



February 2, 2023

SB 51

Testimony from Olivia Naugle, senior policy analyst, MPP, favorable with amendments

Dear Chair Smith, Vice Chair Waldstreicher, and members of the Senate Judicial Proceedings Committee:

My name is Olivia Naugle, and I am the senior policy analyst for the Marijuana Policy Project (MPP), the largest cannabis policy reform organization in the United States. MPP has been working to improve cannabis policy for 27 years; as a national organization, we have expertise in the various approaches taken by different states.

MPP has played a leading role in most of the major cannabis policy reforms since 2000, including more than a dozen medical cannabis laws and 12 of the 21 campaigns to enact legalization laws, including the first two states to legalize cannabis through the state legislature, rather than the ballot box — Illinois and Vermont.

The Marijuana Policy Project strongly supports legalizing and regulating cannabis for adults 21 and older and doing so in a way that repairs the damage inflicted by criminalization.

MPP supports SB 51 with amendments.

This past election, Maryland voters voted overwhelming in favor (67.2 percent) of Question 4 — a constitutional amendment to legalize cannabis for adults in Maryland beginning July 1, 2023. In fact, the passage of Question 4 was the highest margin of any ballot measure to legalize cannabis.

While the passage of Question 4 was a critical step to end the failed policy of cannabis prohibition, Maryland should further reform its cannabis policies to be sure that the odor of cannabis is not grounds for a search. This legislation is particularly necessary in light of then-Attorney General Frosh’s opinion that some searches based on the odor of cannabis will likely be permissible after legalization.¹

The odor or supposed odor of cannabis is often used as a pretext to stop and search residents, and we know that traffic searches are disproportionately performed on cars with Black or Latino drivers.² Traffic stop interactions have led to violence and death for Black

¹ <https://www.marylandattorneygeneral.gov/Opinions%20Documents/2022/107OAG153.pdf>

² Phillip Smith, “States that legalized marijuana see dramatic drop in police traffic searches,” *Alternet*, April 1, 2019. (Before legalization 1.3% of black drivers were subject to traffic searches in Colorado. After legalization, the rate was under 0.2%. Among Hispanic drivers, the rate dropped from 1% to 0.1%. Among whites, the rate of searches dropped from 0.4% to 0.1%. Thus, black drivers went from being 6.5 times as likely to be searched as whites to twice as likely, and the total likelihood of black drivers being subject to a traffic search dropped eightfold.)

Americans.³ To further reduce police interactions for a soon to be legal substance, Maryland should pass SB 51 this year. Most recent, legislatively enacted legalization states explicitly provided that the odor of cannabis isn't grounds for a search. This includes Connecticut, New Jersey, New York, and Virginia.⁴ Maryland should follow suit.

Improving the language to specify that the odor of cannabis is not grounds for a search

We'd like to offer one amendment to strengthen the bill as currently written. While we strongly support SB 51's intent, we are concerned that its exception to the prohibition on searches based on odor is too broad and that it would still provide cover for intrusive and traumatic searches that are not necessary to protect public safety. Subsection (B) would allow law enforcement to search the area of a vehicle "readily accessible to the driver" for cannabis while "investigating whether a person is driving ... while impaired ..."

The odor of cannabis lingers long after it was used, and the odor can just as easily come from passengers. There is no reason to allow law enforcement to search based on the odor — which we know in many cases will just be the claimed / imagined odor⁵ — or possession of a legal product.

If an officer has a legal basis to believe the driver is impaired, they can do a DRE exam with a field sobriety test. And, if they have the legal basis, blood can be drawn by a medical professional.

We urge you to remove the exception in subsection B, or to replace it with language more akin to other states' such as Connecticut's. The language could make it clear that law enforcement can still investigate if the *driver* is impaired, without giving permission to search the vehicle.

We suggest deleting the following entirely:

(b) Subsection (a) of this section does not apply when a law enforcement officer is investigating whether a person is driving, operating, or controlling a motor vehicle or vessel while impaired by drugs, except that the odor of cannabis may not be the

³ Tanvi Misra, "Uncovering Disparities In Policing By Analyzing Traffic Stop Data," *Pacific Standard*, June 7, 2018.

⁴ Citations are available at: <https://www.mpp.org/assets/pdf/issues/criminal-justice/2021.11.19%20State%20Analysis%20Chart.pdf>

⁵ See, i.e. Meghan Matt, "In The Age Of Decriminalization, Is The Odor Of Marijuana Alone Enough To Justify A Warrantless Search?" ("While some people may find it difficult, or perhaps uncomfortable, to believe police would falsify information, a report by the New York Times published in 2019 found that "on more than 25 occasions since January 2015, judges or prosecutors determined that a key aspect of a New York City police officer's testimony was probably untrue" and "at least five other judges have concluded in individual cases that officers likely lied about smelling marijuana to justify searches that turned up an unlicensed firearm."); In Baltimore, an officer was convicted of going further than lying about the smell of evidence — and of actually planting drugs. See: Kevin Rector, "Baltimore Police officer found guilty of fabricating evidence in case where his own body camera captured the act," *The Baltimore Sun*, Nov. 9, 2018. And, regarding another officer who ultimately served time: Julia Jacobo, "Baltimore Police sergeant planted drugs in suspect's car, federal prosecutors say," ABC News, Nov. 30, 2017.

basis for finding probable cause to justify the search of an area of a vehicle or vessel that is not:

- (1) readily accessible to the driver or operator; or
- (2) reasonably likely to contain evidence relevant to the condition of the driver or operator.

Or replacing it with:

(b) Nothing in this section prevents a law enforcement official from conducting a test for impairment based in part on the odor of recently burnt cannabis if the law enforcement official would otherwise be permitted to do so under law.

Thank you to Senator Carter for her leadership on this important legislation. Thank you to members of the Judicial Proceedings Committee for your time and attention to this issue. We urge the bill to be amended and receive a favorable report.

If you have any questions or need additional information, I would be happy to help and can be reached at the email address or phone number below.

Sincerely,

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