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HB 1071 Criminal Procedure – Reasonable Suspicion and Probable Cause – Cannabis  
Hearing before the Senate Judicial Proceedings Committee, March 30, 2023  
Position: Favorable with Amendment

The Public Justice Center (PJC) is a nonprofit civil rights and anti-poverty legal services organization that seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. The Public Justice Center envisions a just society where Black, Latine, Indigenous, Asian, and other historically exploited people are free from systems of oppression, exploitation, and all expressions of discrimination. This will shift power and resources to BIPOC (Black, Indigenous, and other people of color) across Maryland.

HB 1071 will protect against unlawful searches in a post-legalization of cannabis in Maryland. The smell of cannabis alone no longer implies criminal activity. When it was illegal, officers might rely on the plain smell of marijuana for probable cause, reasoning that the odor alone was evidence of a crime—and that individuals had no right to maintain the privacy of their criminal activity.

Police encounters that begin based on the odor of marijuana undermine the right to privacy and enable racial profiling. Racial disparities in policing are perpetuated by systemic exclusion and discrimination and fueled by implicit and explicit bias. In 2021, Black people were nearly 41% of all police stops in the state of Maryland despite being only 31.4% of the state population. Police are two times more likely to search Black drivers and their vehicles during traffic stops than white drivers. These disparities are not by accident but are a byproduct of the long history of white supremacy in this state and country. Allowing police to use the smell of a legal drug to establish probable cause exacerbates already existing disparities and it must end.

Truly, it is the logical and necessary extension of the legislature's work in 2022 to legalize recreational marijuana use to limit the use of the odor of marijuana in police encounters in the 2023 legislative session.

**But the bill must be amended to restore the explicit exclusionary rule to codified language. There can be no room for doubt that police cannot retain an incentive to violate this law or the status quo will continue.** Justifications offered (e.g., that a claim of marijuana odor is a helpful "tool" to provide a basis to

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search people for guns) make clear that the actual intended purpose of such stops is unwarranted, abusive encounters that violate the Fourth Amendment. This is exactly like the discredited New York stop and frisk policy. Both disproportionately target people and communities of color without improving public safety. At a time when community trust in police remains at its lowest, police must be *required by the law* to abandon such unlawful tactics.

For the foregoing reasons, the PJC urges a favorable with amendment report on HB 1071. Should you have any questions, please contact Jeniece Jones, Executive Director, at 410-400-6952, or [jonesj@publicjustice.org](mailto:jonesj@publicjustice.org).