



THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**Testimony of Senator Jill P. Carter  
In Favor of SB52 Criminal Procedure- Reasonable Suspicion and  
Probable Cause- Cannabis**

**Before the Judicial Proceedings Committee  
on February 2, 2023**

**SB51 will prohibit law enforcement from using the odor of cannabis as the basis for a warrantless search of a person or vehicle.**

**In 2022, Marylanders overwhelmingly approved the legalization of cannabis. Simply sanctioning its usage, however, did not solve the ongoing problem of disparate enforcement of the law, especially in our Black and brown communities.**

**The Fourth Amendment grants individuals a right to be free from unreasonable searches and seizures. However, the Supreme Court has long carved out exceptions for car searches when an officer has probable cause to believe the vehicle contains contraband. Courts have held that the odor of cannabis does not provide probable cause to search the person and/or vehicle. For example, the Supreme Court of Pennsylvania in *Commonwealth v. Barr* recently held that the odor of cannabis is insufficient to conduct a search.**

**Allowing the odor of cannabis to be the basis for a search creates a loophole in probable cause determination as it is being applied after the stop, notwithstanding the fact that cannabis is not the reason for the stop, and the citizen stopped is not under the influence of cannabis. Research demonstrates that police are two (2) times more likely to search Black and other citizens of color during traffic stops than white drivers, even though the data shows that Black and other people of color are less likely to possess illicit drugs and/or other contraband.**

**In traffic stops involving Black drivers, probable cause was used to justify sixty-seven percent (67%) of searches. In traffic stops involving white drivers, probable cause was only used to justify a search forty-six percent (46%) of the time. SB 51 would eliminate opportunities for officers to abuse the discretion afforded to them in these situations and reduce opportunities for racial profiling.**

**In this post-decriminalization period, Maryland court decisions on this issue have been confusing and inconsistent. In 2020, the Court of Appeals (now the Supreme Court) ruled that the odor of marijuana alone does not provide probable cause for an arrest or warrantless search of an individual. The Court reasoned that the odor of cannabis alone does not provide probable cause because cannabis possession has been decriminalized, and because an officer cannot determine the quantity of marijuana in someone's possession based solely upon odor. However, the same Court recently ruled that, while the odor of marijuana does not provide probable cause for a warrantless search and arrest, it does provide reasonable suspicion that the person possess ten (10) grams or more; and therefore, justifies an investigatory stop that could lead to a search.**

**The Maryland legislature needs clarify for the courts that the odor of cannabis alone is not a basis for a stop or the search of an individual or vehicle.**

**I urge a favorable report of SB51.**

Sincerely,

A handwritten signature in blue ink that reads "Jill P. Carter". The signature is written in a cursive, flowing style.

Jill P. Carter, Esq.