

Dear 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 8. **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.¹ 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.² 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? 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.

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 Oregon³- 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 effect⁴. Maryland, having legalized marijuana, should now join them. Further, you need to make sure that the final bill codifies that evidence obtained in violation of this law will be excluded from court. The exclusionary rule will not be applied by the courts if the legislature has specifically declined to say that it applies. Without the exclusionary rule, HB1071 will be toothless.

It is for these reasons that I am encouraging you to vote **in support of HB1071**. Thank you for your time, service, and consideration.

Sincerely,
Melissa Badeker
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Showing Up for Racial Justice Baltimore

¹ 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).

² 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/cbpp20.pdf> Table 1

³ See *In re DD* at 240 for further citations.

⁴ NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.