

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.<sup>1</sup> 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.<sup>2</sup> 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 Oregon<sup>3</sup>- 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 effect<sup>4</sup>. 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

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<sup>1</sup> 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).

<sup>2</sup> 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/cbpps20.pdf> Table 1

<sup>3</sup> See *In re DD* at 240 for further citations.

<sup>4</sup> 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