



RACIAL EQUITY IMPACT NOTE

DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND ▪ GENERAL ▪ ASSEMBLY

2023 Session
SB0051

Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis

Bill Summary

This bill (1) prohibits specified types of cannabis-related evidence to be used as the sole basis to establish reasonable suspicion or probable cause for the possession of contraband or other criminal activity and (2) specifies that the prohibition does not apply to an investigation into whether a person is driving, operating, or controlling a motor vehicle or vessel while impaired by drugs (with limited exception). Evidence discovered or obtained in violation of the bill, including evidence discovered or obtained by consent, is not admissible in a trial, hearing, or other proceeding.

Racial Equity Impact Statement

Maryland traffic stop data since 2018 indicates that Black or African American drivers consistently constitute at least 60% of all vehicle traffic stops in the State despite comprising only 29% of the State's population. They are also over four times as likely to be subject to a warrantless vehicle search than white drivers. Data from other jurisdictions also suggests that Blacks or African Americans are disproportionately subjected to warrantless investigative stops in those jurisdictions. A significant portion of these investigative stops and vehicle searches involve the odor of cannabis, and to the extent the bill's provisions reduce these stops and searches based solely on the odor of cannabis, Black or African American individuals will be significantly impacted by reduced exposure to law enforcement activity.

Analysis

This bill will restrict Maryland law enforcement agencies from using the smell of burnt or unburnt cannabis, alone, to determine that there is either reasonable suspicion or probable cause of further criminal activity to (1) stop, arrest, or search an individual; or (2) search a vehicle.

Currently the possession of under 10 grams of cannabis is considered a civil offence, as is the use of cannabis in a public space. The possession of any greater amount than 10 grams, possession with intent to distribute, and driving under the influence are considered criminal offenses. Under existing law, Maryland courts have held that law enforcement officers may conduct a brief investigative stop of a person based on the smell of cannabis if there is a reasonable suspicion of criminal activity. However, they may not use the smell of cannabis, without more, as probable cause to arrest and/or search an individual without a warrant. In addition, after a vehicle traffic stop, the smell of cannabis is sufficient probable cause to search a *vehicle*, but not the vehicle's *occupants*.

Chapters 26 and 45 of 2022 allow for partial legalization of cannabis. Beginning July 1, 2023, an adult over 21 may possess up to 1.5 ounces of cannabis without penalty. Possession of more than 1.5 ounces but less than 2.5 ounces will be a civil offense, and possession of 2.5 ounces or more will remain a crime. Several other existing cannabis-related offenses will be subject to criminal penalties such as driving under the influence of cannabis, cultivating more than two cannabis plants, and distribution or intent to distribute cannabis without a license. It will be a civil offense to smoke cannabis in public, on mass transit, inside indoor spaces regulated under the Clean Indoor Air Act, or in a passenger area of a motor vehicle on a highway.

In December 2022, the Office of the Attorney General published an opinion on the impact of cannabis legalization on the authority of police officers to conduct searches of individuals and vehicles based on detection of the odor of burnt or unburnt cannabis. That opinion advises that under the impending legalization of some use and possession of cannabis, the Supreme Court of Maryland would more likely hold that police officers can still search a vehicle that smells of the drug. However, the odor of cannabis emanating from a vehicle will not, without more, permit a police officer to search the vehicle's occupants. Beyond the vehicle context, the odor of cannabis coming from a person, without more, will not authorize a police officer to arrest and search that person, but the odor will likely allow an officer to briefly stop the person to investigate whether they have an amount of cannabis that would result in a criminal offense.

Post Legalization Rules from Other Jurisdictions

Partial cannabis legalization by states and other jurisdictions has led to post legalization rules and laws addressing the odor of cannabis and its legal sufficiency in the context of vehicle searches and searches of individuals.

