

March 30, 2023

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TESTIMONY ON HBI071 - POSITION: FAVORABLE WITH AMENDMENTS
Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis

TO: Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee

FROM: Karen Caplan, on behalf of Jews United for Justice

My name is Karen Caplan and I am a resident of District 18, in Silver Spring. On behalf of Jews United for Justice (JUFJ), I am submitting this testimony in support of HBI071, Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis, with amendments to codify the exclusionary rule. JUFJ organizes 6,000 Jewish Marylanders and allies from across the state in support of social, racial, and economic justice campaigns.

The concept of *tzelem elohim* — the idea that all people are created in the Divine image and therefore are equally precious and worthy — is central to Judaism. Jewish tradition makes it clear that we are obligated to respond when this core value is threatened. As the law currently stands, police officers may stop and search individuals without a search warrant merely because they claim to detect the odor of cannabis, an exception to our constitutional rights. This in itself is a problem in a state where voters have now chosen partial cannabis legalization. It makes no sense for the odor associated with the use of a legal substance to be used as a gateway to entanglement with police and the legal system. The odor of cannabis should not be used as an excuse to perform a warrantless arrest or search of an individual or their vehicle. But it is also a problem of equity because we know that Black and brown people are disproportionately stopped by police, both nationwide and in Maryland. For incidents involving Black drivers, probable cause (including the odor of cannabis) was used to justify 67% of searches, compared to 46% of incidents involving white drivers. There is no way for an officer to prove that they smell cannabis, and of course no way to disprove it either. This leaves people of color significantly more vulnerable to police violence. Our sacred texts tell us “Do not stand idly by the blood of your neighbor” (Leviticus 19:16), and we must not stand idly by as our neighbors are unjustly criminalized and needlessly placed at risk.

The ability of police to pull drivers out of their cars because of the alleged odor of a legal substance leaves a door to discriminatory pretextual stops wide open and makes people of

color even more likely to be injured or killed by police — especially during traffic stops — something we know happens far too often.

Driving while under the influence of cannabis remains illegal, and HBI071 will allow police officers to investigate this while still respecting the rights of individuals. By banning odor searches, we can protect Black and brown Marylanders from violence, from unnecessary police interactions, and from unnecessary introduction into a criminal legal system that data makes clear is weighted against them. Additionally, to disincentivize officers from conducting illegal searches and ensure that the legislation is enforceable, HBI071 must codify the exclusionary rule. The Supreme Court of Maryland has made clear that the legislature must make explicit the exclusionary rule. Accordingly, it has been codified in other legislation, including the Child Interrogation Protection Act passed last year. The exclusionary rule must be codified in HBI071 to protect Marylanders' Fourth Amendment rights.

On behalf of Jews United for Justice, I thank you for the opportunity to share our position and respectfully urge this committee to return a favorable report on HBI071, with amendments to codify the exclusionary rule.