

Del Charlotte Crutchfield HB 1071 Written Testimon

Uploaded by: Charlotte Crutchfield

Position: FAV

CHARLOTTE A. CRUTCHFIELD, ESQ.
Legislative District 19
Montgomery County

Judiciary Committee

Subcommittees

Chair, Family and Juvenile Law

Public Safety



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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

Testimony for House Judiciary Committee

**HB 1071 – Criminal Law and Procedure - Cannabis - Fines for
Smoking in Public, Stops, and Searches**

March 30, 2023

FAVORABLE

House Bill 1071 seeks to prohibit police from using the odor of cannabis as the sole basis for establishing reasonable suspicion or probable cause for possessing contraband or other criminal activity. Furthermore, House Bill 1071 specifies that certain types of cannabis-related evidence may be factors in the totality of the circumstances leading to investigation, arrest, or a search in relation to a person driving, operating, or controlling a motor vehicle or vessel while impaired by drugs. Also, House Bill 1071 seeks to establish that evidence discovered or obtained in violation of the bill is not admissible in a trial, hearing, or other proceeding. Lastly, House Bill 1071 will reduce the civil fines for smoking cannabis in a public place to \$50.00 for the first offense and \$150.00 the subsequent offenses.

Maryland's standards around stops and searches based on the odor of cannabis are outlined by case law. While no statute speaks specifically to whether an officer can stop a person based on odor alone, courts have held that officers can stop a person and search a vehicle based on the odor of cannabis alone.¹

Stops and searches based on the odor of cannabis not only infringes on individuals' Fourth Amendment rights, but it also enables racial profiling. Banning these stops and searches is both a logical and necessary extension of the work we did, and that Marylanders affirmed in 2022 to legalize recreational use of cannabis.

That is why it is more than time to pass legislation making clear that law enforcement officers cannot use the smell of cannabis alone to justify a stop or search.

¹ Lewis v. State, 470 Md. 1, 233 A.3d 86, 91 (2020).

Here are key points I would like for members of this committee to focus on regarding this bill:

Banning odor stops and searches will not come at the expense of public safety nor prohibit investigations of DUIs.

HB 1071 makes clear that officers may consider the odor of cannabis in the totality of the circumstances when investigating a DUI. Therefore, the passage of this bill will not impede law enforcement's ability to investigate incidents of impaired driving. Furthermore, it should be noted that many searches effectuated after an officer claims they smell cannabis are not necessarily related to DUI enforcement but are used as opportunities to look for illegal weapons or contraband. However, pretext traffic stops are not a necessary or effective crime-fighting tools. A report by the Montgomery County Policing Advisory Commission revealed that of all firearms seized in the County in a recent three-year period, less than 5% were seized during traffic stops.²

HB 1071 will address racist cannabis odor stops and searches by reducing opportunities for racial profiling on the road.

In Maryland, police are four times more likely to subjected to a warrantless search Black drivers and their vehicles during traffic stops than white drivers.³ For incidents involving Black drivers, probable cause is used to justify 67% of searches. While cases involving white drivers, probable cause was only used to justify a search in 46.1% of incidents.⁴ This proposed bill would eliminate opportunities for officers to abuse the discretion afforded to them in these situations and reduce opportunities for racial profiling on the road.

A majority of Marylanders support the banning of odor stops and searches.

A statewide poll conducted prior to legalization found that 65% of voters were more likely to support legalization if it includes stopping the practice by police of using the odor of cannabis as the only probable cause or justification to perform a warrantless search; 13% said this has no impact on their support. Nearly a third of

² Rep. Draft Findings and Recommendations on MCPD Traffic Enforcement - December 19, 2021. Montgomery County Government, December 19, 2021. <https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/PoliceAC/correspondence/DraftReportTrafficEnforcementMontgomeryCounty.pdf>.

³ Criminal procedure - reasonable suspicion and probable cause - cannabis. (n.d.). Retrieved February 20, 2023, from <https://mgaleg.maryland.gov/Pubs/BudgetFiscal/2023RS-SB0051-REIN.pdf>

⁴ "Race-Based Traffic Stop Data Dashboard." Governor's Office of Crime Prevention, Youth, and Victim Services. Governor's Office of Crime Prevention, Youth, and Victim Services. Accessed March 2, 2023. <http://gocep.maryland.gov/data-dashboards/traffic-stop-data-dashboard/>.

voters, 32%, who do not currently support legalization said this makes them more likely to do so.⁵

Marylanders should not fear police interactions because of the lingering odor of a now-legal substance. Ensuring that the odor of cannabis no longer provides probable cause to search a vehicle or reasonable suspicion to stop a person will close a major gateway to criminalization and unnecessary interactions with law enforcement.

That's why for the foregoing reasons, I urge a favorable report on HB 1071.

Sincerely,

Delegate Charlotte Crutchfield

⁵ Williams, Ida J. "Maryland State Police." 2020 Uniform Crime Report. Maryland Department of State Police. Accessed March 2, 2023.
<https://mdsp.maryland.gov/Document%20Downloads/Crime%20In%20Maryland%202020%20Uniform%20Crime%20Report.pdf>.

HB 1071 cannabis odor in Senate.pdf

Uploaded by: Eric Sterling

Position: FAV

STATEMENT OF
ERIC E. STERLING, J.D.¹
SUBMITTED TO
THE MARYLAND SENATE
JUDICIAL PROCEEDINGS COMMITTEE
HON. WILLIAM C. SMITH, JR. CHAIR
HON. JEFF WALDSTREICHER, VICE CHAIR
March 30th, 2023

**HB 1071 - Criminal Procedure - Reasonable Suspicion and Probable Cause
- Cannabis**

FAVORABLE

Chair Smith, Vice Chair Waldstreicher, and honorable Senators, thank you very much for reading my statement. I have lived in the 18th District for 25 years. I have been an attorney and advocate for cannabis reform since 1976.

Regarding the odor of cannabis in motor vehicles, this bill heads off a warning from the Maryland Attorney General Brian Frosh in the Attorney General Opinion of December 1, 2022² that if the General Assembly does not enact a bill such as HB 1071, the courts will have to rule, and that the courts will continue to justify searches based on odor.

“Absent action by the General Assembly to impose limits on police searches beyond what the United States Constitution or the Maryland Constitution would require, these are questions that the courts will ultimately have to resolve.”

The Attorney General predicted that,

Based on existing precedent, it is our opinion that, although not entirely clear, the Court of Appeals is **more likely to hold that the odor of cannabis emanating from a vehicle will still justify a police officer’s search** of that vehicle after July 1, 2023.³

Maryland law should not allow a search of a vehicle in Maryland simply on the basis of the odor of cannabis.

Cannabis possession and use are legal under Maryland law for medical purposes. I am very familiar with this because Governor O'Malley appointed me in 2013 to a four-year term as one of the original members of the Natalie M. LaPrade Maryland Medical Cannabis Commission (MMCC). In that role, I was the principal author of the regulations that created the medical cannabis program in Maryland. In that capacity I met scores of patients or their parents for whom medical cannabis was a critical medicine. As of March 15, 2023, there were 163,665 certified patients in Maryland, according to the MMCC data.⁴ **A patient may legally possess a 30-day supply of up to 120 grams of cannabis.**⁵ **Such legal possession will generate powerful odor.**

Possession of cannabis in Maryland by adults who are not patients, of amounts of less than 10 grams, is a civil offense. **Such conduct is not grounds to arrest a person. Commission of a civil offense does not create a ground justifying a search under the U.S. Constitution.**

In addition, it is probable that everyday thousands of medical cannabis patients from our neighboring states are driving on our highways, perhaps on the way to their physicians at Maryland's world-renowned medical facilities.

And further, the possession of cannabis by adults without any medical need is fully legal under state law in our neighboring jurisdictions of Virginia and the District of Columbia, and in states only a short drive away such as New Jersey, New York, and Connecticut. Thus, many persons from other states may be traveling through Maryland with personal use amounts of marijuana that are legal where they were obtained and which amount to only a civil offense in Maryland.

Searches of vehicles -- as well as of one's person -- are highly intrusive, inconvenient, and often traumatic. Tragically, the misconduct of a relatively small number of police officers has generated well-founded and widespread fear of police interactions. Escalating a traffic stop into a vehicle search is a very serious matter, and the fear created -- especially in absence of criminal conduct or criminal intent -- is profound.

Nevertheless, there is a genuine problem of drivers operating their vehicles impaired by their use of cannabis. Combined with some evidence of impairment, the smell of cannabis smoke might reasonably be the basis to conduct a field sobriety test or otherwise test a driver for more conclusive evidence of impairment. But none of those circumstances would be the ground for the search of the vehicle and its contents.

Thus, to permit searches of vehicles simply on the subjective perception of the odor of cannabis is oppressive, bad public policy, and should not be allowed by law.

Consider whether an officer's perception of the odor of alcohol, by itself, would create reasonable suspicion or probable cause that a crime has occurred that would justify a search of the vehicle. Of course not. Again, the perception of the odor is only relevant in the context of investigating impairment of operation of the vehicle and a search of the vehicle, outside the area immediately surrounding the operator, is not constitutionally permissible.

I urge a favorable report.

¹ Brief summary of my experience considering cannabis regulation: Governor Martin O'Malley appointed me as one of the original members of the Maryland Medical Cannabis Commission in 2013. As the Chair of the Commission's policy committee, I was the principal author of Maryland's medical cannabis regulations adopted in 2015. My appointment was a capstone of decades of consideration the legalization of cannabis. As early as 1982, I was one of the four co-authors of the report, "The Regulation and Taxation of Cannabis Commerce," from the National Task Force on Cannabis Regulation. From 1979 to 1989, I was the counsel to the U.S. House of

Representatives Committee on the Judiciary, Subcommittee on Crime, responsible for federal drug law enforcement, among many issues.

In 1989, U.S. Senate Judiciary Committee Chair Joe Biden and I debated the legalization of drugs at Georgetown University Law Center. Studying and promoting drug legalization options was a major role in my work at the Criminal Justice Policy Foundation for over 30 years. I was one of the co-founders of the Marijuana Policy Project and have received a lifetime achievement award from the National Organization for the Reform of Marijuana Laws (NORML).

I have never had any economic interest in, nor received any compensation from, any entity or person involved in the cannabis industry (with the exception of an honorarium for lecturing at Oaksterdam University in 2015).

² Search And Seizure – Cannabis – Whether The Partial Legalization Of Cannabis Under Maryland Law Will Affect The Authority Of Maryland Police Officers To Conduct Searches Based On The Odor Of Cannabis, December 1, 2022, 107 **Opinions of the Attorney General** 153.

³ Ibid.

⁴

https://mmcc.maryland.gov/Documents/2023%20_PDF_Files/Patient%20Stats/commission_stats_patients_Bi-weekly02.01.pdf

⁵ COMAR 10.62.01.02B(33) defining 30-day supply.

Eric E. Sterling, J.D., served as Executive Director of the Criminal Justice Policy Foundation (1989-2020). He is currently Chair of the Montgomery County Policing Advisory Commission (PAC) but is not in any way testifying on behalf of the PAC.

bergman-debes testimony.pdf

Uploaded by: Lindsay Bergman-Debes

Position: FAV

Testimony for the Senate Judicial Proceedings Committee
Thursday, March 30th, 2023

HB 1071 - Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis

FAVORABLE

Dear Chair Smith, Vice Chair Waldstreicher, and committee members,

My name is Lindsay Bergman-Debes. I'm a proud Maryland resident of 12 years, living in Cecil County. I am writing here today to express my support for House Bill 1071.

After decades of proof of the economic and racial harm deliberately caused by marijuana criminalization and enforcement, Marylanders have voted to legalize adult use and possession of the substance. This is a major step forward in repairing the harms done by the "war on drugs", which, as the data has made clear, is really a war on Black and Brown people.

But, there are still dangerous loopholes left that can be used to racially profile Black and Brown Marylanders and violate their Fourth Amendment protections. One of the more egregious loopholes is the police having the power to conduct investigatory stops and vehicle searches based *solely* on their belief that they smelled marijuana.

This is also why I believe an explicit exclusionary rule is important to include in SB 51 / HB 1071. It is the only mechanism that will deter police from violating the law and obtaining evidence as the result of an illegal search. Maryland Courts have said, and affirmed, that unless the exclusionary rule is explicitly stated in legislation, it does not automatically apply. In order to adequately protect the Fourth Amendment rights of Black Marylanders this bill must explicitly state the exclusionary rule.