The New York Police Department issued a memorandum in April 2021 immediately after New York's recreational cannabis law was signed into law that stated, in part, that the smell of cannabis alone no longer establishes probable cause of a crime to search a vehicle and that searches of vehicles may only be conducted if the driver appears to be under the influence of cannabis and there is probable cause to believe that the vehicle contains evidence of "impairing" cannabis. In

Nevada, where only medical cannabis is allowed, a 2021 statute protects both persons with medical cannabis cards and dispensaries from certain searches. The law provides that the mere possession of a registry identification card or a medical cannabis establishment license were not sufficient to establish probable cause to search a person or a person's property or subject a person or person's property to inspection by a governmental agency.

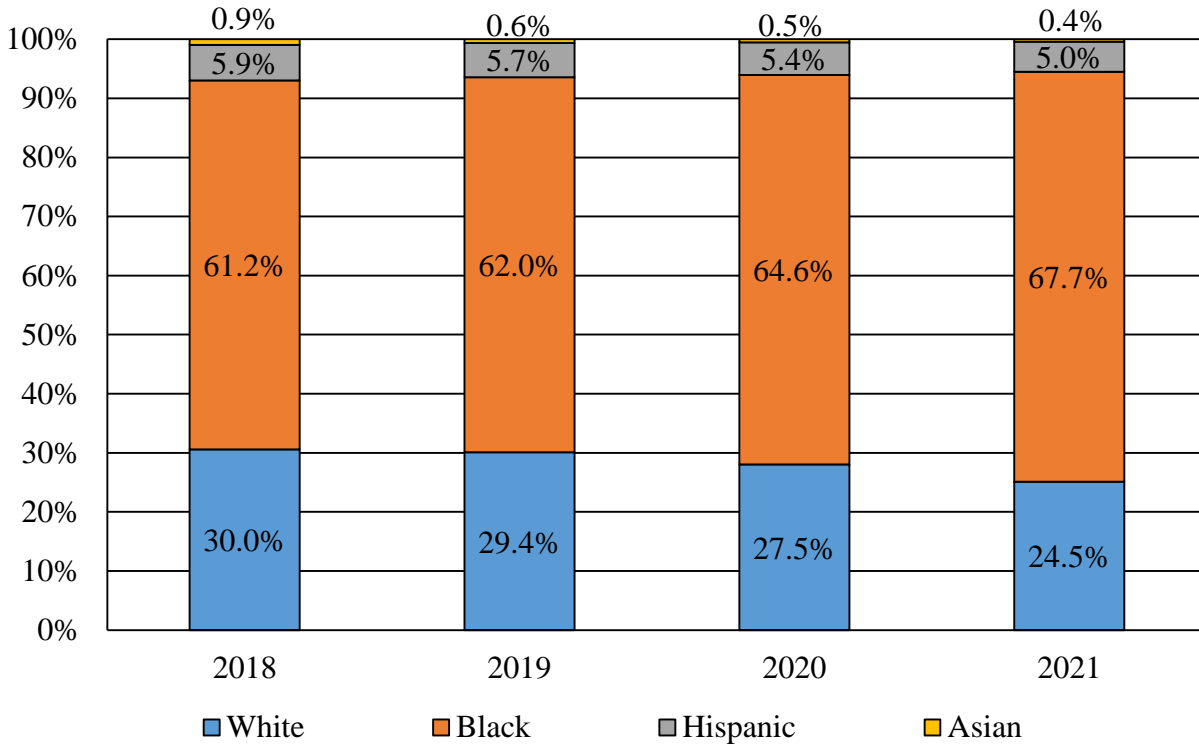
A 2019 Illinois statute specifically mentions that possession of a cannabis buyer identification card does not constitute either probable cause or reasonable suspicion to believe that a crime has been committed or to support a search of that person or the person's property.

Racial Disparities of Stop and Frisk and Vehicle Stops

Studies and collected data show that racial minorities are disproportionately subject to pretextual stops, such as stop and frisk, as compared to whites. The odor of cannabis has long been used as a tool for law enforcement to conduct these pretextual stops. A study of the New York City Police Department's electronic stop-and-frisk database found that, in 2012, 87% of the individuals stopped were Black or African American or Hispanic or Latino, and more than 90% of stopped individuals were never arrested or cited. Of those individuals that were subsequently frisked, weapons or contraband were recovered in less than 2% of these searches.

