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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.

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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 Lambert 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.

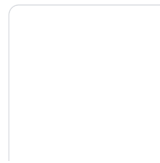
Yalonda M. James / The Chronicle

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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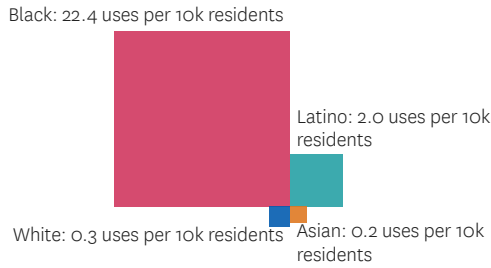


The Chronicle evaluated the terminology that San Francisco police used to explain the unfounded searches of approximately 8,000 people between July 2018 and September 2021, from a total of over 200,000 stops conducted during that time and about 39,000 searches. We included all encounters where police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

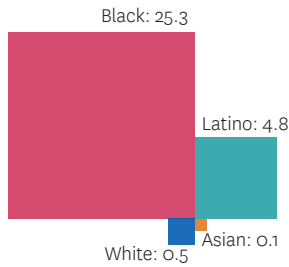
When San Francisco police search people and don't find anything, how do they justify it?

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...



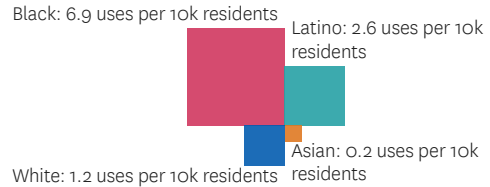
... “odor” at 54 times the rate...



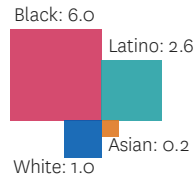
...and “marijuana” at 54 times the rate

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.

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"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)



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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.

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