

March 26,2020
The Honorable Ralph Northam
Governor, Commonwealth of Virginia
1111 East Broad Street
Richmond, VA 23219

RE: Marijuana Decriminalization Legislation Senate Bill 2 and House Bill 972

Dear Governor Northam:

I write to you today on behalf of the ACLU of Virginia and its more than 100,000 Virginia-based donors, members and supporters from across the Commonwealth regarding Senate Bill 2 and House Bill 972, which would reduce the penalty for unlawful possession of small amounts of marijuana to a \$25 civil penalty.

The ACLU of Virginia, alongside many community organizations such as Marijuana Justice, RISE for Youth, and others, has strongly opposed adoption of SB 2 and HB 972 as passed because they do not in fact “decriminalize” marijuana possession or address the reality of discriminatory enforcement of marijuana laws.

As many Virginians’ voiced during this session, the “smell of marijuana” is routinely used as a justification for traffic stops and “stop-and-frisk” activities that disproportionately impact Black and Brown people and communities of color. These interactions can lead to unrelated charges for which there otherwise would be no probable cause or to undue use of force. Especially given the current health crisis and the heightened risk of serious harm to people from COVID-19, downsizing the footprint of the criminal legal system should be part of Virginia’s COVID-19 public health response and part of the way that Virginia looks at its criminal legal system. Virginia should address racially-biased marijuana enforcement and change laws that unnecessarily and unjustifiably lead to more people interacting with the criminal legal system.

The legislation that you’ve been asked to sign continues to state that it is a violation of law to possess marijuana in any amount – only the penalty for possession of under an ounce has changed. Under the current law, a person charged with a criminal violation has the opportunity to have a public defender or appointed lawyer represent them and the possibility of entering a diversion program resulting in complete expungement after a year. The switch to a civil penalty only compounds the racial and economic disparities that already haunt our criminal legal system by depriving the charged person with a right to counsel and advantaging wealthier people who can pay the penalty and not suffer the real life consequences of the admission that they violated the law which could keep a person from entering the military or obtaining a



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federal job or loan, among other things.

The proponents of this legislation argue that it is a reasonable intermediate step pending full legalization and regulation of marijuana. That is simply not the case. The way that the bill is structured, the fact that it remains unlawful to possess even a small amount of marijuana means that police may, and likely will, continue to rely on the “smell test” to justify otherwise completely pretextual stops. The ACLU of Virginia and its coalition partners continue to believe that the right course pending full legalization is to pass legislation that simply makes possession of less than an ounce of marijuana legal by removing it from the criminal code. This would not change laws related to distribution or sale or laws barring impaired driving. It would, however, mean that police could no longer use the “smell test” to justify interactions with Virginians.

Even if you choose not to recommend amendments that would end the prohibition on simple possession and bring some racial justice to our system now by taking away this law enforcement tool, at a minimum, we urge you to recommend that both Senate Bill 2 and House Bill 972 be amended to address the following three concerns. As currently drafted both bills would:

1. Continue to give police officers and commonwealth attorneys the discretion to arrest and charge individuals with a felony for simple marijuana possession under an ounce by arguing that the person had an intent to distribute (which could include giving a joint to a friend). We propose that the following language be deleted from both bills to ensure that possession of anything under an ounce is truly “decriminalized” and that police do not have the authority to choose to release some people, cite some people with a civil penalty infraction and arrest some people for felony intent to distribute: “There shall be a rebuttable presumption that a person who possesses no more than one ounce of marijuana possesses it for personal use.”
2. Criminalize our youth, take away minors’ driver’s licenses for non-related driving offenses, and mandate drug screening by defining possession of an ounce or less of marijuana by a juvenile as a criminal act – a “delinquency”. We do not believe that a civil violation of marijuana possession for adults should be a “crime” for juveniles and defined as “delinquency”. This would put young people into a flawed juvenile criminal legal system for a civil infraction. Virginia should take a more rehabilitative approach and the legislation should be amended to define a child in possession of marijuana as a child in need of services (CHINS), not a juvenile delinquent.
3. Leave out communities directly impacted by marijuana criminalization from the work group tasked to address 2021 marijuana legislation. We believe it is vital to have people from directly impacted communities at the table to ensure racially equitable marijuana legislation gets passed. If we do not have representatives of the communities most impacted by racially biased police enforcement involved in the discussion, Virginia risks reinforcing the decades of disproportionate harm imposed on Black and Brown Virginians in future legislation. At the very least, any workgroup should include public defenders, juvenile justice advocates, Black and



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Brown impacted community members, and civil liberties advocates.

The fact is marijuana laws overwhelmingly target people in Black and Brown communities. The legislation you've been asked to sign will only contribute to that inequality. The war on drugs has always been a war on people, particularly on people of color and experts point to policing practices and the racial history behind marijuana prohibition as leading to arrest disparities. Virginia must address and eliminate discriminatory police practices.

Thank you for your attention to this important matter, and if you have questions or need more information please do not hesitate to contact Ashna Khanna, ACLU of Virginia legislative director, either by calling (248) 231-2551 or emailing akhanna@acluva.org.



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Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire Guthrie Gastañaga". The signature is fluid and cursive.

Claire Guthrie Gastañaga
Executive Director