As someone who organized protests in 2020, spurning the creation of a social justice nonprofit in Cecil County, I am appalled by the treatment of Black and Brown Marylanders by the police. By closing the loophole allowing for searches based on the odor of marijuana—which disproportionately affects Black and Brown people, we can move toward more equitable policing. Especially now that recreational marijuana is legal in our state, searching a vehicle based on odor alone is unfair and unjust. Decriminalization of the substance is just as important as the legislation making it legal; since it is not a crime, it should not be treated as one. There is no justification for searching a car based on the smell of something that is legal.

Marijuana odor has been used as a loophole to justify racial profiling, intrusive searches, and police escalation for far too long. It's unacceptable that police can stop a person and search a car based on an alleged smell, where the claim could be driven by racial bias. As we look forward to legalization, this body must ensure that the smell, or perception of a smell, of a soon-to-be legal substance cannot be used to justify a stop and search of an individual or their vehicle.

Move all of our communities towards the current times by voting "Yes" on SB 51 / HB 1071.

Sincerely,

Lindsay Bergman-Debes

Testimony HB1071.pdf

Uploaded by: Lower Shore Progressive Caucus

Position: FAV

Testimony for the Senate Judicial Proceedings Committee

Thursday, March 30th, 2023

HB 1071 - Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis

FAVORABLE

Honorable Chair Smith, Vice Chair Waldstreicher, and esteemed members of the Senate Judicial Proceedings Committee,

The Lower Shore Progressive Caucus is honored to voice our support for House Bill 1071. As an organization covering districts 37 and 38, we have witnessed firsthand the devastating impact of marijuana criminalization on our communities.

The legalization of adult use and possession of cannabis in Maryland is a critical step towards repairing the harms caused by the war on drugs, particularly its disproportionate impact on Black and Brown people. However, there are still dangerous loopholes that can be used to racially profile individuals and violate their Fourth Amendment rights.

One such loophole is the ability of law enforcement to conduct investigatory stops and vehicle searches based solely on their belief that they smelled marijuana. This practice has been used to justify racial profiling, intrusive searches, and police escalation for far too long.

As such, we believe that an explicit exclusionary rule is crucial to adequately protect the Fourth Amendment rights of Black and Brown Marylanders. Maryland courts have made it clear that unless the exclusionary rule is explicitly stated in legislation, it does not automatically apply. This is why we urge this committee to include an exclusionary rule in HB 1071 to deter police from violating the law and obtaining evidence as a result of an illegal search.

We strongly believe that the smell or perception of a soon-to-be legal substance should not be used to justify a stop and search of an individual or their vehicle. This bill will move all of our communities towards the current times, and we urge this committee to **vote "Yes"** on SB 51 / HB 1071.

HB1071_AmyRuddle_FWA.pdf

Uploaded by: Amy Ruddle

Position: FWA

Date of Date of Hearing: 3/30/2023

Amy Ruddle
Silver Spring, MD 20901

TESTIMONY ON HB1071 - POSITION: FAVORABLE WITH AMENDMENTS
Criminal Law and Procedure – Cannabis – Fines for Smoking in Public, Stops, and Searches

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

FROM: Amy Ruddle

My name is Amy Ruddle. I am a resident of District 20. I am submitting this testimony in support of HB1071, Criminal Procedure - Reasonable Suspicion and Probable Cause – Cannabis.

I am a small business owner, attend Temple Emanuel synagogue in Kensington, MD, and am also a member of and volunteer for the National Alliance on Mental Illness (NAMI) of Montgomery County. I am compelled to provide testimony in favor of HB1071 because of my Jewish values: a central tenet of my faith is the principal of tikkun olam, which means it is my responsibility to actively fight social, racial, and economic inequity in my community (and the world at large). I also write today as an individual living with mental illness who is also able to articulate my lived experience, and I believe it is my responsibility to advocate for myself and people like me. It's because of these values that I write my testimony today.

I am in favor of banning odor searches because I believe that an important component of public safety is limiting unnecessary interactions between police and community members. Historically, Marylanders of color, immigrants, members of the LGBTQ+ community, people with disabilities, and those experiencing mental health crises have often been harmed by police, regardless of police intention. As someone who advocates constantly for reducing unnecessary police interaction from the mental health crisis perspective, I am doing the same today in support of the rights of the aforementioned groups, especially black Marylanders who are more likely to be stopped and searched by police.

Research shows that traffic stops disproportionately injure and kill drivers of color. To continue allowing merely the odor of cannabis to be probable cause to remove someone from their car adds greater danger to traffic stops and increases the likelihood of people of color being unjustly criminalized. Furthermore, with the upcoming legalization of cannabis in Maryland, it makes absolutely no sense to continue to use the odor of a legal substance as probable cause for a search. Common sense dictates that non-criminal behavior is not probable cause for a warrantless search.

Additionally, it is essential that the exclusionary rule be codified in the bill. If the exclusionary rule is not codified in this bill, police will not be deterred from conducting illegal searches, but instead will be encouraged to keep committing these searches in the hopes of finding evidence they can later use in court. I care very much about public safety, and the well-being of people in my community. So it is deeply concerning to me that as of July 1, 2023, if this bill is not passed, we will be setting up a trap for individuals engaging in legal activities. Someone engaging in a legal activity, who is causing no harm to the community, could be stopped, searched, and then dragged through the criminal justice system based on whatever an officer finds during an illegal search. This is a serious potential violation of fourth amendment rights, but worst of all, means more people being introduced to the criminal justice system.

I believe passing this legislation with the codification of the exclusionary rule will help to reduce unnecessary police interactions with members of the community and will help protect Marylanders' right to privacy. This, in turn, will help to transform public safety in our community. **I respectfully urge this committee to return a favorable with amendments report on HB1071.**

HB 1071 - Criminal Procedure - Reasonable Suspicio

Uploaded by: Anita Lampel

Position: FWA

HB 1071 - Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis

FAVORABLE WITH AMENDMENTS

Dear Chair Smith, Vice Chair Waldstreicher, and committee members,

My name is Anita Lampel. I live in D.16 and am a retired child and adolescent psychologist. I am here today to express my support for House Bill 1071 and urge the committee to adopt an amendment that would codify a strong exclusionary rule in the bill.

After decades of proof of the economic and racial harm deliberately caused by marijuana criminalization and enforcement, Marylanders have voted to legalize adult use and possession of the substance. This is a major step forward in repairing the harms done by the “war on drugs”, which, as the data has made clear, is really a war on Black and Brown people. Black and Brown young people are arrested for marijuana at high rates, even though White young people are actually more likely to possess marijuana and smoke it.

But, there are still dangerous loopholes in the new marijuana legalization legislation. One of the more egregious loopholes is that the police still have the power to conduct investigatory stops and vehicle searches based *solely* on their belief that they smelled marijuana.

Marijuana odor has been used as a loophole to justify racial profiling, intrusive searches, and police escalation for far too long. I urge you to codify an **exclusionary rule** that would bar evidence obtained in violation of the statute from being used in criminal proceedings, rather than leaving discretion up to judges to decide if such evidence should be admissible. This rule is needed to deter violations of the statute and provide some form of redress for victims of illegal searches.

For the foregoing reasons, I urge the committee to issue a favorable report with the aforementioned amendments on HB 1071.

HB1071 - Favorable with amend 3-30-23.pdf

Uploaded by: Beverly John

Position: FWA

Testimony for the Senate Judicial Proceedings Committee
Thursday, March 30, 2023
HB 1071 - Criminal Procedure - Reasonable Suspicion and Probable Cause -
Cannabis
FAVORABLE WITH AMENDMENTS

Dear Chair Smith, Vice Chair Waldstreicher, and committee members,

My name is Beverly John. I have lived in Prince George's County, District 47 since 1998. I would like to express my support for House Bill 10071 and urge the committee to adopt an amendment that would codify a strong exclusionary rule in the bill.

Providing the police power to stop citizens or to search their vehicles based on a *real*, *perceived*, or *fabricated* smell of marijuana is inherently discriminatory and used to profile Black and Brown people disproportionately. We have gained ground in acknowledging the negative economic impact and harm to our communities caused by the Nixon era "war on drugs." Marylanders have voted to legalize adult use and possession of the substance and should be free to use the substance without fear of getting caught in this loophole. With legalized use of the substance, how can you continue to use the odor as justification to stop and search?

The passage of House Bill 1071 would help decrease the racial profiling of Black and Brown Marylanders and help protect our Fourth Amendment rights. It is time to confront this "war on drugs" mentality that has destroyed so many communities and lives in our state.

As we look forward to legalization, this body must ensure that the smell, or perception of a smell, of a soon-to-be legal substance cannot be used to justify a stop and search of an individual or their vehicle. I also urge you to codify an exclusionary rule that would bar evidence obtained in violation of the statute from being used in criminal proceedings, rather than a provision that would leave discretion up to judges to decide if such evidence should be admissible. This rule is needed to deter violations of the statute and provide some form of redress for victims of illegal searches.

For the foregoing reasons, I urge a favorable report with the referenced amendments on House Bill 1071.

Thank you.

HB1071_CarolStern_FWA.pdf

Uploaded by: CAROL STERN

Position: FWA

Carol Stern
4550 North Park Avenue, Apt T106
Chevy Chase, Maryland 20815

TESTIMONY ON HBI071 - POSITION: FAVORABLE WITH AMENDMENTS

HBI071 - Criminal Procedure – Reasonable Suspicion and Probable Cause – Cannabis

TO: Senate Judicial Proceeding Committee, Chair Smith & Vice Chair Waldstreicher

FROM: Carol Stern

My name is Carol Stern, and I am testifying in favor with amendments of HBI071 Criminal Procedure – Reasonable Suspicion and Probable Cause – Cannabis, as a resident of Montgomery County’s District 16 and a member of Adat Shalom Reconstructionist Congregation in Bethesda.

The biblical commentator Rashi, writing in the 11th century, noted when judges (shoftim) rendered a legal decision, it was the police (shotrim) who were charged with enforcing that law even by using physical force. However, throughout the literature of the Jewish sages, attention has been given to the conduct, the decency and the character of both institutions. Both judges and police are expected to comport themselves in keeping with the highest standards of Jewish law and ethical teaching. Further, in the Torah, we find instruction that the law should be applied equally and fairly to all, regardless of social status or origins. When we are working to reform our criminal justice system, we must demand that it operates in accordance with these deeply held Jewish beliefs.

Ending odor searches will reduce police violence, especially towards Black and brown Marylanders. However, if the exclusionary rule is not codified, the bill will be unenforceable and will not deter the police from conducting illegal searches.

While police are required to obtain a search warrant before conducting a search, the smell of cannabis is used as an exception to this constitutional right. Within the last few years, officers in several states were found to have lied about smelling cannabis, which is now legal in Maryland, before conducting a search. In Maryland, Black drivers are more likely to be stopped and searched by police. For incidents involving Black drivers, probable cause (including the odor of cannabis) was used to justify 67% of searches, compared to 46% of incidents involving white drivers.

Traffic stops disproportionately injure and kill drivers of color. Pulling drivers out of their car because of the lingering odor of a legal substance adds further danger to these stops. Banning odor searches would reduce unnecessary, harmful interactions with the police and eliminate a gateway to the unjust criminalization of Black and brown people. Banning odor searches adds much needed reforms for all Maryland residents with equality and the respect that all people deserve.

I respectfully urge a favorable with amendments report on HBI071.

HB1071 - Marijuana Odor Search.docx (1).pdf

Uploaded by: Christina Nemphos

Position: FWA

Dear Members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with the Campaign for Justice Safety and Jobs, and the Maryland Coalition for Justice and Police Accountability. I am a resident of Maryland District 40, and live in the Medfield neighborhood of Baltimore. **I am testifying in support of House Bill 1071, Reasonable Suspicion and Probable Cause - Cannabis.**



Many police encounters begin with what courts call “reasonable suspicion”: a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.¹ After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it’s a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won’t: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can’t legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.² Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon³- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia’s legislatures have passed laws to this effect⁴. Maryland, having legalized marijuana, should now join them. **Further, you need to make sure that the final bill codifies that evidence obtained in violation of this law will be excluded from court. The exclusionary rule will not be applied by the courts if the legislature has specifically declined to say that it applies. Without the exclusionary rule, HB1071 will be toothless.**

Odor-based searches increase young black people’s interactions with law enforcement. As we’ve seen, and continue to see, this is a risk that can lead to death or injury of that person. For a substance that voters have decided to allow personal use of. For years, law enforcement has claimed that odor-based stops and searches are one of the tools used against violent crime, and yet, to my knowledge they have not been able to produce the evidence to back up this claim. The lives and safety of our friends and neighbors are not worth the risk.

It is for these reasons that I am encouraging you to vote **in support of HB1071**. Thank you for your time, service, and consideration.

Sincerely,
Christina Nemphos
1301 W. 42nd Street, Baltimore, Md 21211
Showing Up for Racial Justice Baltimore

¹ Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

² 16.7% of people ages 18-24 report being stopped by police in 2020, compared to 12.2% for people aged 25-44, and 8.1% for people aged 45-64. See: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpp20.pdf> Table 1

³ See *In re DD* at 240 for further citations.

