

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 51
Criminal Procedure – Reasonable Suspicion and Probable Cause -
Cannabis
DATE: January 30, 2023
(2/2)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 51. This bill provides that a finding of reasonable suspicion or probable cause may not be based solely on the odor of raw or burnt cannabis, the presence of money in proximity to cannabis, or possession of cannabis. However, the language on page 1, lines 20-22 appears to broaden the applicability to cases “relating to possession of contraband or other criminal activity.” That language is very broad and it is unclear whether that broad application is intentional.

In addition, the bill contains an exception for certain driving offenses. However, it is unclear why the language on page 2, line 5 provides for “investigating” rather than “reasonable suspicion.” It is unclear how to interpret that general term in the context of other Fourth Amendment jurisprudence. It is also unclear how to read the competing sections on page 2, lines 4 through 12. The section carves out certain offenses but then creates an exception that itself has an exception. The drafting makes it difficult to understand and likely difficult to apply.

Lastly, without exception, the bill provides that evidence discovered or obtained in violation of this bill, including evidence discovered or obtained with consent, is not admissible. This section conflicts with Fourth Amendment jurisprudence regarding consent searches. It is also hard to read this section in conjunction with the earlier provision. If a search is done with the consent of the party, it is necessarily not based on a finding of probable cause and thus the earlier section would not apply.

cc. Hon. Jill Carter
Judicial Council
Legislative Committee
Kelley O’Connor