprosecution.org/wp-content/uploads/2017/09/FJPBrief.Marijuana.9.25.pdf>.

Alternatives to Incarceration

Diversion programs refer to programs that redirect individuals away from incarceration. These programs are an important tool in criminal justice reform. Diversion programs limit expenditure of resources, reduce rates of recidivism and decrease the collateral consequences of entanglement in the criminal justice system.³⁶ Diversion programs decrease the likelihood of people entering the prison system and help people access much needed resources.

a. Drug Treatment Courts

In Baltimore City there exist both Circuit and District Drug Treatment Courts. These are specialized court dockets to serve criminal defendants who have alcohol and other drug dependency barriers.³⁷ These courts require cooperative relationships among drug court team members. Collaboration must exist from beginning through end of the process. The court, through the designated judge, provides the overall leadership of the team and represents the court's authority to drug court participants.³⁸

The goal of Drug Treatment Court Programs is to offer nonviolent offenders, who are identified as being drug-dependent, fully integrated and comprehensive substance abuse treatment services, with close criminal justice supervision and judicial monitoring. These programs strive to enhance public safety, provide cost-effective alternatives to incarceration, give offenders the tools and skills necessary to maintain sobriety, reward positive life changes and maintain accountability for negative conduct, with an overarching goal to rehabilitate drug offenders to become productive, self-sustaining members of society. Participants are held accountable for negative conduct, and consequences resulting from negative conduct are decided by the team on an individual basis.

b. Mental Health Courts

In Baltimore there exist both Circuit and District Mental Health Courts. A Mental Health Court is a specialized court docket established for defendants with mental illness. Participants can have a co-occurring substance use disorder. Participants are identified through mental health screening and assessments and voluntarily participate in a judicially supervised treatment plan developed jointly by a team of court staff and mental health professionals. The overarching goal of the Mental Health Court is to decrease the frequency of participants' contacts with the criminal justice system by providing participants with judicial leadership to improve the social functioning, employment linkage, housing needs, treatment, and support services of participants.³⁹

³⁶ Fair and Just Prosecution "21 Principles for the 21st Century Prosecutor"

https://www.brennancenter.org/sites/default/files/publications/FJP_21Principles_FINAL.pdf.

³⁷ Maryland Courts "Drug Treatment Courts", <https://www.courts.state.md.us/opsc/dtc>.

³⁸ Maryland Courts "Drug Treatment Courts", <https://www.courts.state.md.us/opsc/dtc>.

³⁹ Maryland Courts "Mental Health Courts," <https://mdcourts.gov/opsc/mhc>.

Mental Health Courts rely on individualized treatment plans and ongoing judicial monitoring to address both the mental health needs of offenders and public safety concerns of communities. These courts also seek to address the underlying problems that contribute to criminal behavior, and to assist with the avoidance of recurring correctional visits, as well as to overall lower the recidivism of this population. Both the Drug Treatment Courts and the BCSAO diversion programs described below have borrowed heavily from the assessment, treatment, and supervision aspects of the Mental Health Courts.

BCSAO's AIM to B'More (AIM) Diversion Program

Created in 2015 by and operated under the administration of State's Attorney Marilyn J. Mosby, AIM to B'More (AIM) is an alternative to incarceration that improves the quality of life for low-level felony drug offenders. Merging accountability with real opportunities for self and situational development and sustainability, amenable and successful participants graduate without a criminal record and with a career. While it is recognized that certain criminal offenses may require confined and secure settings, problem solving initiatives and approaches, similar to AIM, provide choices to initial or continued formal processing in the criminal justice system. Equally, diversion programs reduce crime, improve practices and coordination across agencies, enhance client and victim services, reduce repetitive care and increase public trust in the pursuit of justice.

Fundamentally, AIM was modeled after former San Francisco District Attorney Kamala Harris's evidence-based *Back on Track: A Problem Solving Reentry initiative*. Existing in partnership with 24 public and private agencies, including the Division of Parole and Probation in the Department of Public Safety and Correctional Services, AIM to B'More fills a critical void within the criminal justice system for offenders who sell drugs for income. First, participants submit to an amenability assessment of serious or chronic behavioral, social and psychological disorders and barriers; undergo treatment deemed necessary; and are encouraged to work with the program's licensed certified clinical social worker to develop a tentative action plan based on his or her evolving needs. Participants are offered a two-year supervised probation, including 100 hours of community service, career coaching, and are required to maintain consistent full time employment for one year. Upon successful completion of AIM, including full compliance with the terms of a 2-year supervised probation, the state will initiate and facilitate the defendant's timely petition for expungement.