⁴ NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.

Carrington 2023 Testimony HB1071 - Criminal Law an

Uploaded by: Darrell Carrington

Position: FWA



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**HB1071 – Criminal Law and Procedure - Cannabis - Fines for Smoking in
Public, Stops, and Searches**

FAVORABLE AS AMENDMENDED

Carrington & Associates, LLC, requests a FAVORABLE report for HB1071 as amended. This bill prohibits a law enforcement officer from (1) initiating a stop or a search of a person, motor vehicle, or vessel based solely on specified types of cannabis-related evidence and (2) conducting a search of specified areas of a motor vehicle or vessel during an investigation of a person solely for driving a motor vehicle or vessel while impaired by or under the influence of cannabis. The bill specifies that the Exclusionary Rule and its exceptions, as judicially determined, applies to the bill. In addition, the penalty for smoking cannabis in a public place is reduced for a first offense, to a maximum fine of \$50 (rather than \$250 under current law) and for a second or subsequent offense, to a maximum fine of \$150 (rather than \$500 under current law).

On behalf of our clients, we would like to thank Delegate Crutchfield and all of the Co-Sponsors for introducing this important legislation as the General Assembly works to create a dual medical and adult use cannabis industry. This bill will help guide law enforcement and the public as to how the state intends for cannabis to be treated as a legal substance that can be possessed, but not consumed, in a motor vehicle or vessel. This is yet another necessary clarification that is needed as other related bills are moving through the process.

For the stated reasons, we ask for a FAVORABLE report on HB1071 as amended. Please contact Darrell Carrington at darrell.carrington@verizon.net, if you have questions, or would like additional information.

6007 Hillmeade Road, Bowie, MD 20720
Cell 732.763.7398 Fax 732.763.7398
darrell.carrington@verizon.net

HB1071 - Marijuana Odor Search.pdf

Uploaded by: Daryl Yoder

Position: FWA

Dear Members of the Judicial Proceedings Committee,,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with the Campaign for Justice Safety and Jobs, and the Maryland Coalition for Justice and Police Accountability. I am a resident of District 44A. **I am testifying in support of House Bill 1071, Reasonable Suspicion and Probable Cause - Cannabis.**



Many police encounters begin with what courts call “reasonable suspicion”: a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.¹ After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it’s a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won’t: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can’t legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.² Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon³- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia’s legislatures have passed laws to this effect⁴. Maryland, having legalized marijuana, should now join them. Further, you need to make sure that the final bill codifies that evidence obtained in violation of this law will be excluded from court. The exclusionary rule will not be applied by the courts if the legislature has specifically declined to say that it applies. Without the exclusionary rule, HB1071 will be toothless.

It is for these reasons that I am encouraging you to vote **in support of HB1071, amended to include the exclusionary rule**. Thank you for your time, service, and consideration.

Sincerely,
Daryl Yoder
309 Glenmore Ave.
Catonsville, MD 21228

¹ Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

² 16.7% of people ages 18-24 report being stopped by police in 2020, compared to 12.2% for people aged 25-44, and 8.1% for people aged 45-64. See: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpp20.pdf> Table 1

³ See *In re DD* at 240 for further citations.

⁴ NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.

testimonyMarSmellDW23.pdf

Uploaded by: David Wizer

Position: FWA

SURJ

BALTIMORE

showing up for racial justice

Dear Members of Judicial Proceedings Committee

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with the Campaign for Justice Safety and Jobs, and the Maryland Coalition for Justice and Police Accountability. I am a resident of **District 43A**. **I am testifying in support of House Bill 1071, Reasonable Suspicion and Probable Cause - Cannabis.**

Many police encounters begin with what courts call “reasonable suspicion”: a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles. After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it’s a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won’t: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can’t legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults. Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. Further, you need to make sure that the final bill codifies that evidence obtained in violation of this law will be excluded from court. The exclusionary rule will not be applied by the courts if the legislature has specifically declined to say that it applies. Without the exclusionary rule, HB1071 will be toothless.

The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate. New York and Virginia’s legislatures have passed laws to this effect. Maryland, having legalized marijuana, should now join them. I have attached a page to this testimony of the actions of neighbor states regarding this issue. Clearly, Maryland is behind Pennsylvania, New York City and Virginia.

It is for these reasons that I am encouraging you to vote **in support of HB1071**. Thank you for your time, service, and consideration.

Sincerely, 

David Wizer 289 W. 31st. St, Baltimore, MD 21211
Showing Up for Racial Justice Baltimore

Marijuana Arrests issues related to smell - **Submission of Testimony**

Legislation Summary: Would ban police from using the odor of marijuana as a basis for stopping or searching a person or car, and banning the use of any evidence obtained in search...

Submission of testimony related to HB 1071.

Bill title: Criminal Procedure – Reasonable Suspicion and Probable Cause – Cannabis

<https://mgaleg.maryland.gov/2023RS/bills/hb/hb1071f.pdf>

Facts to support change in Policing Policies from our neighbor states: NY, PA, & VA.

Summary of arrest patterns are discriminatory and adversely impact black citizens.

In **New York City**, for example, the police arrested black people on low-level marijuana charges at eight times the rate of whites over the last three years, with Latino people arrested at five times the rate of whites. (NY Times Editorial Board, 2018)

These disparities are all the more indefensible because low-level marijuana arrests have no public safety benefit. A [2017 analysis by Harry Levine](#), a sociology professor at Queens College, debunked the oft-heard claim that petty marijuana arrests get serious offenders off the street, noting that 76 percent of those arrested for marijuana possession during the previous year had never been convicted of any crime. (NY Times Editorial Board, 2018)

According to CNN (2019), Minor infractions such as broken taillights, the smell of marijuana, improperly displayed registration stickers ...have been criticized as a pretext for racially motivated traffic stops.

In **Pennsylvania**, Black drivers, who comprise 48% of Philadelphia's population, accounted for 72% of the nearly 310,000 traffic stops by police officers between October 2018 and September 2019, according to data from the Defender Association of Philadelphia. In 2019, the data indicates Black drivers account for 67% of stops compared to just 12% of White drivers. (CNN, 2019)

Virginia lawmakers voted in 2020 to downgrade a range of petty offenses to secondary infractions, arguing that police too often used them as [a pretext to stop and search minorities](#). Black drivers in Virginia are still being pulled over at higher rates than white drivers, per the [second annual analysis](#) of traffic stops under the state's Community Policing Act. Racial disparities in who is being pulled over, Black drivers representing 19% of the driving age population but accounting for 31% of the stops.

- Police are now barred in VA from initiating searches based on the smell of marijuana, as well as other minor infractions.

By the VA numbers: Statewide traffic stops dropped by 7.5% to 567,000 from 2020 to 2021, per the most recent analysis. (Axios, 2022)

- It's **clearly time for Maryland legislature to act & pass House Bill 1071.**

PJC testimony for JPR sponsor hearing, HB 1071 FWA

Uploaded by: Debra Gardner

Position: FWA



Jeniece Jones, Executive Director
Albert Turner, Attorney, Human Right to Housing Project

Public Justice Center
201 North Charles Street, Suite 1200
Baltimore, Maryland 21201
410-625-9409, ext. 228
jonesj@publicjustice.org
turnera@publicjustice.org

HB 1071 Criminal Procedure – Reasonable Suspicion and Probable Cause – Cannabis
Hearing before the Senate Judicial Proceedings Committee, March 30, 2023
Position: Favorable with Amendment

The Public Justice Center (PJC) is a nonprofit civil rights and anti-poverty legal services organization that seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. The Public Justice Center envisions a just society where Black, Latine, Indigenous, Asian, and other historically exploited people are free from systems of oppression, exploitation, and all expressions of discrimination. This will shift power and resources to BIPOC (Black, Indigenous, and other people of color) across Maryland.

HB 1071 will protect against unlawful searches in a post-legalization of cannabis in Maryland. The smell of cannabis alone no longer implies criminal activity. When it was illegal, officers might rely on the plain smell of marijuana for probable cause, reasoning that the odor alone was evidence of a crime—and that individuals had no right to maintain the privacy of their criminal activity.

Police encounters that begin based on the odor of marijuana undermine the right to privacy and enable racial profiling. Racial disparities in policing are perpetuated by systemic exclusion and discrimination and fueled by implicit and explicit bias. In 2021, Black people were nearly 41% of all police stops in the state of Maryland despite being only 31.4% of the state population. Police are two times more likely to search Black drivers and their vehicles during traffic stops than white drivers. These disparities are not by accident but are a byproduct of the long history of white supremacy in this state and country. Allowing police to use the smell of a legal drug to establish probable cause exacerbates already existing disparities and it must end.

Truly, it is the logical and necessary extension of the legislature's work in 2022 to legalize recreational marijuana use to limit the use of the odor of marijuana in police encounters in the 2023 legislative session.

But the bill must be amended to restore the explicit exclusionary rule to codified language. There can be no room for doubt that police cannot retain an incentive to violate this law or the status quo will continue. Justifications offered (e.g., that a claim of marijuana odor is a helpful "tool" to provide a basis to

The Public Justice Center is a 501(c)(3) charitable organization and as such does not endorse or oppose any political party or candidate for elected office.

search people for guns) make clear that the actual intended purpose of such stops is unwarranted, abusive encounters that violate the Fourth Amendment. This is exactly like the discredited New York stop and frisk policy. Both disproportionately target people and communities of color without improving public safety. At a time when community trust in police remains at its lowest, police must be *required by the law* to abandon such unlawful tactics.

For the foregoing reasons, the PJC urges a favorable with amendment report on HB 1071. Should you have any questions, please contact Jeniece Jones, Executive Director, at 410-400-6952, or jonesj@publicjustice.org.

The Public Justice Center is a 501(c)(3) charitable organization and as such does not endorse or oppose any political party or candidate for elected office.

HB1071 - Marijuana Odor Search.pdf

Uploaded by: Erica Palmisano

Position: FWA

Dear Members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with the Campaign for Justice Safety and Jobs, and the Maryland Coalition for Justice and Police Accountability. I am a resident of 12A. **I am testifying in support of House Bill 1071, Reasonable Suspicion and Probable Cause - Cannabis.**



Many police encounters begin with what courts call “reasonable suspicion”: a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.¹ After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it’s a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won’t: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can’t legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.² Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon³- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia’s legislatures have passed laws to this effect⁴. Maryland, having legalized marijuana, should now join them. Further, you need to make sure that the final bill codifies that evidence obtained in violation of this law will be excluded from court. The exclusionary rule will not be applied by the courts if the legislature has specifically declined to say that it applies. Without the exclusionary rule, HB1071 will be toothless.

It is for these reasons that I am encouraging you to vote **in support of HB1071**. Thank you for your time, service, and consideration.

Sincerely,

Erica Palmisano

5580 Vantage Point Rd, Apt 5, Columbia, MD 21044
Showing Up for Racial Justice Baltimore

¹ Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

² 16.7% of people ages 18-24 report being stopped by police in 2020, compared to 12.2% for people aged 25-44, and 8.1% for people aged 45-64. See: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpb20.pdf> Table 1

³ See *In re DD* at 240 for further citations.

⁴ NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.

3_30_23- HB1071 - Criminal Procedure - Reasonable

Uploaded by: Ericka McDonald

Position: FWA



Testimony to the Senate Judicial Proceedings Committee

HB 1071 - Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis

Position- Support

By: Nancy Soreng

Date: March 30, 2023

The League of Women Voters is a nonpartisan organization that works to influence public policy through education and advocacy. The League advocates against systemic racism in the justice system and, at a minimum, for preventing excessive force and brutality by law enforcement. The League supports a criminal justice system that is just, effective, equitable, transparent, and that fosters public trust at all stages.

While Marylanders overwhelmingly voted to legalize recreational marijuana use, the law continues to allow police to stop individuals or search vehicles based on the suspected odor of marijuana alone. These interactions undermine the right to privacy and enable racial profiling. The Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis bill will close a major gateway to criminalization and unnecessary interactions with police.

In Maryland, police are two times more likely to search Black drivers and their vehicles during traffic stops than white drivers. For incidents involving Black drivers, probable cause was used to justify 67% of searches. In cases involving white drivers, probable cause was only used to justify a search in 46.1% of incidents.¹

A lawsuit brought by a Black family who were beaten by police officers in Baltimore County based on an odor search illustrates this problem.² During the incident the family was racially profiled, searched based on the odor of marijuana, and brutally beaten by the police. The five family members were arrested and charged with crimes that were subsequently dropped or not pursued.

