



Testimony for the Senate Judicial Proceedings Committee

February 2, 2024

SB 396 - Criminal Procedure - Stops and Searches - Cannabis Odor and Admission of Evidence (Drug-Free Roadways Act of 2024)

OPPOSED

The Maryland Coalition for Justice and Police Accountability opposes SB 396, which seeks repeal the prohibition of police from using the alleged odor of marijuana to search a vehicle.

Marylanders should not fear police interactions because of the lingering odor of a now-legal substance. For decades, the alleged smell of marijuana has been used as a sole, unbridled justification for a warrantless search, infringing on individuals' right to privacy and a rubber stamp for police to justify racial profiling. Banning odor stops and searches was both a logical and necessary extension of the work lawmakers did in 2022 to legalize the recreational use of marijuana.

Marijuana odor stops and searches by police facilitate and too often justify racial profiling.

While the bounds of probable cause are outlined by the courts, in practice, probable cause is determined by individual law enforcement officers who may hold inherent biases or suspicions towards certain racial groups. In Maryland, police are **four times** more likely to search Black drivers and their vehicles during traffic stops than white drivers.¹ And despite nearly identical rates of usage, Black people are criminalized for marijuana use at significantly higher rates in both arrests and sentencing. From 2018 to 2019, of those arrested for possession in Maryland, 75% were Black.² These disparities speak to the popular belief that marijuana use among Black people is linked to criminal activity. In contrast, marijuana use by white people

¹ 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>

² 2020 Statistics and Data Request for Possession of Marijuana over 10 Grams by Delegate Nick Mosby



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is seen as recreational and medical. These biases inevitably spill into traffic enforcement, sometimes with horrific, life-altering, or deadly results for Black people who are racially profiled.

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.³ Inevitably, unlawful odor searches become a situation of "he said, she said" in which the word of law enforcement is taken at face value and victims are given no opportunity for redress.

Prohibiting Marijuana odor searches does not come at the expense of public safety.

Driving under the influence of marijuana is illegal under Maryland law. The current law does not impede law enforcement's ability to investigate incidents of impaired driving. The bill specifies that the odor of marijuana may be a factor in the totality of circumstances when investigating a DUI. Just as with alcohol, in the marijuana DUI context some evidence of impairment must be observed before an officer conducts a search or arrest.

Additionally, smoking marijuana in a car is also illegal. Penalties for such violations vary based on whether the individual was the driver or simply a passenger of the vehicle. However, any occupant of a vehicle, whether driver or passenger, is already prohibited from smoking cannabis in a vehicle.

With that in mind, however, it should be noted that many searches effectuated after an officer claims they smell marijuana **are not** necessarily related to DUI enforcement. Instead, they are actually used as opportunities to look for illegal weapons or contraband. However, pretextual traffic stops are not an effective or necessary crime-fighting tool. In 2022, there were almost 36,000 traffic stops in

³ <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>.



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Montgomery County and we've learned that those stops resulted in the seizure of 172 guns. This is an incredibly ineffective way to find guns and is certainly not worth the racially disparate harms to our community.⁴

Similarly, a study of the New York City Police Department's electronic stop-and-frisk database found that, in 2012, 87% of the individuals stopped were Black or African American or Hispanic or Latino, and more than 90% of stopped individuals were never arrested or cited. Of those individuals that were subsequently frisked, weapons or contraband were recovered in less than 2% of these searches.⁵

Under legalization, the idea that the odor of a legal substance could, in any way, reasonably suggest that someone has a weapon or is engaging in illegal activity is just wrong. 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 alleged odor of marijuana) for stopping and searching people.

The majority of Marylanders support ending police stops based solely on the odor of marijuana.

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 marijuana as the only probable cause or justification to perform a warrantless search.⁶

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. Let's ensure that Marylanders do not have to fear police interactions because of the lingering odor of a now-legal substance.

4 Testimony provided to the Montgomery County Council Public Safety Committee on February 6, 2023 by Captain Brian Dillman Traffic Operations Division Director Montgomery County Police Department.

5 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>

6 https://www.aclumd.org/sites/default/files/field_documents/aclu_bpi_md_cannabis_legalization_march_3_2022.pdf



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For the foregoing reasons, the Maryland Coalition for Justice and Police Accountability urges this committee to issue an unfavorable report on SB 396.

Respectfully,

Maryland Coalition for Justice & Police Accountability (members listed below)

ACLU of Maryland

ACLU of Maryland, Montgomery County Chapter

Amnesty International

Arts Education in Maryland Schools (AEMS) Alliance

Baltimore Action Legal Team

Baltimore Bern Unit

Baltimore City Civilian Review Board

Baltimore for Border Justice

Be More Unified

Council on American-Islamic Relations (CAIR) - Maryland

CASA

Caucus of African-Americans Leaders

Citizens Policing Project

Coalition for Justice for Anton Black

Coalition of Concerned Mothers

Coalition of People Opposed Violence and Extremism

Common Cause Maryland

Community Actively Seeking Transparency (C.A.S.T.)

Community Justice

Court Watch & Judicial Accountability

Democratic Socialists of America – Baltimore City

Democratic Socialists of America – Greater Baltimore

Democratic Socialists of America – Prince George's County

Disability Rights Maryland

Do the Most Good

Drug Policy Alliance

Equality Matters

For Kathy's Sake



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FreeState Justice
Greenbelt People Power
Helping Ourselves to Transform
Hispanic National Law Enforcement Association
Homeless Persons Representation Project
Innocence Project
InterFaith Action for Human Rights
Jews United For Justice
Justice Policy Institute
The JustUs Initiative
The Talking Drum
Kevin L. Cooper Foundation
Law Enforcement Action Partnership
Leaders of a Beautiful Struggle
League of Women Voters Maryland
LGBTQ Dignity Project
Life After Release
Making Changes LLC
Mama Sisterhood of Prince George's County
March for Our Lives Maryland
Maryland Alliance for Justice Reform
Maryland Center on Economic Policy
Maryland Consumer Rights Coalition
Maryland Defenders Union
Maryland Justice Project
Maryland Office of the Public Defender
Maryland Poor People's Campaign
Maryland Prisoners' Rights Coalition
Maryland Restorative Justice Initiative
Montgomery County Civil Rights Coalition
Montgomery County Democratic Socialists of America
Mothers on the Move
NAACP Legal Defense and Educational Fund
National Coalition for Drug Legalization
Nigerian American Lawyers Association - Washington DC Chapter
Organizing Black
Our Maryland



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Our Prince George's
Our Revolution Maryland
Power Inside
Prevent Gun Violence Ministry, River
Road Unitarian Universalist Congregation
Policy Foundation of Maryland
Prince George's People's Coalition
Prisons to Professionals
Progressive Maryland
Public Justice Center
Racial Justice NOW!
Rebuild, Overcome, and Rise (ROAR) Center at University of Maryland-Baltimore
Reproductive Justice Inside
Sanctuary DMV
SEIU 1199
Showing up for Racial Justice, Annapolis and Anne Arundel County
Showing Up for Racial Justice, Baltimore
Showing Up for Racial Justice, Montgomery County
The Shriver Center at UMBC
Silver Spring Justice Coalition
Takoma Park Mobilization
The Talking Drum Incorporated
The Women of Color for Equal Justice Law Center
West Wednesdays
Wicomico County NAACP Branch 7028
Young People for Progress