Exhibit 1 shows traffic stop data from the Governor's Office of Crime Prevention, Youth, and Victim Services indicating the racial demographics of traffic stop vehicle searches based on probable cause in Maryland from 2018-2021. Probable cause includes various possible reasons a law enforcement officer might initiate a vehicle search, the odor of cannabis only being one of them. Even though the data does not specify the portion of searches where the smell of cannabis was the probable cause for the vehicle search, the data shows that Blacks or African Americans consistently made up over 60% of traffic stops that ended in vehicle searches based on probable cause.

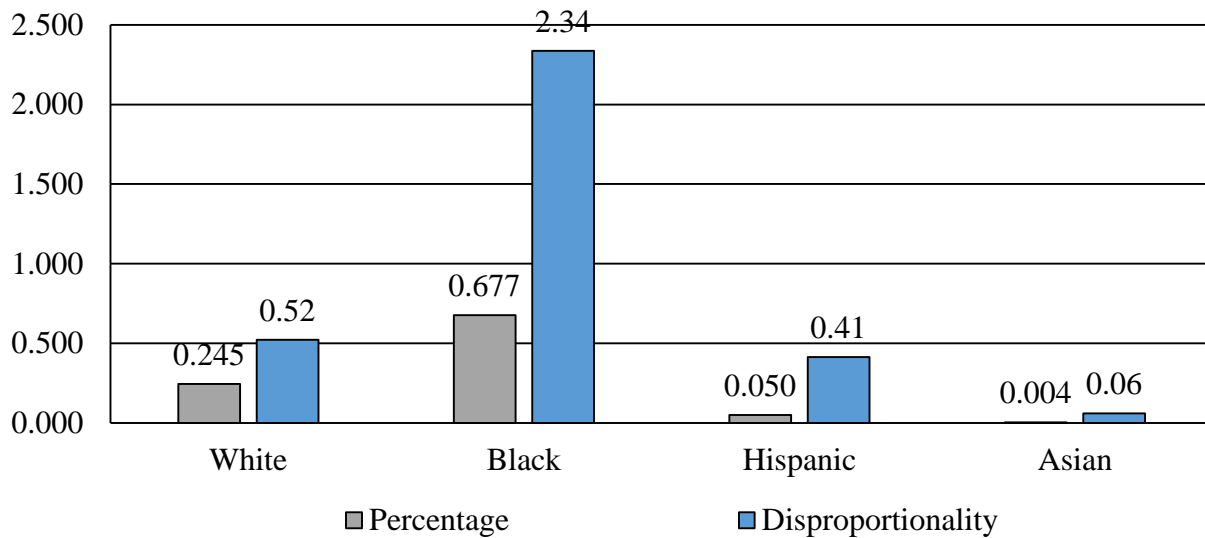
Exhibit 1
Maryland Traffic Stop Vehicle Searches Based on Probable Cause
2018-2021



Source: Governor’s Office of Crime Prevention, Youth, and Victim Services

Exhibit 2 further shows that in 2021, the number of probable cause searches was disproportionately high for Blacks or African Americans compared to general population demographics. Specifically, the number of Black or African American drivers subjected to probable cause searches were overrepresented by a ratio of 2.34, meaning they were more than twice as likely to have their vehicle searched by law enforcement without a warrant compared to their proportion of the State’s population.

