

Testimony for the Senate Judicial Proceedings Committee
Thursday, March 30th, 2023

HB 1071 - Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis

FAVORABLE

Dear Chair Smith, Vice Chair Waldstreicher, and committee members,

My name is Lindsay Bergman-Debes. I'm a proud Maryland resident of 12 years, living in Cecil County. I am writing here today to express my support for House Bill 1071.

After decades of proof of the economic and racial harm deliberately caused by marijuana criminalization and enforcement, Marylanders have voted to legalize adult use and possession of the substance. This is a major step forward in repairing the harms done by the "war on drugs", which, as the data has made clear, is really a war on Black and Brown people.

But, there are still dangerous loopholes left that can be used to racially profile Black and Brown Marylanders and violate their Fourth Amendment protections. One of the more egregious loopholes is the police having the power to conduct investigatory stops and vehicle searches based *solely* on their belief that they smelled marijuana.

This is also why I believe an explicit exclusionary rule is important to include in SB 51 / HB 1071. It is the only mechanism that will deter police from violating the law and obtaining evidence as the result of an illegal search. Maryland Courts have said, and affirmed, that unless the exclusionary rule is explicitly stated in legislation, it does not automatically apply. In order to adequately protect the Fourth Amendment rights of Black Marylanders this bill must explicitly state the exclusionary rule.

As someone who organized protests in 2020, spurning the creation of a social justice nonprofit in Cecil County, I am appalled by the treatment of Black and Brown Marylanders by the police. By closing the loophole allowing for searches based on the odor of marijuana—which disproportionately affects Black and Brown people, we can move toward more equitable policing. Especially now that recreational marijuana is legal in our state, searching a vehicle based on odor alone is unfair and unjust. Decriminalization of the substance is just as important as the legislation making it legal; since it is not a crime, it should not be treated as one. There is no justification for searching a car based on the smell of something that is legal.

Marijuana odor has been used as a loophole to justify racial profiling, intrusive searches, and police escalation for far too long. It's unacceptable that police can stop a person and search a car based on an alleged smell, where the claim could be driven by racial bias. As we look forward to legalization, this body must ensure that the smell, or perception of a smell, of a soon-to-be legal substance cannot be used to justify a stop and search of an individual or their vehicle.

Move all of our communities towards the current times by voting "Yes" on SB 51 / HB 1071.

Sincerely,

Lindsay Bergman-Debes