Stops and searches based on the odor of marijuana are problematic because there is no way to know the amount of time the odor has been present, where the odor came

¹ <http://goccp.maryland.gov/data-dashboards/traffic-stop-data-dashboard/>

² <https://thedailyrecord.com/2023/01/25/lawsuit-baltimore-co-police-beat-5-family-members-after-claiming-to-smell-pot/>

from, or if the odor is a result of unburnt or burnt marijuana. There is no way to confirm or deny the presence of the odor after a search, which allows officers' claims to go virtually unchecked, and claims of marijuana odor have become commonplace, with some judges even determining many are highly suspect.³

The League also believes the bill must codify an exclusionary rule that would bar evidence obtained in violation of the statute from being used in criminal proceedings. This rule is needed to deter violations of the statute and provide some form of redress for victims of illegal searches.

The League is committed to the elimination of systemic bias, including disproportionate policing and incarceration of marginalized communities. This bill will ensure that the odor of marijuana no longer provides probable cause to search a vehicle or reasonable suspicion to stop a person.

The League of Women Voters, Maryland, representing 1500+ concerned citizens throughout Maryland, strongly urges a favorable report.

3

<https://www.startribune.com/federal-judge-rules-minneapolis-police-illegally-searched-frey-staffers-car/600159885/>; <https://casetext.com/case/united-states-v-gray-366>;
<https://www.nytimes.com/2018/03/18/nyregion/testilying-police-perjury-new-york.html>

HB1071_JoShifrin_FWA (1).pdf

Uploaded by: Jo Shifrin

Position: FWA

HB1071_JoShifrin_FWA

Date of Hearing: March 30, 2023

Jo Shifrin

Bethesda, MD 20817

TESTIMONY ON HB1071 - POSITION: FAVORABLE

**Criminal Law and Procedure - Cannabis- Fines for Smoking in Public,
Stops, and Searches**

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

FROM: Jo Shifrin

OPENING: My name is Jo Shifrin. I am a resident of District 16. I am submitting this testimony in support of HB1071, Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis.

I live in Bethesda and I am a Jew. The concept of *tzelem elohim* - the idea that all people are created in the Divine image and, therefore, are equally precious and worthy of dignity and respect – is central to Judaism. It is so central that our sacred texts teach us that the destruction of one life is the same as destroying the whole world. Unfortunately, in Maryland, we know that lives are destroyed every day through the interactions between the police and people of color, when the police claim they can smell cannabis.

Since the advent of the War on Drugs, people of color have been disproportionately arrested and convicted of drug possession. Their history of incarceration, even when they have completed serving their time in prison, often prevents them from engaging in the things that most of us take for granted, like renting a place to live and being employed.

The scent of cannabis is overused as a rationale for searches. Odor stops and searches facilitate racial profiling. In Maryland, police are twice as likely to search Black drivers and their vehicles during traffic stops than white drivers.

An overwhelming majority of Maryland voters have decided that the possession and use of marijuana should be decriminalized. Even with the change in Maryland law, situations would still remain in which police officers would be able to stop and search an individual or their vehicle based on *the officer's assertion* that there was an odor of cannabis. This infringes on everyone's right to privacy. Moreover, given the degree of systemic racism in our country, it is not surprising that Blacks and other people of color have been – and are more likely to continue to be – stopped and searched using this rationale. And, as we know, police stops have led to interactions in which people have been harmed or killed.

Now that the recreational use of cannabis is legal, it does not make sense for the odor associated with its use to be the basis for interactions between the people of Maryland and the police. I believe that the removal of these pretextual stops will keep all Marylanders safer. *However, the ‘exclusionary rule’ must be codified into the bill. If the exclusionary rule is not codified, the bill will not be enforceable and will not deter the police from conducting illegal searches.*

I respectfully urge this committee to return a favorable with amendments report on HB 1071.

HB1071_Joanna Silver for SSJC_FWA.pdf

Uploaded by: Joanna Silver

Position: FWA



TESTIMONY IN SUPPORT OF HB1071, WITH AMENDMENT
Criminal Law and Procedure - Cannabis - Fines for Smoking in Public, Stops,
and Searches
Senate Judicial Proceedings Committee, March 30, 2023

My name is Joanna Silver. I am a resident of Silver Spring, in District 18. I am testifying on behalf of the Silver Spring Justice Coalition in support of HB1071, with a critical amendment to codify the exclusionary rule.

The Silver Spring Justice Coalition (SSJC) is a coalition of community members, faith groups, and civil and human rights organizations from throughout Montgomery County committed to eliminating harm caused by police and empowering those communities most affected by policing. In furtherance of this goal, it is essential that we prohibit officers from relying solely on the odor of cannabis as the basis for reasonable suspicion or probable cause to believe someone is engaged in criminal activity. *It is also essential that this prohibition be enforced by a clear and codified enactment of the exclusionary rule so that evidence seized in violation of this prohibition cannot be used against a defendant in a criminal proceeding.*

The odor of cannabis has long served as a pretext for officers to conduct stops, to prolong stops, and to search in the hopes that they will find evidence of some other criminal activity. We know that the weight of these invasive and often dehumanizing stops and searches falls most heavily on Black and brown community members because they are the ones who are most frequently targeted by police. Where I live in Montgomery County, from 2018 to 2022, Black drivers were the subject of 31% of all traffic stops, despite being only 18% of our population, and Black drivers constituted 43% of all searches conducted during a traffic stop.

These racially-biased stops and searches come at a great cost: in 2022, Black people were four times more likely to have force used against them by Montgomery County police officers than White people. Now that Marylanders have voted to legalize cannabis, there is simply no excuse to continue to subject so many members of our community to an unnecessary risk of harm.

I want to address two of the excuses we frequently hear for allowing officers to continue to rely on odor alone, particularly in traffic stops.

First, this law will not prevent officers from investigating drivers who are under the influence of cannabis; they simply need some evidence of impairment other than odor. This rule makes sense and does not hamstring officers because we know that odor does not equal impairment. Moreover, in my day job I have been a public defender for over 20 years and I can't remember a single case in which cannabis was the substance that caused my client's impaired driving - it is almost exclusively alcohol and PCP that I've seen in DUI cases.

Second, pretext traffic stops are not a necessary crime-fighting tool. Last year there were almost 36,000 traffic stops in Montgomery County and we've learned that those stops resulted in the seizure of 172 guns. This is an incredibly ineffective way to find guns and is certainly not worth the racially disparate harms to our community. This suburban form of stop and frisk is not good policy and should not be embraced as a reason to continue to stop and search people for the odor of cannabis. That police clearly use the odor of cannabis as a pretext to search the cars of people they suspect (based on racial profiling) may have contraband inside is precisely why this bill must be amended with a codified exclusionary rule to make it clear that if evidence is seized in violation of this new law, it cannot be admitted against a defendant in a criminal proceeding. Anything short of that will fail to deter police from violating the law and leave people wrongfully stopped or searched with no redress.

For these reasons I respectfully urge you to amend HB1071 to add a codified exclusionary rule and to issue a favorable report.

HB1071_JohnFord_Favorable.pdf

Uploaded by: John Ford

Position: FWA

Dear Members of the Judicial Proceedings Committee,,

I am a resident of **District 46**, a citizen of **Baltimore City** subject to the **BPD**, and a **workforce development professional**. I am testifying in support of **House Bill 1071, Reasonable Suspicion and Probable Cause - Cannabis**.

Many police encounters begin with what courts call “reasonable suspicion”: a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.¹ After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it’s a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won’t: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can’t legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.² Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon³- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia’s legislatures have passed laws to this effect⁴. Maryland, having legalized marijuana, should now join them. Further, you need to make sure that the final bill codifies that evidence obtained in violation of this law will be excluded from court. The exclusionary rule will not be applied by the courts if the legislature has specifically declined to say that it applies. Without the exclusionary rule, HB1071 will be toothless.

It is for these reasons that I am encouraging you to vote **in support of HB1071**. Thank you for your time, service, and consideration.

Sincerely,

John Ford
3301 Fleet St
Baltimore, MD 21224

¹ Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

² 16.7% of people ages 18-24 report being stopped by police in 2020, compared to 12.2% for people aged 25-44, and 8.1% for people aged 45-64. See: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpp20.pdf> Table 1

³ See *In re DD* at 240 for further citations.

⁴ NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.

HB1071_KarenCaplan_FWA.docx (1)[1].pdf

Uploaded by: Karen Caplan

Position: FWA

March 30, 2023

Karen Caplan
Silver Spring, MD 20902



TESTIMONY ON HBI071 - POSITION: FAVORABLE WITH AMENDMENTS
Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis

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

FROM: Karen Caplan, on behalf of Jews United for Justice

My name is Karen Caplan and I am a resident of District 18, in Silver Spring. On behalf of Jews United for Justice (JUFJ), I am submitting this testimony in support of HBI071, Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis, with amendments to codify the exclusionary rule. JUFJ organizes 6,000 Jewish Marylanders and allies from across the state in support of social, racial, and economic justice campaigns.

The concept of *tzelem elohim* — the idea that all people are created in the Divine image and therefore are equally precious and worthy — is central to Judaism. Jewish tradition makes it clear that we are obligated to respond when this core value is threatened. As the law currently stands, police officers may stop and search individuals without a search warrant merely because they claim to detect the odor of cannabis, an exception to our constitutional rights. This in itself is a problem in a state where voters have now chosen partial cannabis legalization. It makes no sense for the odor associated with the use of a legal substance to be used as a gateway to entanglement with police and the legal system. The odor of cannabis should not be used as an excuse to perform a warrantless arrest or search of an individual or their vehicle. But it is also a problem of equity because we know that Black and brown people are disproportionately stopped by police, both nationwide and in Maryland. For incidents involving Black drivers, probable cause (including the odor of cannabis) was used to justify 67% of searches, compared to 46% of incidents involving white drivers. There is no way for an officer to prove that they smell cannabis, and of course no way to disprove it either. This leaves people of color significantly more vulnerable to police violence. Our sacred texts tell us “Do not stand idly by the blood of your neighbor” (Leviticus 19:16), and we must not stand idly by as our neighbors are unjustly criminalized and needlessly placed at risk.

The ability of police to pull drivers out of their cars because of the alleged odor of a legal substance leaves a door to discriminatory pretextual stops wide open and makes people of

color even more likely to be injured or killed by police — especially during traffic stops — something we know happens far too often.

Driving while under the influence of cannabis remains illegal, and HBI071 will allow police officers to investigate this while still respecting the rights of individuals. By banning odor searches, we can protect Black and brown Marylanders from violence, from unnecessary police interactions, and from unnecessary introduction into a criminal legal system that data makes clear is weighted against them. Additionally, to disincentivize officers from conducting illegal searches and ensure that the legislation is enforceable, HBI071 must codify the exclusionary rule. The Supreme Court of Maryland has made clear that the legislature must make explicit the exclusionary rule. Accordingly, it has been codified in other legislation, including the Child Interrogation Protection Act passed last year. The exclusionary rule must be codified in HBI071 to protect Marylanders' Fourth Amendment rights.

On behalf of Jews United for Justice, I thank you for the opportunity to share our position and respectfully urge this committee to return a favorable report on HBI071, with amendments to codify the exclusionary rule.

HB1071 - Marijuana Odor Search.docx.pdf

Uploaded by: Lindsay Keipper

Position: FWA

Dear Senator Smith and members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with the Campaign for Justice Safety and Jobs, and the Maryland Coalition for Justice and Police Accountability. I am a resident of District 46 and a lawyer with 15 years of experience in criminal justice, and **I am testifying in support of House Bill 1071, Reasonable Suspicion and Probable Cause - Cannabis.**



Many police encounters begin with what courts call “reasonable suspicion”: a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.¹ After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it’s a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won’t: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can’t legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.² Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? These are the silent victims of the practice, because they never appear before a court and police of course do not report the number of times they stop or search someone but don’t find any contraband. As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people. It is one of the bedrock principles of our democracy that the majority should not have to sacrifice their privacy and submit to unjustified searches simply because the police might uncover evidence of wrongdoing through broad powers of search and seizure.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon³- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia’s legislatures have passed laws to this effect⁴. Maryland, having legalized marijuana, should now join them.

Furthermore, the final version of the bill must codify the exclusionary rule. The belief that placing an uncoded exclusionary rule in the statute will have the same effect as a codified one is mistaken. Uncoded language becomes nothing more than a vague statement of semi-approval for the uncoded language. The courts have already decided that under fourth amendment jurisprudence, the odor of marijuana justifies stops and searches; the entire point of this bill is to direct the courts to align their interpretation of the fourth amendment with the wishes and understanding of the state’s voters. When courts come to interpret how to apply this bill, they will look at the plain language of the statute, not any

¹ Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

² 16.7% of people ages 18-24 report being stopped by police in 2020, compared to 12.2% for people aged 25-44, and 8.1% for people aged 45-64. See: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpp20.pdf> Table 1

³ See *In re DD* at 240 for further citations.