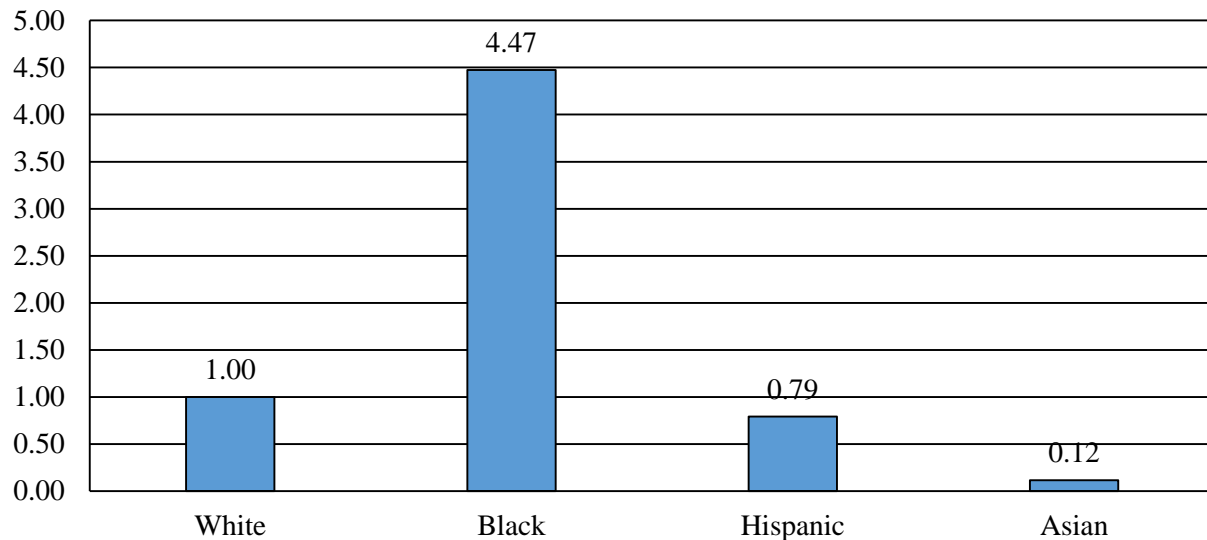
Exhibit 2
Disproportionality Ratios
Probable Cause Vehicle Searches
2021



Source: Governor's Office of Crime Prevention, Youth, and Victim Services

Exhibit 3 shows the racial disparity ratios for vehicle searches during traffic stops in Maryland. The data shows that Black or African American drivers have a racial disparity ratio of 4.47, meaning that they were more than four times as likely to experience a warrantless vehicle search based on probable cause during a traffic stop when compared to white drivers in 2021.

Exhibit 3
Disparity Ratios
Probable Cause Vehicle Searches
2021



Source: Governor’s Office of Crime Prevention, Youth, and Victim Services

Conclusion

Existing law will likely allow law enforcement to continue to use the odor of cannabis either as a reasonable suspicion to stop an individual or as probable cause to search an individual’s motor vehicle during a traffic stop even after the partial legalization of cannabis goes into effect on July 1, 2023. The bill’s provisions eliminating the odor of cannabis as sufficient grounds for these activities would likely reduce the volume of investigative stops of individuals as well as warrantless vehicle searches based on probable cause. Based on the disparities evident in statewide traffic stop data, the bill will substantially impact Black and African American individuals by reducing exposure to warrantless enforcement activity.

Methodologies, Assumptions, and Uncertainties

Although some reports use disparity and disproportionality interchangeably, this racial equity impact note distinguishes them. Disproportionality is the state of being out of proportion. It compares the proportion of one racial or ethnic group of a target population to the proportion of the same racial or ethnic demographic group in the general population. Disparity, however, refers to a state of being unequal. A disparity describes an unequal outcome experienced by one racial or

ethnic group of the target population as contrast against a different racial or ethnic group in the target population.

Relevant to racial and ethnic labels and classification, the racial and ethnic data analysis in this note follows the standards on race and ethnicity set by the U.S. Office of Management and Budget in 1997. These standards serve as a template to guide how the Racial Equity Impact Note function collects and presents data comparisons.

It is important to note that these racial and ethnic data comparisons should be made with caution, taking into account that the racial and ethnic classification system used by State agencies may differ from the U.S. Census. Additionally, individuals who identify as Hispanic or Latino may racially identify with the ‘some other race’ category. According to the 2020 census, the “some other race” category mostly includes individuals who wrote in a Hispanic origin or nationality as their race.

The information provided in this note is drawn from quantitative data analysis of available statistical datasets on crime and criminal justice collected by entities at the national and state level. Moreover, the information includes scholarly literature on racial and ethnic disparities in the U.S. criminal justice system.

