

Department of Legislative Services  
Maryland General Assembly  
2024 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 396

(Senator Folden, *et al.*)

Judicial Proceedings

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Criminal Procedure - Stops and Searches - Cannabis Odor and Admission of  
Evidence (Drug-Free Roadways Act of 2024)

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This bill separates a motor vehicle from a person or a vessel for the purposes of stop and search procedure and prohibits a law enforcement officer from initiating a stop or search of a motor vehicle based solely on (1) possession (or suspicion of possession) of cannabis that does not exceed the personal use amount or (2) the presence of cash or currency in proximity to cannabis without other *indicia* of an intent to distribute. The bill removes the prohibition against a law enforcement officer from initiating a stop or search of a *motor vehicle* based solely on the odor of burnt or unburnt cannabis and repeals the provision that makes specified evidence obtained in violation of the law inadmissible at trial or other proceedings.

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Fiscal Summary

**State Effect:** As the bill partially reverts to practices and procedures in place prior to July 1, 2023, general fund expenditures are not expected to be materially affected, as discussed below. Potential minimal increase in revenues to the extent the bill results in more fine penalties being imposed (and collected) for cases heard in District Court.

**Local Effect:** Any change in local operations to return to practices and procedures in place prior to July 1, 2023, is not expected to materially affect local government expenditures, as discussed below. Potential minimal increase in revenues to the extent the bill results in more fine penalties being imposed (and collected) for cases heard in the circuit courts.

**Small Business Effect:** None.

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## Analysis

### Bill Summary/Current Law:

#### *Prohibited Search of a Vehicle or a Person – § 1-211 of the Criminal Procedure Article*

Pursuant to Chapter 802 of 2023 a law enforcement officer is prohibited from initiating a stop or a search of a person, a motor vehicle, or a vessel based solely on one or more of the following types of evidence: (1) the odor of burnt or unburnt cannabis; (2) possession (or suspicion of possession) of cannabis that does not exceed the personal use amount; or (3) the presence of cash or currency in proximity to cannabis without other *indicia* of an intent to distribute.

The bill removes a motor vehicle from the above provision and instead prohibits a law enforcement officer from initiating a stop or search of a motor vehicle based *only* on (1) possession of cannabis that does not exceed the personal use amount or (2) the presence of cash or currency in proximity to cannabis without other *indicia* of an intent to distribute. The bill removes the prohibition against initiating a stop or search of a *motor vehicle* based on the odor of burnt or unburnt cannabis.

Also pursuant to Chapter 802, if a law enforcement officer is investigating a person solely for driving or attempting to drive a motor vehicle or vessel while impaired by or under the influence of cannabis, the law enforcement officer may not search of an area of a motor vehicle or vessel that is not (1) readily accessible to the driver or operator of the motor vehicle or vessel or (2) reasonably likely to contain evidence relevant to the condition of the driver or operator of the motor vehicle or vessel.

Evidence discovered or obtained in violation of Chapter 802, including evidence discovered or obtained by consent, is not admissible in a trial, hearing, or other proceeding. The bill repeals this provision.

#### *Cannabis Reform*

Chapters 254 and 255 of 2023 established the adult-use cannabis industry in the State following the enactment of Chapter 26 of 2023 and the passage of the associated constitutional referendum by (1) creating the Maryland Cannabis Administration (MCA) as an independent unit of State government that is responsible for the regulation of medical and adult-use cannabis; (2) attributing cannabis-related duties to the Alcohol and Tobacco Commission and renaming it the Alcohol, Tobacco, and Cannabis Commission; (3) developing a licensing framework for the regulated sale of cannabis; (4) requiring all existing medical cannabis licensees to convert to adult-use cannabis businesses; (5) establishing a 9% sales and use tax on the sale of adult-use cannabis; and (6) creating

the Office of Social Equity (OSE) in MCA and the Social Equity Partnership Grant Program in OSE. The sale of adult-use cannabis began on July 1, 2023.

