



## 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.<sup>1</sup> 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%

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<sup>1</sup> 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>



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were Black.<sup>2</sup> 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.<sup>3</sup> 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

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

<sup>3</sup> <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.>



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

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.<sup>5</sup>

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.<sup>6</sup>

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.**

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<sup>4</sup> 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.

<sup>5</sup> 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>

<sup>6</sup> [https://www.aclumd.org/sites/default/files/field\\_documents/aclu\\_bpi\\_md\\_cannabis\\_legalization\\_march\\_3\\_2022.pdf](https://www.aclumd.org/sites/default/files/field_documents/aclu_bpi_md_cannabis_legalization_march_3_2022.pdf)



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The purpose of the exclusionary rule is to deter police misconduct.<sup>7</sup> 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

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



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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



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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