

Testimony for the Maryland Senate Judicial Proceedings Committee

Thursday, March 30th, 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 Dr. Matthew Fogg. I'm a retired Chief Deputy U.S. Marshal with 32 years of Federal Service and speaking as the Honorable President of the Heritage Chapter of Blacks In Government (BIG). I'm also a member of the [Caucus of African American Leaders](#) (CAAL) in the Great State of Maryland.

[BIG is a 501\(c\)3 Black employee advocacy organization](#) Chartered in Washington, DC, in 1976 with chapters nationwide and seeks to represent approximately 2.5 million Federal, State, and municipal employees.

I have [testified before the Annapolis, Maryland legislators](#) calling for Whistleblower protection of law enforcement officers who expose rogue colleagues. I agree with HB 1071 for the following reasons: I spent my entire 30-year Federal career in law enforcement with the U.S. Marshals Service (USMS) under the U.S. Department of Justice (USDOJ) supervision involving nationwide enforcement operations. In nearly half of my tenure, I became an advocate for internal racial equality and inclusion that garnered a Federal civil rights Jury Verdict—finding that in my federal career was an environment that was [“Racially Hostile To African American deputy U.S. marshals.”](#)

I supervised and worked in tandem with the Federal task force and Dragnet operations involving state and municipal police in many major cities, including Maryland. As a result, I observed firsthand policing in various jurisdictions, involving extensive manhunts of 'America's Most Wanted' fugitives and was cross designated as a U.S. Drug Enforcement Special Agent (DEA) that spearheaded the Federal law enforcement initiative known as the 'War on Drugs' (WoD).

Soon after arriving at my duty station in Washington, D.C., from the Federal Law Enforcement Training Academy in Glenco, Georgia (FLETC), my White supervisor told me, *"Fogg, I know you have all that fancy training, but let most of that go because this is how we do things here."*

It was clear to me I was now in a [culture of indifference by default in a predominately Black community](#), making up the rules of engagement as the law enforcement culture deemed necessary and in opposition to our training, policy, and proper procedures because Black lives didn't matter.

Within that same culture, most law officers Black, White and others followed the non-policy procedures [supporting excessive force, and misconduct, daily](#) against the people we swore to protect and serve (today exposed on cell phones and street cameras) to get our arrest numbers up and provide a media image that we were warring on crime and illegal drugs in Black communities.

Today statistics indicate that, due to the WoD there are more Black people identified in America's criminal justice system than were American Slaves at the time of the Civil War. 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.

HB 1071 is a significant step forward in repairing the harms done by the "[WoD](#)", which, as [the data has made clear](#), is a war on Black and Brown people. But there are still dangerous loopholes left used to racially profile Black and Brown Marylanders and violate their Fourth Amendment protections. The preservation of these loopholes is fueled by the WoD racially bias policy and enforcement that has destroyed many communities of color and individual lives in Maryland. One more egregious loophole is police having the power to conduct investigatory stops and vehicle searches based solely on an Officer's belief that they smelled marijuana.

I'll never forget my DEA Supervisor and Special Agent-In-Charge telling me we could not enforce the same drug laws in affluent White neighborhoods as we did in Black communities. His rationale was the White violators had support from Judges, good lawyers, politicians, money, and influence that would bring high level scrutiny on our drug interdiction that could lead to defunding of our enforcement operations, arrest statistics, abundant overtime, and great property seizures.

Therefore, I became aware early in my [law enforcement career that absolute public transparency at all levels was necessary](#). Any shroud of secrecy becomes an albatross to police integrity that creates [absolute power that corrupts absolutely](#), causing a lack of public trust so prevalent, and rightfully so, in Black communities.

Marijuana odor has been used as a loophole to [justify racial profiling, intrusive searches, and police escalation for far too long](#). As Marylanders look forward to full legalization, this body must ensure that police cannot use the smell or perception of a scent of a soon-to-be legal substance to justify a stop and search of an individual or their vehicle.

I also urge you to adopt an amendment that would codify an "exclusionary rule." This exclusionary rule should be written to bar the submission of any evidence obtained in violation of the statute from being admitted in court. In its current posture, this language is not codified and leaves discretion up to judges to decide whether such evidence is admissible. This exclusionary rule is a necessary deterrent to police misconduct.

One thing I can say for certain - if the racial divisions in America's law enforcement culture does not change and this Bill is rightfully passed, the germs that fuel the

culture of racism in law enforcement will simply mutate into other forms to achieve the same nefarious and racial bias assaults on Black communities.

For the preceding reasons, Blacks In Government Heritage Chapter and the Congress of African American Leaders urges a favorable with amendments report on Maryland's HB 1071.