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POSITION ON PROPOSED LEGISLATION

BILL: HB 1071 Criminal Procedure - Reasonable Suspicion and Probable Cause - Canna

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 3/7/2023

The Maryland Office of the Public Defender respectfully requests that this Committee issue a favorable report on HB 1071.

My name is Roberto Martinez, and I proudly serve as the co-Supervisor for District Court in Montgomery County. In my capacity, I represent Maryland residents accused of misdemeanors and felonies. Additionally, I support and lead a team of civil rights attorneys in their advocacy. Through my representation, I have never encountered an impaired driving case attributed to marijuana. As such, the Legislature should pass HB 1071.

Most, if not all, impaired driving cases in Montgomery County follow the same investigative pattern. The National Highway Traffic Safety Administration (NHTSA) trains officers to observe the vehicle in motion, make personal contact, perform standard field sobriety tests, and further investigate impaired driving at the station.

In my time as a dedicated public defender, I have handled hundreds of DUIs (both alcohol and drugs) and tried dozens of cases. I have never tried an impaired driving case based solely on the odor of marijuana. Passing this legislation would not make investigating impaired driving cases more difficult.

To begin, officers look for traffic violations as signs of impairment -- e.g., speeding, straddling lanes, turning too fast, turning too slow, stopping on a cross walk. They look for expired registrations, swerving, accidents, etc. Note there is no reference to odor alone. Once they find a reason to pull the car over, officers observe the individual. They look for slurred speech, blood

shot eyes, slow reactions, poor coordination, and they ask questions—e.g., have you consumed any drugs? When? Note there is no reference odor alone.

If an officer gets passed the vehicle in motion and suspects that the driver is impaired, they perform the standard field sobriety test—Horizontal Gaze Nystagmus, One Leg Stand, Walk and turn—which further establishes probable cause of impaired driving. Roadside investigation concludes with a portable breathalyzer test (PBT). An arrest is made and at the station they confirm perform additional investigation. They use a breathalyzer machine to determine any alcohol concentration. If the officer believes drugs are involved in the impaired driving, they request a drug recognition expert (DRE) to the station. A DRE performs a battery of tests similar to what’s been previously described but looks for additional cues of drug impairment. At times a blood draw is performed.

Officers allege they can detect drug impairment such as PCP, which smells like permanent marker, or cocaine, suboxone etc., which have no distinct odor because there is evidence of impairment. Again, in my time, I've never litigated an impaired driving case based solely on the odor of Marijuana and it's not because Montgomery County Officers refuse to investigate those offenses. Accordingly, passing this legislation will have no effect on investigating Marijuana impaired driving.

For these reasons, the Maryland Office of the Public Defender strongly urges a favorable report on House Bill 1071.

**Submitted by: Maryland Office of the Public Defender, Government Relations Division.
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