⁴ NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.

uncodified portions. And if they do in fact go to the legislative history to interpret the statute, it will speak volumes to them that the legislature deliberately refused to codify the exclusionary rule.

It is for these reasons that I am encouraging you to vote **in support of HB1071, with amendments**. Thank you for your time, service, and consideration.

Sincerely,

Lindsay Keipper

2425 Fleet St.

Showing Up for Racial Justice Baltimore

HB1071_Louise Weissman_FWA.pdf

Uploaded by: Louise Weissman

Position: FWA

HI071_Louise Weissman_FWA
Date of Hearing: March 30, 2023

Louise Weissman
Greenbelt, MD 20070

TESTIMONY HB#/I071: FWA
Criminal Law and Procedure - Cannabis
Fines for Smoking in Public, Stops, and Searches

TO: Chair Smith, Vice Chair Waldstreicher, and members of the Judiciary Proceeding Committee

FROM: Louise Weissman

My name is Louise Weissman. I am a resident of District 22 in Greenbelt. I am submitting this testimony in support of HB1071_FWA, Criminal Law and Procedure - Cannabis, Fines for Smoking in Public, Stops, and Searches.

I am a member of Oseh Shalom in Laurel, MD, and a Jews United For Justice District 22 Co-Captain. As a 31 year resident of Prince George's County, I have heard about encounters between law enforcement and our residents, especially those who are Black and Brown, that escalate because of the real or perceived odor of cannabis. I have heard the stories on a few occasions.

During the November 2022 elections Maryland voters enthusiastically supported the measure to legalize adult use and possession of marijuana after our state legislators took affirmative action during the 2022 session. This was a tremendous step forward in repairing harms done by the "War on Drugs," which more aptly should be called a war on Black and Brown people. But unfortunately, there are still dangerous and egregious loopholes in the law and tools that can be used by police officers to initiate stops and searches.

Police encounters that begin based on the odor of marijuana undermine the right to privacy and violate the 4th Amendment. The tactic is used to justify racial profiling, intrusive searches, and police escalation. Marylanders should not fear police interactions because of the lingering odor of a now-legal substance. It is only a logical extension of the State's legislators' action and voter approval last year, that Maryland lawmakers this year ensure law enforcement can no longer use this loophole.

Additionally, I strongly believe the "exclusionary rule" must be codified into the bill. If the exclusionary rule is not codified, the bill will be unenforceable and will not deter the police from conducting illegal searches.

I respectfully urge this committee to return a favorable report on HB107_FWA

M Badeker_HB1071 - Marijuana Odor Search.pdf

Uploaded by: Melissa Badeker

Position: FWA

Dear Members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with the Campaign for Justice Safety and Jobs, and the Maryland Coalition for Justice and Police Accountability. I am a resident of District 8. **I am testifying in support of House Bill 1071, Reasonable Suspicion and Probable Cause - Cannabis.**



Many police encounters begin with what courts call “reasonable suspicion”: a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.¹ After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it’s a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won’t: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can’t legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.² Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon³- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia’s legislatures have passed laws to this effect⁴. Maryland, having legalized marijuana, should now join them. Further, you need to make sure that the final bill codifies that evidence obtained in violation of this law will be excluded from court. The exclusionary rule will not be applied by the courts if the legislature has specifically declined to say that it applies. Without the exclusionary rule, HB1071 will be toothless.

It is for these reasons that I am encouraging you to vote **in support of HB1071**. Thank you for your time, service, and consideration.

Sincerely,
Melissa Badeker
3020 Linwood Avenue, Parkville MD 21234
Showing Up for Racial Justice Baltimore

¹ Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

² 16.7% of people ages 18-24 report being stopped by police in 2020, compared to 12.2% for people aged 25-44, and 8.1% for people aged 45-64. See: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpp20.pdf> Table 1

³ See *In re DD* at 240 for further citations.

⁴ NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.

HB 1071 Odor of Cannabis Favorable Senate hearing.

Uploaded by: Michele Hall

Position: FWA



NATASHA DARTIGUE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS

ELIZABETH HILLIARD
ACTING DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

**BILL: HB1071—Criminal Procedure—Reasonable Suspicion &
Probable Cause--Cannabis**

FROM: Maryland Office of the Public Defender

POSITION: Favorable with Amendments

DATE: March 30, 2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House Bill 1071. An essential final piece to cannabis legalization is limiting the role that now legal cannabis can play in police investigations and, in turn, infringement on the citizenry's Fourth Amendment rights. Legislation this session must explicitly preclude the police from relying solely on the odor of marijuana, simple possession of marijuana, or possession of marijuana in proximity to money, to conduct a stop, search, or arrest of a person, or to search a vehicle. New York (Attachment A) and Virginia (Attachment B) have similar legislation. It is imperative that HB1071 becomes law.

PROPOSED AMENDMENT

An established principle of the Fourth Amendment is that in order for the parameters of lawful warrantless stops, searches, and seizures to be respected by law enforcement, there must be some consequence to act as an effective deterrent. That consequence comes through the "exclusionary rule," which precludes court's from admitting at a criminal trial illegally seized evidence. The purpose of the exclusionary rule is to deter police misconduct. *United States v. Leon*, 468 U.S. 897, 922 (1984).

This bill currently places the exclusionary rule in uncodified language: **SECTION 3. AND BE IT FURTHER ENACTED, That the Exclusionary Rule and its exceptions, as judicially determined, applies to this Act.** OPD is concerned that this language is not sufficiently explicit for the courts to suppress evidence following a violation of this new law.

“As the Court of Special Appeals stated, ‘One may not wish an exclusionary rule into being by waiving a magic wand. It is something that must be deliberately and explicitly created to cover a given type of violation.’ *Sun Kin Chan v. State*, 78 Md. App. 287, 311 (1989). **Accordingly, where the Legislature does not provide explicitly for a suppression remedy, courts generally should not read one into the statute. N. 9: We acknowledge that courts have recognized implicit suppression remedy for certain statutory violations on limited occasions. ... This Court has never found, however, an implicit exclusionary rule and we decline to do so here.**” *King v. State*, 434 Md. 472, 493 (2013). The Supreme Court of Maryland reaffirmed this same principle in 2022 in *Dejarnette v. State*, 478 Md. 148.

The General Assembly has enacted other statutes that have codified the exclusionary rule. *See* Md. Cts. & Jud. Proc. § 10-309 (a)(1)(ii) (in statutory scheme governing alcohol concentration tests, “evidence of a test or analysis provided for in this subtitle is not admissible in a prosecution for violation of [specific Transportation Article violations] if obtained contrary to the provisions of this subtitle”); § 10-405 (a) (evidence obtained in violation of the Maryland Wiretap Act is not admissible in any subsequent trial or proceeding).

OPD is concerned that without the exclusionary rule being made explicit in the codified section of the statute, as the General Assembly has done previously, the courts may not interpret the exclusionary rule in the uncodified language of the statute as mandatory. This undermines the intent of the bill, which is to ensure that police do not stop or search individuals or their vehicles based on odor of cannabis alone. If there is no consequence through exclusion of evidence, there is no deterrence. OPD implores this committee to amend the bill to include the exclusionary rule in the codified language of the statute, stating explicitly: **EVIDENCE DISCOVERED OR OBTAINED IN VIOLATION OF THIS SECTION IS NOT ADMISSIBLE IN A TRIAL, HEARING, OR ANY OTHER PROCEEDING.**

Maryland’s 2014 decriminalization bill did not explain what role the odor or possession of marijuana was to play in police-citizen interactions in the post-decriminalization world. The result is that in the past eight years countless people have been stopped, searched, and arrested based on the odor of marijuana and/or the possession of a small amount of marijuana—conduct that does not in and of itself indicate someone is engaged in criminal conduct. The Supreme Court of Maryland (formerly the Court of Appeals) made clear in June 2022 with its decision in *In re D.D.*,

479 Md. 206 (2022), that the odor of marijuana alone could still support a stop of an individual because marijuana remained contraband. Even with legalization of up to 1.5 ounces of marijuana, there is still some amount of marijuana that is contraband and therefore the logic of *D.D.* remains sound: because there is some amount of cannabis that is illegal, it can be used to support an officer's reasonable suspicion of criminal activity and thus a stop under the Fourth Amendment. If the Legislature does not limit police action based on the odor or possession of marijuana, people will continue to be stopped, searched, and arrested based on legal conduct. As the legal marijuana industry continues to expand, this will create an unacceptable violation of civil liberties, and it will invite biased policing, because police will use the odor of marijuana as a pretext for otherwise illegal, race-based stops, searches, and arrests. On January 25, 2023, a civil suit was filed against the Baltimore County Police Department for excessive use of force against a family of five which all began based on the odor of marijuana, which the officers alleged they could smell when driving past a car with rolled up windows. (Attachment C) Without action by the General Assembly, Marylanders will continue to fall victim to police violence based on the odor of cannabis alone—a now legal product.

Not only is it a problem that under the status quo individuals can be stopped by the police for the legal smell of cannabis, but “there is no way to challenge or verify what the officer smelled, no way to test whether a person actually smelled of marijuana,...and no way to control for the fully legal and otherwise non-criminal or second-hand ways someone could come to smell like marijuana.” *Lewis v. State*, 470 Md. 1, 24 (2020). In fact, a recent article in the San Francisco Chronicle detailed how the San Francisco police disproportionately relied on cannabis related fact such as “smell,” “odor,” and “marijuana” to justify stops and searches of Black individuals where no contraband was ultimately recovered. (Attachment D)

Additionally, even post-legalization, possession of some amounts of marijuana will remain subject to civil penalties and will therefore be contraband. Absent a legislative limitation, this leaves open the possibility that police can continue to search vehicles based on the odor of marijuana, because under the *Carroll* doctrine officers can conduct a warrantless roadside search of a vehicle whenever they have probable cause to believe it contains contraband. *Robinson v. State*, 451 Md. 94 (2017). If the Legislature does not limit the role marijuana plays in police investigations at the same time as legalization, Marylanders' cars will continue to be searched in the course of any traffic stop

based on possession of, mere proximity to, or lingering scent of, a legal substance. This will undermine the entire legalization regime.

A key concern remains what the odor of marijuana should mean when an officer suspects an individual is driving a motor vehicle while impaired by drugs. In that context, officers would still need to have some initial basis to suspect that a person is impaired before stopping them. This bill makes explicit that the odor of cannabis can be considered as part of the totality of the circumstances to support an officer's observations of suspected impairment; it simply cannot be the sole basis for a stop to investigate driving under the influence, because the odor of cannabis alone is not indicative that someone is an impaired driver.

If the General Assembly fails to limit the use of the odor of cannabis to support stops, seizures, and searches, it will endorse a two-tiered system of legalized cannabis and justice, wherein Black people will be disproportionately criminalized, stopped, and searched for partaking in a legal substance. Making clear from the outset that police cannot stop, search, and arrest people, or search vehicles, based only on the odor or simple possession of cannabis (1) ensures that people's rights are not infringed upon for legal conduct, (2) ensures that police do not continue to use the odor of cannabis to disproportionately stop, frisk, and search people and vehicles in Black and Brown communities, and (3) and prevents another decade of litigation to answer the question of what is lawful police conduct post-legalization. We urge the General Assembly to pass HB1071 to make legal cannabis use without the encroachment of law enforcement a reality for all Marylanders.

For these reasons, the Maryland Office of the Public Defender strongly urges this Committee to issue a favorable report on HB 1071/ SB 51.

**Submitted by: Maryland Office of the Public Defender, Government Relations Division.
Authored by: Michele D. Hall, Assistant Public Defender | michele.hall@maryland.gov**

ATTACHMENT A

McKinney's Consolidated Laws of New York Annotated
Penal Law (Refs & Annos)
Chapter 40. Of the Consolidated Laws (Refs & Annos)
Part Three. Specific Offenses
Title M. Offenses Against Public Health and Morals
Article 222. Cannabis

McKinney's Penal Law § 222.05

§ 222.05 Personal use of cannabis

Effective: March 31, 2021

[Currentness](#)

Notwithstanding any other provision of law to the contrary:

1. The following acts are lawful for persons twenty-one years of age or older: (a) possessing, displaying, purchasing, obtaining, or transporting up to three ounces of cannabis and up to twenty-four grams of concentrated cannabis;

(b) transferring, without compensation, to a person twenty-one years of age or older, up to three ounces of cannabis and up to twenty-four grams of concentrated cannabis;

(c) using, smoking, ingesting, or consuming cannabis or concentrated cannabis unless otherwise prohibited by state law;

(d) possessing, using, displaying, purchasing, obtaining, manufacturing, transporting or giving to any person twenty-one years of age or older cannabis paraphernalia or concentrated cannabis paraphernalia;

(e) planting, cultivating, harvesting, drying, processing or possessing cultivated cannabis in accordance with [section 222.15](#) of this article; and

(f) assisting another person who is twenty-one years of age or older, or allowing property to be used, in any of the acts described in paragraphs (a) through (e) of this subdivision.

