

**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 4<sup>th</sup> 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 4<sup>th</sup> 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 4<sup>th</sup> Amendment. It should be the court that determines what are a person's 4<sup>th</sup> Amendment rights. As seen by the above, many of these rights are already protected.

I urge an unfavorable report.