### *Adult-use Cannabis*

Pursuant to Chapter 26 of 2022 and the passage of the associated constitutional amendment, a person at least age 21 may use and possess the personal use amount of cannabis. Possession of the personal use amount of cannabis by a person younger than age 21 and possession of the civil use amount of cannabis by anyone are subject to civil penalties. Possession of more than the civil use amount of cannabis by anyone is subject to a criminal penalty.

“Personal use amount” means (1) up to 1.5 ounces of usable cannabis; (2) up to 12 grams of concentrated cannabis; (3) cannabis products containing up to 750 milligrams of delta-9-tetrahydrocannabinol (THC); or (4) up to 2 cannabis plants. “Civil use amount” means (1) more than 1.5 ounces but not more than 2.5 ounces of usable cannabis; (2) more than 12 grams but not more than 20 grams of concentrated cannabis; or (3) cannabis products containing more than 750 milligrams but not more than 1,250 milligrams of delta-9-THC.

### *Probable Cause to Arrest – Odor of Marijuana*

The Fourth Amendment to the U.S. Constitution protects individuals from unreasonable searches and seizures by the government. Generally, U.S. Supreme Court decisions have established the principle that a warrant issued by a “neutral and detached magistrate” must be obtained before a government authority may breach the individual privacy that the Fourth Amendment secures. However, the U.S. Supreme Court recognizes a number of exceptions to the warrant requirement including for arrests where probable cause exists to believe that a crime has been committed by the person being seized.

Additionally, in *U.S. v. Humphries*, 372 F.3d 653, 659 (4th Cir. 2004) the court stated that while the odor of marijuana provides probable cause to believe that marijuana is present, the presence of marijuana does not of itself authorize the police to arrest any person in the vicinity. Additional factors must be present to localize the presence of marijuana such that its placement will justify the arrest.

The Maryland Court of Appeals (now the Supreme Court of Maryland) considered whether the odor of marijuana alone provided probable cause to arrest despite the decriminalization of possession of less than 10 grams of marijuana, and subsequently held that “the mere odor of marijuana alone is not indicative of the amount of marijuana that may be in a person’s possession and does not provide a law enforcement officer with the requisite probable cause to arrest a person and perform a warrantless search of that person incident

to the arrest.” *Lewis v. State*, 470 Md. 1 (2020). However, the Court of Appeals held that “the odor of marijuana provides reasonable suspicion of criminal activity sufficient to conduct a brief investigatory detention.” *In re D.D.*, 479 Md. 206 (2022).

### *Smoking Cannabis in the Passenger Area of a Vehicle*

Effective July 1, 2023, an occupant of a motor vehicle may not smoke cannabis in the passenger area of a motor vehicle on a highway. A violation of this prohibition is a civil offense subject to a maximum fine of \$25. Additionally, a driver of a motor vehicle may not smoke or consume cannabis in the passenger area of a motor vehicle on a highway. A violation of this prohibition is a misdemeanor subject to a maximum fine of \$500. The prepayment penalty established by the District Court is \$530, and the Motor Vehicle Administration (MVA) must assess one point against a violator’s license. If, however, the violation contributes to an accident, the prepayment penalty is \$570, and MVA must assess three points against the violator’s license.

### *Driving Under the Influence of Alcohol or While Impaired by Alcohol, Drugs, or Controlled Dangerous Substances*

Under the Transportation Article, a person may not drive or attempt to drive any vehicle while (1) under the influence of alcohol or under the influence of alcohol *per se*; (2) impaired by alcohol; (3) impaired by a drug, any combination of drugs, or any combination of drugs and alcohol; or (4) impaired by a controlled dangerous substance. Additionally, a person may not commit any of these offenses while transporting a minor.

A person convicted of one of the above offenses is subject to higher maximum penalties when that person has specified prior convictions. Chapter 20 of 2019 increased maximum penalties for subsequent drunk and drugged driving violations. **Exhibit 1** displays the maximum penalties for alcohol and drug-related driving offenses.