2. Cannabis, concentrated cannabis, cannabis paraphernalia or concentrated cannabis paraphernalia involved in any way with conduct deemed lawful by this section are not contraband nor subject to seizure or forfeiture of assets under article four hundred eighty of this chapter, [section thirteen hundred eleven of the civil practice law and rules](#), or other applicable law, and no conduct deemed lawful by this section shall constitute the basis for approach, search, seizure, arrest or detention.

3. Except as provided in subdivision four of this section, in any criminal proceeding including proceedings pursuant to [section 710.20 of the criminal procedure law](#), no finding or determination of reasonable cause to believe a crime has been committed shall be based solely on evidence of the following facts and circumstances, either individually or in combination with each other:

- (a) the odor of cannabis;
- (b) the odor of burnt cannabis;
- (c) the possession of or the suspicion of possession of cannabis or concentrated cannabis in the amounts authorized in this article;
- (d) the possession of multiple containers of cannabis without evidence of concentrated cannabis in the amounts authorized in this article;
- (e) the presence of cash or currency in proximity to cannabis or concentrated cannabis; or
- (f) the planting, cultivating, harvesting, drying, processing or possessing cultivated cannabis in accordance with [section 222.15](#) of this article.

4. Paragraph (b) of subdivision three of this section shall not apply when a law enforcement officer is investigating whether a person is operating a motor vehicle, vessel or snowmobile while impaired by drugs or the combined influence of drugs or of alcohol and any drug or drugs in violation of [subdivision four](#) or [subdivision four-a of section eleven hundred ninety-two of the vehicle and traffic law](#), or [paragraph \(e\) of subdivision two of section forty-nine-a of the navigation law](#), or [paragraph \(d\) of subdivision one of section 25.24 of the parks, recreation and historic preservation law](#). During such investigations, the odor of burnt cannabis shall not provide probable cause to search any area of a vehicle that is not readily accessible to the driver and reasonably likely to contain evidence relevant to the driver's condition.

Credits

(Added L.2021, c. 92, § 16, eff. March 31, 2021.)

McKinney's Penal Law § 222.05, NY PENAL § 222.05

Current through L.2022, chapters 1 to 841. Some statute sections may be more current, see credits for details.

ATTACHMENT B

West's Annotated Code of Virginia
Title 4.1. Alcoholic Beverage and Cannabis Control (Refs & Annos)
Subtitle II. Cannabis Control Act (Refs & Annos)
Chapter 13. Prohibited Practices; Procedural Matters

VA Code Ann. § 4.1-1302

§ 4.1-1302. Search without warrant; odor of marijuana

Effective: July 1, 2021

[Currentness](#)

A. No law-enforcement officer, as defined in § 9.1-101, may lawfully stop, search, or seize any person, place, or thing and no search warrant may be issued solely on the basis of the odor of marijuana and no evidence discovered or obtained pursuant to a violation of this subsection, including evidence discovered or obtained with the person's consent, shall be admissible in any trial, hearing, or other proceeding.

B. The provisions of subsection A shall not apply in any airport as defined in § 5.1-1 or if the violation occurs in a commercial motor vehicle as defined in § 46.2-341.4.

Credits

Acts 2021, Sp. S. I, c. 550, cl. 1, eff. July 1, 2021; Acts 2021, Sp. S. I, c. 551, cl. 1, eff. July 1, 2021.

VA Code Ann. § 4.1-1302, VA ST § 4.1-1302

The statutes and Constitution are current through the 2022 Regular Session and include 2022 Sp. Sess. I, cc. 1 to 22.

End of Document

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ATTACHMENT C

MARYLAND

THE DAILY RECORD

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Lawsuit: Baltimore County police beat 5 family members after claiming to smell pot

By: Madeleine O'Neill ◉ January 25, 2023

A new federal civil rights lawsuit claims that Baltimore County police officers violently beat five members of the same family after claiming to smell an odor of marijuana coming from a parked vehicle with its windows up.

The family went out to dinner on Jan. 25, 2020, to celebrate their daughter's upcoming 18th birthday when they were stopped by the officers, according to the complaint.

What followed was a "gross display of excessive force," said Hannah Ernstberger, the lawyer representing the family. The complaint alleges that the Westminster family's two parents, their daughter and adult son, and a cousin were all assaulted by the officers and suffered injuries.

All five were also arrested and charged with crimes, but the charges against each were later dropped or placed on the stet docket.

The complaint names nine Baltimore County police officers and refers to extensive body camera footage of the incident.

According to the lawsuit, Shaneris Nalls, now 20, and three female friends were sitting in a parked vehicle at about 7:30 p.m. after having dinner at to celebrate her birthday at City View Bar & Grill on Security Boulevard.

Two police officers drove by and approached the vehicle. One of the officers, Evan Vicarini, claimed that he could smell marijuana coming from the vehicle, though its windows were rolled up and other cars were nearby.

Vicarini would later tell another officer, "'We drove by and they gave us the (expletive) crim look,' seemingly admitting that the officers stopped the vehicle and the occupants based on appearance alone," Ernstberger wrote in the complaint.

Vicarini told Nalls that if she handed over marijuana she would be free to leave without a citation, the complaint claims. Nalls handed over a joint, but Vicarini believed there was more inside the vehicle and ordered the passengers out.

Nalls's mother, Dayaneris Dmeza, approached to speak with Vicarini. When Dmeza's husband, Shamdu V. Nalls, and son, Shamdu C. Nalls, also arrived, Vicarini told the other police officers who had responded to "hook 'em" if "they start to get out of hand," according to the complaint.

Shaneris Nalls and her mother approached their vehicle to warm up. Vicarini told Dmeza to back up, grabbed her hoodie and slammed her into the side of the vehicle, the complaint claims.

Shaneris Nalls tried to step in, but Vicarini threw her to the ground and kneeled on top of her before handcuffing and arresting her.

Another officer, Anthony Vitacco, then slammed Dmeza into a metal fence near the vehicle. Dmeza's husband, Shamdu V. Nalls, tried to intervene nonviolently, according to the complaint, and was punched multiple times by Vicarini.



Shaneris Nalls, in white, and her mother, Dayaneris Dmeza, in navy, stand at center. Shamdu V. Nalls, in sunglasses, and Shamdu C. Nalls, wearing a blue hat, stand behind the two women. Nehemiah Lember stands at the far right looking out of the frame. (Contributed photo)

Other officers then slammed him to the ground, where he was beaten, kicked and Tased by four officers while his hands were behind his back. One officer kicked him in the face and he lost consciousness before being dragged into a nearby police vehicle and Tased again, the complaint claims.

A cousin, Nehemiah Lember, tried to check on Dmeza when four officers violently forced him into the metal fence and onto the ground. Multiple officers placed their hands around Lember's neck or used their arms in an effort to choke him while his hands were behind his back, according to the complaint.

Finally, the couple's son, Shamdu C. Nalls, rushed past the officers with his hands raised to check on his mother. As officers grabbed him, he lost his balance and fell into one of the officers. Another Tased Nalls and continued Tasing him after he had fallen to the ground, the complaint alleges.

The complaint also claims that on multiple occasions, the responding officers put their body weight on top of the members of the family they were arresting, causing difficulty breathing.

All five of the family members were taken to the police precinct and charged with crimes. According to the complaint, Shaneris Nalls was charged with possession of marijuana and her brother and cousin were charged with assault on a law enforcement officer and resisting arrest. The charges were ultimately dismissed, Ernstberger wrote.

Dmeza was charged with failure to obey a lawful order and disorderly conduct and her husband, Shamdu V. Nalls, was charged with assault on a law enforcement officer and resisting arrest. Their charges were placed on the stet docket, court records show.

The complaint claims that body-worn camera footage also captured officers Vitacco and Vicarini conspiring to create a "fabricated story" about the arrests in their statement of probable cause. One officer covered Vitacco's body camera in an effort to muffle their conversation, the complaint alleges.

All of the family members were injured during the arrests. Shamdu C. Nalls and Dmeza suffered concussions, according to the complaint, and Shamdu V. Nalls suffered a broken bone near his eye.

Ernstberger said the family believes the incident was at least partially motivated by race. Shamdu V. Nalls is African American and Dmeza is Hispanic.

The family continues to struggle with issues related to post-traumatic stress disorder, Ernstberger said.

The family filed complaints with the Baltimore County Police Department a few days after the incident. In December 2021, they received a letter that said "the officer was in violation of departmental rules and regulations" and that "corrective administrative action will be initiated," but provided no other information. A copy of the letter is included with their lawsuit.

The suit brings claims of excessive force, false arrest and malicious prosecution. It also raises a *Monell* claim against Baltimore County for failing to train and supervise the officers.

Spokeswomen for the county and for the police department declined to comment.

Lawmakers this year are considering legislation that would prohibit police officers from citing the odor of marijuana as the sole basis for reasonable suspicion or probable cause, with the exception of investigations for impaired driving. Marijuana will become legal in Maryland on July 1.



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ATTACHMENT D

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BAY AREA // SAN FRANCISCO

S.F. police often use these marijuana-related words to justify unfounded searches of Black people

Susie Neilson, Justin Phillips

Updated: Jan. 23, 2023 7:56 a.m.



San Francisco police officers regularly say they suspect marijuana or smell a suspicious odor to justify unfounded searches of Black people, an analysis finds.
Yalonda M. James / The Chronicle

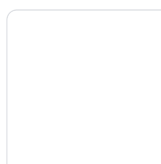
San Francisco police officers regularly claim they suspect marijuana or smell a suspicious odor to justify unfounded searches of Black people in the city, a Chronicle analysis of more than three years of stop data has found.

The data sheds light on the reasons police give for conducting fruitless searches of Black residents — mostly in cars but also on foot — and raises questions about whether the city's decision [to end certain kinds of lower-level police stops](#) will make any

difference.

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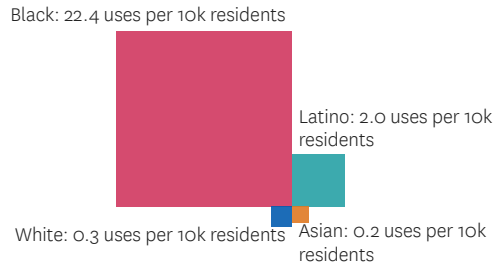


The Chronicle evaluated the terminology that San Francisco police used to explain the unfounded searches of approximately 8,000 people between July 2018 and September 2021, from a total of over 200,000 stops conducted during that time and about 39,000 searches. We included all encounters where police conducted a search that resulted in no arrests or citations and yielded no “contraband” (weapons, drugs or other items suggestive of criminal activity).

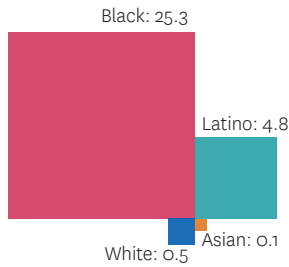
When San Francisco police search people and don't find anything, how do they justify it?

Words with the *highest* disparity between Black and white people

Police unsuccessfully searched Black residents — using “smell” in their justification of the search — at 85 times the rate of white residents...



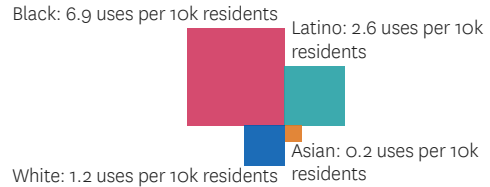
... “odor” at 54 times the rate...



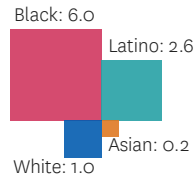
...and “marijuana” at 54 times the rate

Words with the *lowest* disparity between Black and white people

Police unsuccessfully searched Black residents — using “him” in their justification of the search — at 6 times the rate of white residents...



... “pocket” at 6 times the rate...



...and “tools” at 6 times the rate

In one field of the data, labeled “basis for search narrative,” we found officers frequently employed the words “smell,” “marijuana” and other drug-related terms during searches of Black people, even if they indicated in the data that they did not find any drugs and took no action as a result of their searching.

Officers employed the word “marijuana” in 269 unsuccessful searches of Black people, compared to 38 mentions for white people, despite the fact that Black people make up just 5% of the city’s population and white people make up 51%.