Overall, AIM services a population that is 98% Black and predominantly (86%) male. Sixty (60%) of participants have their high school diploma or are under 24 years old and 80% are working full-time. Remarkably, AIM's success rate is 68% and its recidivism rate (32%) is well below the national average (68%). To date, 98% of AIM graduates have full time employment.

Reform

The BCSAO is committed to holistic criminal justice reform. In an effort to develop new policies that better address and remedy the systemic racial disparities resulting from the uneven enforcement of marijuana laws borne by communities of color in Baltimore City, the BCSAO has studied the national best practices and recommendations from accredited and progressively innovative agencies, including: *Fair and Just Prosecution*, *The Brennan Center for Justice*, *PEW Charitable Trust*, and other District Attorneys across the country. Collectively, the efforts guide the BCSAO's new policies, particularly in relation to marijuana, and these policies will begin to address the disproportionate effects from the War on Drugs.

Many of the BCSAO's current policies and programs are progressive and strive to reduce rates of mass incarceration, especially when it comes to incarceration for conduct that is primarily a public health concern. The City's neighbor, Washington, D.C., and states across the country have decriminalized marijuana while Maryland has yet to follow suit. The new policies outlined below are intended to further address the injustices of the past and ensure that justice always prevails.

- a. BCSAO will not Prosecute Marijuana Possession regardless of Weight and Criminal History

Effective immediately, the BCSAO will not prosecute individuals for the possession of marijuana regardless of weight and/or criminal history.⁴⁰

- b. BCSAO will prosecute Marijuana Possession With Intent to Distribute (PWID) and Distribution if articulation of indicium of Distribution Exists

Effective immediately, the BCSAO will continue to prosecute felony Possession With Intent to Distribute and/or Distribution Charges if those charges are based on articulated evidence of intent to sell or distribution of marijuana exists, in addition to the amount possessed.

- c. BCSAO Mandates Referrals of all first time Felony Drug Distribution Offenses to AIM to B'MORE Diversion Program

Effective immediately, Assistant State's Attorneys for Baltimore City must refer all first time felony drug distribution defendants to AIM to B'More Diversion Program.

⁴⁰ In instances where there are extraordinary circumstances, Executive approval must be gained in order to prosecute possession, and such approval must be noted in all case files.

Correcting past convictions

In addition to the reforms above, this office will work to right the wrongs of the past. In light of the disproportionate enforcement of marijuana possession laws and the collateral consequences of such convictions on communities of color, the BCSAO has moved to vacate marijuana possession convictions in 1,050 Circuit Court cases and in 3,778 District Court cases, dating back to 2011.⁴¹ Removing the aforesaid convictions is in line with the BCSAO's mission of pursuing "justice over convictions" in every case.

Expungement motions were not filed in these cases because of the numerous hurdles in the expungement statutes that would require expenditure of enormous resources to determine whether expungement might be possible.⁴²

Conclusion

While contemporary attitudes and public policy toward marijuana have changed dramatically in the past few years, the enforcement of marijuana laws remains grossly disproportionate in its impact on communities of color. Moreover, prosecuting marijuana possession has not been shown to significantly improve public safety or public health outcomes in communities, and the resources saved from prosecuting such cases can be redirected to prosecuting drug kingpins and addressing other significant crimes, including crimes of violence.

The BCSAO understands this and, coupled with the overwhelming evidence showing that the War on Marijuana has only served to further intensify existing racial biases across our country's criminal justice system without securing any significant net gains, the Baltimore City State's Attorney stands ready to use her prosecutorial discretion to change how marijuana laws are enforced in Baltimore City and, in so doing, re-balance the justice system one individual, one family, at a time.

⁴¹ The BCSAO collected the number of cases dating back to the year 2000 from JIS, but we do not contend that the Office has captured all cases. The Administrative Office of The Courts possesses the comprehensive data, but we have been unsuccessful in obtaining this information.

⁴² Barriers to expungement motions include: The Unit Rule, The Pending Case Exception, The Waiting Period and having to pull the controlled dangerous substance analysis for each case.