Information Sources: Governor’s Office of Crime Prevention, Youth, and Victim Services; Office of the Attorney General; Bureau of Justice Statistics; National Conference of State Legislatures; American Civil Liberties Union of New York; Department of Legislative Services

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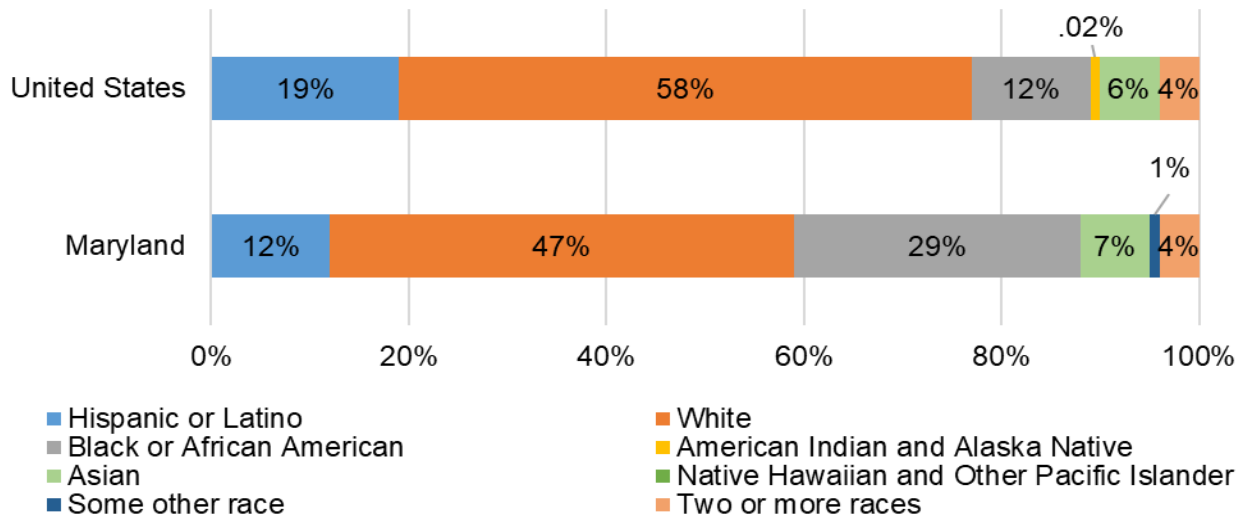
Appendix – Maryland Demographics

Race and Ethnicity of the Maryland Population

Maryland’s 2020 census population is 6,177,244, a 7% increase from the 2010 census count and approximately 2% higher than the 2019 census population estimates. In addition to an increase in population, Maryland’s racial demographics have become more diverse. Maryland is now a state in which racial minorities make up a majority of its total population. Notable changes relevant to this shift are the increase in groups who identify as “other” and “multiracial” (*i.e.*, two or more racial identities), which total 5% of the State’s population. Additionally, the change in demographics is due to the decrease in the number of individuals who only report “white” as their racial group. Despite this decrease, non-Hispanic whites remain the largest single race demographic group in the State of Maryland comprising 47% of the State’s population.

Compared to the U.S. population overall, Maryland’s population of individuals who identify as a single race is more diverse. Maryland is ranked as the fourth most diverse state by the U.S. Census Bureau’s [Diversity Index](#). As shown in **Exhibit 1**, in Maryland, 47% identify as white alone compared to 58% of the national population. Similarly, 51% of the population identify as non-white or multi-racial compared to 38% of the national population. In both the State and national population, the largest shares of the non-white population are individuals who are Black or African American, with 29% of the State population identifying only as Black or African American and another 2.5% identifying as Black in combination with some other race. Maryland’s Asian population is 7%, which is slightly higher than the Asian share of the national population of 6%. The State’s overall population by ethnicity, however, is slightly less diverse than the U.S. population; 12% of the State’s population identified as Hispanic or Latino compared to 19% of the U.S. population.

Exhibit 1
U.S. and Maryland Population by Race and Ethnicity
2020



Source: U.S. Census Bureau, 2020 Census Redistricting Data (Public Law 94-171), Table ID P2, HISPANIC OR LATINO, AND NOT HISPANIC OR LATINO BY RACE.