

Dear Members of the Judiciary Committee:

I am a member of Showing Up for Racial Justice Annapolis and Anne Arundel County. I am a resident of District 23. I am writing to you to request that you support HB1071 for the reasons outlined in this letter.

In 2022, an overwhelming majority of voters supported the legalization of adult, recreational marijuana use. Marylanders affirmed with their vote what legislators acknowledged with the decriminalization of marijuana in 2014: the criminalization of marijuana is a misuse of police resources and is rooted in racism.

However, legalization alone does not mean an end to disparate enforcement of marijuana laws or unnecessary interactions with the police. In Maryland, current legal standards allow police to stop an individual or search their vehicle based on the odor of marijuana alone. Police encounters that begin based on the odor of marijuana undermine the right to privacy and enable racial profiling. 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.

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

ODOR STOPS & SEARCHES FACILITATE FOURTH AMENDMENT VIOLATIONS

Once the smell of marijuana was allowed as a sole, unbridled justification for a warrantless search, it also became a rubber stamp for police to search with no questions asked, which infringes on the right to privacy we all expect as Americans. The popularity of these odor-based searches cannot be understated. While there is no available data to track how often officers are making these claims, anecdotal evidence from lawyers and judges suggests that the "plain smell doctrine" is not only highly used but also highly abused.

The Fourth Amendment grants individuals a right to be free from unreasonable searches and seizures. However, the Supreme Court has long carved out exceptions for car searches when an officer has probable cause to believe the vehicle contains contraband. Here in Maryland, court decisions on these matters have been inconsistent.

In 2020, the Court of Appeals ruled that the odor of marijuana alone does not provide probable cause for an arrest or warrantless search of an individual. The court's decision was based on the idea that odor alone does not suggest criminal activity because an officer cannot determine the quantity of marijuana in someone's possession and, therefore, does not have probable cause to believe a criminal act is taking place. But the Court of Appeals also recently ruled that, while the odor of marijuana does not provide probable cause for a warrantless search and arrest, it does provide reasonable suspicion that the person may have 10 grams or more and justifies a brief investigatory stop, which seems to defy the logic applied to their 2020 decision.

That is why the legislature must step in to ensure that the state's stance on this issue is consistent and rooted in the will of the people.

MARIJUANA ODOR CLAIMS ARE OVERUSED AND UNRELIABLE

The mere scent of marijuana cannot denote the amount of time the odor has been present, where the odor came from, or if the odor is a result of unburnt or burnt marijuana. Additionally, there is no way to confirm or deny the presence of the odor after a search, which allows officers' claims to go virtually unchecked. As a result, officers' claims of marijuana odor have become ubiquitous, with some judges even determining many are highly suspect, if not outright lies. (1)

ODOR STOPS & SEARCHES FACILITATE RACIAL PROFILING

In Maryland, police are two times more likely to search Black drivers and their vehicles during traffic stops than white drivers. For incidents involving Black drivers, probable cause was used to justify 67% of searches. In cases involving white drivers, probable cause was only used to justify a search in 46.1% of incidents. (2) Our 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.

AN ODOR STOP & SEARCH BAN WILL NOT COME AT THE EXPENSE OF PUBLIC SAFETY

The criminalization of marijuana is an ineffective public safety strategy and a misuse of police time and resources. Between 2018-2019, Prince George's County arrested nearly 3,000 people for the possession of marijuana, over 10 grams – 90% of whom were Black. Of those 3,000 cases, only 20 cases resulted in a guilty conviction. (3) That same year, only 18% of all violent crimes in Prince George's were cleared. (4)

Public safety is of the utmost importance for all our communities, but diligent law enforcement can and should solve a crime using honest and evidence-based techniques without relying on pretextual bases (like the odor of marijuana) for stopping and searching people.

OTHER STATES HAVE BANNED MARIJUANA ODOR SEARCHES

In Virginia, prior to legalization, lawmakers decided that no law-enforcement officer may stop, search, or seize any person, place, or thing solely based on the odor of marijuana. In New York, the state's legalization law specifically established that the smell of marijuana would no longer serve as probable cause for a search of an individual or their vehicle, with certain exceptions for driving while impaired incidents.

I urge the Committee to support HB1071.

Respectfully,

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SOURCES:

- 1 <https://www.startribune.com/federal-judge-rules-minneapolis-police-illegally-searched-frey-staffers-car/600159885/>; <https://casetext.com/case/united-states-v-gray-366>; <https://www.nytimes.com/2018/03/18/nyregion/testifying-police-perjury-new-york.html>.
- 2 <http://goccp.maryland.gov/data-dashboards/traffic-stop-data-dashboard/>.
- 3 Requested court data of marijuana possession over 10 grams from 2018-2019 made by Delegate Mosby in 2020.
- 4 <https://mdsp.maryland.gov/Document%20Downloads/Crime%20in%20Maryland%202015%20Uniform%20Crime%20Report.pdf>.