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**Exhibit 1**  
**Driving Under the Influence of Alcohol, Under the Influence *Per Se*, or**  
**While Impaired by a CDS**

First Offense	1 year imprisonment and/or fine of \$1,000
Second Offense	2 years imprisonment and/or fine of \$2,000
Third Offense	5 years imprisonment and/or fine of \$5,000
Fourth or Subsequent Offense	10 years imprisonment and/or fine of \$10,000

**Driving Under the Influence of Alcohol, Under the Influence *Per Se*, or**  
**While Impaired by a CDS While Transporting a Minor**

First Offense	2 years imprisonment and/or fine of \$2,000
Second Offense	3 years imprisonment and/or fine of \$3,000
Third Offense	5 years imprisonment and/or fine of \$5,000
Fourth or Subsequent Offense	10 years imprisonment and/or fine of \$10,000

**Driving While Impaired by Alcohol or While Impaired by a Drug, a Combination of**  
**Drugs, or a Combination of One or More Drugs and Alcohol**

First Offense	2 months imprisonment and/or fine of \$500
Second Offense	1 year imprisonment and/or fine of \$500
Third Offense	5 years imprisonment and/or fine of \$5,000
Fourth or Subsequent Offense	10 years imprisonment and/or fine of \$10,000

**Driving While Impaired by Alcohol or While Impaired by a Drug, a Combination of**  
**Drugs, or a Combination of One or More Drugs and Alcohol**  
**While Transporting a Minor**

First Offense	1 year imprisonment and/or fine of \$1,000
Second Offense	2 years imprisonment and/or fine of \$2,000
Third Offense	5 years imprisonment and/or fine of \$5,000
Fourth or Subsequent Offense	10 years imprisonment and/or fine of \$10,000

CDS: controlled dangerous substance

Notes: All listed offenses are misdemeanors. Additionally, for the offense of driving under the influence of alcohol, under the influence *per se*, or while impaired by a CDS, a repeat conviction or convictions within five years requires a mandatory minimum penalty of imprisonment from 5 to 10 days.

Source: Department of Legislative Services

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**State Expenditures:** As the bill partially reverts to practices and procedures in place prior to the effective date of Chapter 802 of 2023 (July 1, 2023), it is generally assumed that affected entities – State law enforcement agencies (*e.g.*, the Department of State Police, Department of Natural Resources Police, Maryland Transit Administration Police, and the Maryland Transportation Authority Police), the Judiciary, the Office of the Public Defender (OPD), and the Department of Public Safety and Correctional Services – have not materially altered their distribution of resources, including personnel, since July 1, 2023, in such a way that additional resources are necessary.

#### *Office of the Public Defender*

OPD advises that the bill results in approximately 275 new cases each requiring 22.3 hours of attorney time, which equates to approximately three attorneys and one secretary at a cost of \$320,103 in fiscal 2025 increasing to \$434,226 by fiscal 2029. As mentioned above, the bill partially reverts to the law as it was prior to the effective date of Chapter 802 (July 1, 2023). The fiscal and policy note for Chapter 802 indicated that any savings for OPD would be redirected to other duties. The Department of Legislative Services advises that it is unlikely OPD has materially redirected personnel since July 1, 2023, such that additional staff is required to partially return to practices and procedures in place before July 1, 2023. Thus, general fund expenditures for OPD are not materially affected.

**Local Expenditures:** Similar to the impact described above for State entities, it is generally assumed that the bill does not materially impact local expenditures, as affected entities (*e.g.*, State’s Attorneys’ offices and local law enforcement) have likely not materially altered their distribution of resources since July 1, 2023, in such a way that additional resources are necessary.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** HB 320 (Delegate Pippy, *et al.*) - Judiciary.

**Information Source(s):** Baltimore City; Howard and Prince George’s counties; Towns of Bel Air and Leonardtown; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - February 1, 2024  
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