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Montgomery County

Judiciary Committee

Subcommittees

Chair, Family and Juvenile Law

Public Safety



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THE MARYLAND HOUSE OF DELEGATES  
ANNAPOLIS, MARYLAND 21401

March 9, 2023

**Testimony in Support**

of

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

House Bill 1071 seeks to prohibit police from using the odor of cannabis as the sole basis for establishing reasonable suspicion or probable cause for possessing contraband or other criminal activity. Furthermore, House Bill 1071 specifies that certain types of cannabis-related evidence may be factors in the totality of the circumstances leading to investigation, arrest, or a search in relation to a person driving, operating, or controlling a motor vehicle or vessel while impaired by drugs. Lastly, House Bill 1071 seeks to establish that evidence discovered or obtained in violation of the bill is not admissible in a trial, hearing, or other proceeding.

Maryland's standards around stops and searches based on the odor of cannabis are outlined by case law. While no statute speaks specifically to whether an officer can stop a person based on odor alone, courts have held that officers can stop a person and search a vehicle based on the odor of cannabis alone.<sup>1</sup>

Stops and searches based on the odor of cannabis not only infringes on individuals' Fourth Amendment rights, but it also enables racial profiling. Banning these stops and searches is both a logical and necessary extension of the work we did, and that Marylanders affirmed in 2022 to legalize recreational use of cannabis.

That is why it is more than time to pass legislation making clear that law enforcement officers cannot use the smell of cannabis alone to justify a stop or search.

Here are key points I would like for members of this committee to focus on regarding this bill:

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<sup>1</sup> Lewis v. State, 470 Md. 1, 233 A.3d 86, 91 (2020).

## **Banning odor stops and searches will not come at the expense of public safety nor prohibit investigations of DUIs.**

HB 1071 makes clear that officers may consider the odor of cannabis in the totality of the circumstances when investigating a DUI. Therefore, the passage of this bill will not impede law enforcement's ability to investigate incidents of impaired driving. Furthermore, it should be noted that many searches effectuated after an officer claims they smell cannabis are not necessarily related to DUI enforcement but are used as opportunities to look for illegal weapons or contraband. However, pretext traffic stops are not a necessary or effective crime-fighting tools. A report by the Montgomery County Policing Advisory Commission revealed that of all firearms seized in the County in a recent three-year period, less than 5% were seized during traffic stops.<sup>2</sup>

## **HB 1071 will address racist cannabis odor stops and searches by reducing opportunities for racial profiling on the road.**

In Maryland, police are four times more likely to subjected to a warrantless search Black drivers and their vehicles during traffic stops than white drivers.<sup>3</sup> For incidents involving Black drivers, probable cause is used to justify 67% of searches. While cases involving white drivers, probable cause was only used to justify a search in 46.1% of incidents.<sup>4</sup> This proposed bill would eliminate opportunities for officers to abuse the discretion afforded to them in these situations and reduce opportunities for racial profiling on the road.

## **A majority of Marylanders support the banning of odor stops and searches.**

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 cannabis as the only probable cause or justification to perform a warrantless search; 13% said this has no impact on their support. Nearly a third of

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<sup>2</sup> Rep. Draft Findings and Recommendations on MCPD Traffic Enforcement - December 19, 2021. Montgomery County Government, December 19, 2021. <https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/PoliceAC/correspondence/DraftReportTrafficEnforcementMontgomeryCounty.pdf>.

<sup>3</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>4</sup> "Race-Based Traffic Stop Data Dashboard." Governor's Office of Crime Prevention, Youth, and Victim Services. Governor's Office of Crime Prevention, Youth, and Victim Services. Accessed March 2, 2023. <http://gocep.maryland.gov/data-dashboards/traffic-stop-data-dashboard/>.

voters, 32%, who do not currently support legalization said this makes them more likely to do so.<sup>5</sup>

Marylanders should not fear police interactions because of the lingering odor of a now-legal substance. Ensuring that the odor of cannabis 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 law enforcement.

**That's why for the foregoing reasons, I urge a favorable report on HB 1071.**

Sincerely,

Delegate Charlotte Crutchfield

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<sup>5</sup> Williams, Ida J. "Maryland State Police." 2020 Uniform Crime Report. Maryland Department of State Police. Accessed March 2, 2023.  
<https://mdsp.maryland.gov/Document%20Downloads/Crime%20In%20Maryland%202020%20Uniform%20Crime%20Report.pdf>.