Fifth & Mission

How SFPD Language Reveals Racial Bias

A Chronicle analysis of more than three years of police data has found that the San Francisco officers used terms like "marijuana" and "baggy" c



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In these unsupported encounters, police used the word “smell” in searches of Black residents at 85 times the rate of white people. They used “marijuana” to search Black people at 58 times the rate of white people. Officers were also disproportionately likely to use loaded words such as “firearm,” “gun,” “crime” and “baggy” to justify frisking Black people in searches where they came up empty-handed.

The words with the lowest Black-white disparity, on the other hand, tended to be more procedural (though because police search Black people at such high rates, they used all terms more for Black people than white). These included “tools,” “pocket” and “weapon.”

Very few white people were subjected to an unsuccessful search related to marijuana or odor, showing how San Francisco police officers’ selective enforcement for lower-level infractions may contribute to their vastly disproportionate stop and search rates for Black residents.

“It’s not surprising that (The Chronicle) analysis appears to show that S.F. Police who are making these unwarranted stops are more suspicious of people of color,” San Francisco Public Defender Mano Raju said via email. “The language police use in these reports is revealing, and lends further credence to what we already know — that pretext stops are racially biased and inflict disproportionate harm on people of color.”

The San Francisco Police Department did not respond to requests for comment.

The Chronicle's findings come amid ongoing discussions about how to reduce the frequency with which people of color are subjected to police bias. In San Francisco specifically, Black people were about six times as likely to be stopped by police as white people in 2020, and 10 times more likely to be searched as a result of a stop. And while white people were more likely to be in possession of illegal substances when searched, Black people are more likely to be subjected to physical force by police, according to a state-level advisory board tasked with reducing police bias.

San Francisco's disproportionate stop and search rates make it an outlier even in California, where Black people are disproportionately stopped by every law enforcement agency reporting data to the state, [as a previous Chronicle analysis found](#).

To curb this widespread bias, on Jan. 11, the San Francisco Police Commission [approved a draft of a law](#) restricting "pretextual" traffic stops, in which police stop drivers for minor violations like expired registration tags or a broken taillight in order to investigate probable criminal activity. Meanwhile, state Sen. Steven Bradford, D-Gardena (Los Angeles County), is rallying support for Senate Bill 50, which would [outlaw several forms of pretextual stops](#) and is a rehash of a bill he introduced but that failed to pass last year.

The data we analyzed included all stops, not just those made under specific "pretextual" codes as defined by the commission.

During the Jan. 11 Police Commission meeting, more than 20 community members testified that over-policing causes both the possibility of [police brutality](#) and a toxic environment where marginalized communities have reason to distrust law enforcement.

One caller described being pulled over in the city's Bayview neighborhood for having "heavily tinted" back windows. She said an officer posed "uncomfortable" questions to her, like whether her boyfriend was a criminal and how often she commits crimes in the car she was driving. The caller, who admitted to being on parole at the time of the police stop, said her vehicle was searched and officers found a small can of pepper spray, which led to them using "excessive force" while removing her from her vehicle.

The Bayview contains the city's highest [concentration of Black residents](#), despite the fact that San Francisco's overall Black population has been steadily shrinking over the past 60 years for [a variety of interrelated and often complex reasons](#), including racial bias.

"I lost my job, my car," the caller said. "I did nothing wrong that day and that stop change(d) my life forever."

Another speaker, William Palmer, the executive director of "Life After Next," a re-entry program for the formerly incarcerated, and a member of the Sheriff's Department Oversight Board, shared his own story. Palmer was also on parole at the time.

His account goes something like this: He was pulled over by a San Francisco police officer and was forced to exit his car and sit on the curb while police conducted a search of his vehicle.

"For a person on parole, that's anxiety-filling, that's trauma-triggering and was just disrespectful," he said, adding that police let him go without a citation. "I am a survivor of contact with police."

Not everybody can say the same. Mapping Police Violence, a research and advocacy group that tracks police killings nationwide, found police [killed nearly 600 people in traffic stops](#) between 2017 and 2022. Black people represent only 13% percent of the U.S. population, but accounted for 28% of people killed in traffic stops.

Brian Cox, director of the Integrity Unit at the San Francisco Public Defender's Office, said his office's clients experience these disparities all the time.

Drought Map

Track water shortages and restrictions across Bay Area

Updated to include drought zones while tracking water shortage status of your area, plus reservoir levels and a list of restrictions for the Bay Area's largest water districts.

"They're tired of being harassed by police, they are tired of being stopped for, sometimes, what is effectively driving while Black, or being detained and searched constantly," Cox said. "In a place like San Francisco where there is a stated commitment to progressive values, the fact that this happens just goes against that commitment quite substantially."

Now that San Francisco has approved a draft of its pretext stop policy, the policy will move to meet-and-confer sessions between the city and the San Francisco Police Officers Association, which allows the union to weigh in on policy changes. After these sessions are complete, the Police Commission will vote again on the final version of the policy.

Los Angeles, Berkeley, Philadelphia, and Washington, D.C., meanwhile, are cities that have already passed legislation to limit these kinds of police interactions.

While the results of pretext stop bans in different cities are as varied as the policies themselves, the Los Angeles Times [reports](#) that after the Los Angeles Police Department policy was implemented in March 2022, it was followed by an almost immediate decline in police stopping people for minor violations, and officers were conducting far fewer searches during these stops.

Police stop disparities are baked into the historic origins of American law enforcement, said Chauncey Smith, a senior manager of Reimagine Justice and Safety for the racial justice-focused nonprofit Catalyst California.

“Today, what we have are these low-level infractions that can be used by present day officers to stop people of color for relatively innocuous things that pose little to no safety risk,” he said. “For generations there has been significant distrust... when it comes to law enforcement and its ability to keep all Californians safe. And this is rooted in a long history of racism embedded in our country’s approach to law enforcement.”

Partially because of this history of distrust, many Black people find it difficult to openly discuss their experiences with police, said Cox.

“Not only is it difficult for people to talk about it when it happens to them because of having to relive that trauma, but there’s a fear of retaliation, and a fear that there is nobody out in their community to protect them if they say something negative about the police,” Cox said. “They think about how all the civilian oversight boards in the world can’t stop that specific officer from doing something to them again.”

Saundra Haggerty, a member of Glide, a San Francisco-based organization that focuses on social justice issues, said she volunteered to share her story because exposing disparities in police stops is directly tied to her work.

One night in June 2020, she was driving through San Francisco’s posh Marina neighborhood when a police cruiser began following her. Haggerty said she was driving the speed limit, which made it all the more frightening when the police car’s lights began flashing in her rearview mirror.

According to Haggerty, a tense exchange ensued when the officer who pulled her over pointed out that her tail light was broken and then grew frustrated over her refusal to roll down her window completely during their interaction.

“I was thinking about my own safety,” recalled Haggerty, who said that she was eventually let go without a citation. “It’s not that I live life not thinking about how I’m a Black woman in this city, but there are moments where you know you’re going to get reminded that you are. ... That cop behind me was one of those moments, and I knew it.”

Susie Neilson and Justin Phillips are San Francisco Chronicle staff writers. Email: susie.neilson@sfchronicle.com, jphillips@sfchronicle.com Twitter: [@susieneilson](https://twitter.com/susieneilson), [@JustMrPhillips](https://twitter.com/JustMrPhillips)



Written By
Susie Neilson

Reach Susie on

Susie Neilson is a data reporter for The San Francisco Chronicle. Previously, she was a science fellow at Business Insider, covered COVID-19 and criminal justice for KQED and worked as a private investigator at the Mintz Group. Her work has also appeared in NPR, Reveal from the Center for Investigative Reporting and The New Yorker, among other publications. She is a 2019 graduate of the UC Berkeley Graduate School of Journalism, where she studied investigative and multimedia reporting.

Read more about the [data team and their work](#).



Written By
Justin Phillips

Reach Justin on

Justin Phillips joined The San Francisco Chronicle in November 2016 as a food writer. He previously served as the City, Industry, and Gaming reporter for the American Press in Lake Charles, Louisiana. In 2019, Justin also began writing a weekly column for The Chronicle's Datebook section that focused on Black culture in the Bay Area. In 2020, Justin helped launch Extra Spicy, a food and culture podcast he co-hosts with restaurant critic Soleil Ho. Following its first season, the podcast was named one of the best podcasts in America by the Atlantic. In February, Justin left the food team to become a full-time columnist for The Chronicle. His columns focus on race and inequality in the Bay Area, while also placing a spotlight on the experiences of marginalized communities in the region.

[VIEW COMMENTS](#)

Top of the News

Charts show UC admissions rates for every high school in state

Here's how many students are admitted to the University of California at every high school in the state.

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Why 49ers are 'built for it' heading into NFC title game

BY MICHAEL SILVER

These 'bioswales' were built to help prevent flooding. Here's how they...

BY JOHN KING

SFPD use weed-related words to justify unfounded searches of Black people

BY SUSIE NEILSON AND JUSTIN PHILLIPS

Bay Area temps are set to rise this week - here's when it'll be warmest

BY MICHELLE APON

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HB 1071 - Criminal Procedure - Reasonable Suspicio

Uploaded by: Morgan Drayton

Position: FWA

March 30, 2023

Testimony on HB 1071
Criminal Law and Procedure - Cannabis - Fines for Smoking in Public, Stops, and Searches
Judicial Proceedings

Position: Favorable w/Amendments

Common Cause Maryland is in strong support of HB 1071.

After decades of proof of the economic and racial harm deliberately caused by marijuana criminalization and enforcement, Marylanders have voted to legalize adult use and possession of the substance. While this represents a major step forward in repairing the harms done by the “war on drugs,” dangerous loopholes that can be used to racially profile Black and Brown Marylanders and violate their Fourth Amendment protections. One of the more egregious loopholes is the power of the police to conduct investigatory stops and vehicle searches based solely on the belief that they smelled marijuana.

Marijuana odor has been used as a loophole to justify racial profiling, intrusive searches, and police escalation for far too long. As we move towards legalization, our legislators have a duty to ensure that the smell, or perception of a smell, of a soon-to-be legal substance cannot be used to justify a stop and search of an individual or their vehicle.

We also urge the committee to codify an exclusionary rule that would bar evidence obtained in violation of the statute from being used in criminal proceedings, rather than a provision that would leave discretion up to judges to decide if such evidence should be admissible. This rule is sorely needed to deter violations of the statute and provide some form of redress for victims of illegal searches.

For the above reasons, we urge the committee to issue a favorable report with the aforementioned amendment on HB 1071.

HB 1071 _FAV_MCJPA.pdf

Uploaded by: Olivia Spaccasi

Position: FWA



Testimony for the Senate Judicial Proceedings Committee

March 30, 2023

HB 1071 - Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis

FAVORABLE WITH AMENDMENT

The Maryland Coalition for Justice and Police Accountability supports HB 1071, which seeks to prohibit police from using the alleged odor of marijuana to stop a person or search a vehicle. We respectfully urge the committee to consider amendments to explicitly include the exclusionary rule. In order for HB 1071 to have any ability to deter law enforcement from conducting illegal stops and searches based on the odor of cannabis alone, the statute must have an “exclusionary rule,” which precludes that evidence from being admitted at trial.

Marylanders should not fear police interactions because of the lingering odor of a now-legal substance. For decades, the alleged smell of marijuana has been used as a sole, unbridled justification for a warrantless search, infringing on individuals' right to privacy and a rubber stamp for police to justify racial profiling. Banning odor stops and searches is both a logical and necessary extension of the work lawmakers did in 2022 to legalize the recreational use of marijuana.

Marijuana odor stops and searches by police facilitate and too often justify racial profiling.

While the bounds of probable cause are outlined by the courts, in practice, probable cause is determined by individual law enforcement officers who may hold inherent biases or suspicions towards certain racial groups. In Maryland, police are **four times** more likely to search Black drivers and their vehicles during traffic stops than white drivers.¹ And despite nearly identical rates of usage, Black people are criminalized for marijuana use at significantly higher rates in both arrests and sentencing. From 2018 to 2019, of those arrested for possession in Maryland, 75%

¹ Criminal procedure - reasonable suspicion and probable cause - cannabis.(n.d.). Retrieved February 20, 2023, from <https://mgaleg.maryland.gov/Pubs/BudgetFiscal/2023RS-SB0051-REIN.pdf>



MARYLAND COALITION FOR JUSTICE & POLICE ACCOUNTABILITY

were Black.² These disparities speak to the popular belief that marijuana use among Black people is linked to criminal activity. In contrast, marijuana use by white people is seen as recreational and medical. These biases inevitably spill into traffic enforcement, sometimes with horrific, life-altering, or deadly results for Black people who are racially profiled.

Marijuana odor claims are overused and unreliable.

The mere scent of marijuana cannot denote the amount of time the odor has been present, where the odor came from, or if the odor is a result of unburnt or burnt marijuana. Additionally, there is no way to confirm or deny the presence of the odor after a search, which allows officers' claims to go virtually unchecked. As a result, officers' claims of marijuana odor have become ubiquitous, with some judges even determining many are highly suspect, if not outright lies.³ Inevitably, unlawful odor searches become a situation of "he said, she said" in which the word of law enforcement is taken at face value and victims are given no opportunity for redress.

Passage of HB 1071 will not come at the expense of public safety.

HB 1071 will not impede law enforcement's ability to investigate incidents of impaired driving. The bill specifies that the odor of marijuana may be a factor in the totality of circumstances when investigating a DUI. Just as with alcohol, in the marijuana DUI context some evidence of impairment must be observed before an officer conducts a search or arrest.

With that in mind, however, it should be noted that many searches effectuated after an officer claims they smell marijuana **are not** necessarily related to DUI enforcement. Instead, they are actually used as opportunities to look for illegal weapons or contraband. However, pretextual traffic stops are not an effective or necessary crime-fighting tool. Last year there were almost 36,000 traffic stops in Montgomery County and we've learned that those stops resulted in the seizure of 172

² 2020 Statistics and Data Request for Possession of Marijuana over 10 Grams by Delegate Nick Mosby

³ <https://www.startribune.com/federal-judge-rules-minneapolis-police-illegally-searched-frey-staffers-car/600159885/>; <https://casetext.com/case/united-states-v-gray-366>; <https://www.>



MARYLAND COALITION FOR JUSTICE & POLICE ACCOUNTABILITY

guns. This is an incredibly ineffective way to find guns and is certainly not worth the racially disparate harms to our community.⁴

Similarly, 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.⁵

Under legalization, the idea that the odor of a legal substance could, in any way, reasonably suggest that someone has a weapon or is engaging in illegal activity is just wrong. Public safety is of the utmost importance for all our communities, but diligent law enforcement can and should solve a crime using honest and evidence-based techniques without relying on pretextual bases (like the alleged odor of marijuana) for stopping and searching people.

The majority of Marylanders support ending police stops based solely on the odor of marijuana.

A statewide poll conducted prior to legalization found that 65% of voters were more likely to support legalization if it includes stopping the practice by police of using the odor of marijuana as the only probable cause or justification to perform a warrantless search.⁶

Ensuring that the odor of marijuana no longer provides probable cause to search a vehicle or reasonable suspicion to stop a person will close a major gateway to criminalization and unnecessary interactions with police. Let’s ensure that Marylanders do not have to fear police interactions because of the lingering odor of a now-legal substance.

Adopt an amendment to explicitly include the exclusionary rule.

⁴ Testimony provided to the Montgomery County Council Public Safety Committee on February 6, 2023 by Captain Brian Dillman Traffic Operations Division Director Montgomery County Police Department.

⁵ Criminal procedure - reasonable suspicion and probable cause - cannabis.(n.d.). Retrieved February 20, 2023, from <https://mgaleg.maryland.gov/Pubs/BudgetFiscal/2023RS-SB0051-REIN.pdf>

⁶ https://www.aclumd.org/sites/default/files/field_documents/aclu_bpi_md_cannabis_legalization_march_3_2022.pdf



MARYLAND COALITION FOR JUSTICE & POLICE ACCOUNTABILITY

The purpose of the exclusionary rule is to deter police misconduct.⁷ HB 1071 seeks to deter unlawful stops and searches based on the odor of marijuana. as the Supreme Court of Maryland stated in *King v. State*, 434 Md. 472, 493 (2013), the court does not recognize implicit suppression of evidence for statutory violations. It thus will only read an exclusionary rule into a statute if the legislature provides for it explicitly.

For the foregoing reasons, the Maryland Coalition for Justice and Police Accountability urges this committee to issue a favorable report on HB 1071, with the aforementioned amendment.

Respectfully,

Maryland Coalition for Justice & Police Accountability (members listed below)

ACLU of Maryland
ACLU of Maryland, Montgomery County Chapter
Amnesty International
Arts Education in Maryland Schools (AEMS) Alliance
Baltimore Action Legal Team
Baltimore Bern Unit
Baltimore City Civilian Review Board
Baltimore for Border Justice
Be More Unified
Council on American-Islamic Relations (CAIR) - Maryland
CASA
Caucus of African-Americans Leaders
Citizens Policing Project
Coalition for Justice for Anton Black
Coalition of Concerned Mothers
Coalition of People Opposed Violence and Extremism
Common Cause Maryland
Community Actively Seeking Transparency (C.A.S.T.)
Community Justice
Court Watch & Judicial Accountability

⁷ *United States v. Leon*, 468 U.S. 897, 922 (1984).



MARYLAND COALITION FOR JUSTICE & POLICE ACCOUNTABILITY

Democratic Socialists of America – Baltimore City
Democratic Socialists of America – Greater Baltimore
Democratic Socialists of America – Prince George’s County
Disability Rights Maryland
Do the Most Good
Drug Policy Alliance
Equality Matters
For Kathy’s Sake
FreeState Justice
Greenbelt People Power
Helping Ourselves to Transform
Hispanic National Law Enforcement Association
Homeless Persons Representation Project
Innocence Project
InterFaith Action for Human Rights
Jews United For Justice
Justice Policy Institute
The JustUs Initiative
The Talking Drum
Kevin L. Cooper Foundation
Law Enforcement Action Partnership
Leaders of a Beautiful Struggle
League of Women Voters Maryland
LGBTQ Dignity Project
Life After Release
Making Changes LLC
Mama Sisterhood of Prince George’s County
March for Our Lives Maryland
Maryland Alliance for Justice Reform
Maryland Center on Economic Policy
Maryland Consumer Rights Coalition
Maryland Defenders Union
Maryland Justice Project
Maryland Poor People’s Campaign
Maryland Prisoners’ Rights Coalition
Maryland Restorative Justice Initiative
Montgomery County Civil Rights Coalition



MARYLAND COALITION FOR JUSTICE & POLICE ACCOUNTABILITY

Montgomery County Democratic Socialists of America
Mothers on the Move
NAACP Legal Defense and Educational Fund
National Coalition for Drug Legalization
Nigerian American Lawyers Association - Washington DC Chapter
Organizing Black
Our Maryland
Our Prince George's
Our Revolution Maryland
Power Inside
Prevent Gun Violence Ministry, River
Road Unitarian Universalist Congregation
Policy Foundation of Maryland
Prince George's People's Coalition
Prisons to Professionals
Progressive Maryland
Public Justice Center
Racial Justice NOW!
Rebuild, Overcome, and Rise (ROAR) Center at University of Maryland-Baltimore
Reproductive Justice Inside
Sanctuary DMV
SEIU 1199
Showing up for Racial Justice, Annapolis and Anne Arundel County
Showing Up for Racial Justice, Baltimore
Showing Up for Racial Justice, Montgomery County
The Shriver Center at UMBC
Silver Spring Justice Coalition
Takoma Park Mobilization
The Talking Drum Incorporated
The Women of Color for Equal Justice Law Center
West Wednesdays
Wicomico County NAACP Branch 7028
Young People for Progress

Eckel HB1071 - FAV Marijuana Odor Search.pdf

Uploaded by: Rianna Eckel

Position: FWA

Dear Members of the Judicial Proceedings Committee,,

My name is Rianna Eckel, I live in the 43rd District. I am submitting this testimony as a member of Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with the Campaign for Justice Safety and Jobs, and the Maryland Coalition for Justice and Police Accountability. **I am testifying in support of House Bill 1071, Reasonable Suspicion and Probable Cause - Cannabis.**



Many police encounters begin with what courts call “reasonable suspicion”: a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.¹ After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it’s a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won’t: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can’t legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.² Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon³- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia’s legislatures have passed laws to this effect⁴. Maryland, having legalized marijuana, should now join them. Further, you need to make sure that the final bill codifies that evidence obtained in violation of this law will be excluded from court. The exclusionary rule will not be applied by the courts if the legislature has specifically declined to say that it applies. Without the exclusionary rule, HB1071 will be toothless.

It is for these reasons that I am encouraging you to vote **in support of HB1071**. Thank you for your time, service, and consideration.

Sincerely,

Rianna Eckel
2300 Hunter St, Baltimore 21218
Showing Up for Racial Justice Baltimore

¹ Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

² 16.7% of people ages 18-24 report being stopped by police in 2020, compared to 12.2% for people aged 25-44, and 8.1% for people aged 45-64. See: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpp20.pdf> Table 1

³ See *In re DD* at 240 for further citations.

⁴ NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.

hb1071_fwa.pdf

Uploaded by: Rusty Carr

Position: FWA

HB1071 Favorable with Amendments
Warren (Rusty) Carr
4391 Moletton Drive
Mount Airy, MD 21771

I support HB1071 with amendments.

HB1071 provides an exception for law enforcement officers to search motor vehicles within the proximity of the driver if there is suspicion of impairment. This would allow the law enforcement officer to use the odor of cannabis to suspect impairment and thus search. The fact that the search would be limited would not prevent the use of odor as a pretext for stopping and searching minorities.

The law requires reasonable suspicion before a search can be warranted. The odor of cannabis is indistinguishable from the odor of hemp. Hemp is non-intoxicating. Therefore, cannabis odor is not a reasonable indication of intoxication. If I smoke tobacco in my car, police can't use that as a reason to search my vehicle. Police can't search my car for alcohol solely because they can smell mouthwash on my breath. There can be no exception that allows odor to be used as a reason to conduct a search.

Please strike 1-211 section B.

Thank you,
Rusty Carr

HB1071 - Marijuana Odor Search crossover_FAV w AMN

Uploaded by: Sarah Johnson

Position: FWA

Dear Members of the Senate Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with the Campaign for Justice Safety and Jobs, and the Maryland Coalition for Justice and Police Accountability. I am a resident of District 41 in Baltimore City. **I am testifying in support of House Bill 1071 (with amendments), Reasonable Suspicion and Probable Cause - Cannabis.**



Many police encounters begin with what courts call “reasonable suspicion”: a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.¹ After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it’s a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won’t: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can’t legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.² Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon³- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia’s legislatures have passed laws to this effect⁴. Maryland, having legalized marijuana, should now join them. Further, you need to make sure that the final bill codifies that evidence obtained in violation of this law will be excluded from court. The exclusionary rule will not be applied by the courts if the legislature has specifically declined to say that it applies. Without the exclusionary rule, HB1071 will be toothless.

It is for these reasons that I am encouraging you to **support of HB1071 by voting in favor of it, with amendments.** Thank you for your time, service, and consideration.

Sincerely,
Sarah Johnson
1 Merryman Court
Baltimore, MD 21210
Showing Up for Racial Justice Baltimore

¹ Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

² 16.7% of people ages 18-24 report being stopped by police in 2020, compared to 12.2% for people aged 25-44, and 8.1% for people aged 45-64. See: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpp20.pdf> Table 1

³ See *In re DD* at 240 for further citations.

⁴ NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.

HB 1071 Criminal Procedure - Reasonable Suspicion

Uploaded by: Scott Shellenberger

Position: UNF

Bill Number: HB 1071

Scott D. Shellenberger, State's Attorney for Baltimore County

Opposed

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN OPPOSITION OF HOUSE BILL 1071
CRIMINAL PROCEDURE – REASONABLE SUSPICION AND PROBABLE CAUSE -
CANNABIS

I write in opposition to House Bill 1071 that creates a statute to set guidelines for searches that involve the odor of cannabis. Regulation of searches and seizures regarding the 4th Amendment have always been determined by the courts. Why now when the Legislature and a referendum is passed concerning cannabis should the Legislature write the rules concerning the 4th Amendment?

Maryland's highest court has already ruled on a number of these issues since the decriminalization of small amounts of marijuana. In 2017 in *Robinson v. State* the Court ruled that the odor of marijuana is enough to establish probable cause to search a vehicle even in light of decriminalization. In 2019, in *Pacheco v. State* the odor of marijuana and observation of a marijuana joint in a vehicle supplies sufficient probable cause to search a vehicle under the automobile exception but a search of a person is unreasonable because there is no probable cause to believe the person was in possession of a criminal amount. Then in 2020, in *Lewis v. State*, the Court ruled you needed more than just the odor of marijuana to constitute probable cause to make an arrest of a person and conduct a search incident to arrest. Odor is not indicative of quantity for a conviction. And finally in 2022 in *Re: D.D.* the odor of marijuana was found to be enough for an investigative detention under reasonable suspicion standard but there must be additional factors to justify a pat down of the person.

Everything in HB 1071 deals with police searches and the 4th Amendment. It should be the court that determines what are a person's 4th Amendment rights. As seen by the above, many of these rights are already protected.

I urge an unfavorable report.