



TESTIMONY IN OPPOSITION TO HOUSE BILL 320

TO: Members of the House Judiciary Committee

FROM: Center for Criminal Justice Reform, University of Baltimore School of Law

DATE: February 23, 2024

The University of Baltimore School of Law’s Center for Criminal Justice Reform (“Center”) is dedicated to supporting community driven efforts to improve public safety and address the harm and inequities caused by the criminal legal system. The Center strongly opposes House Bill 320. House Bill 320 would unnecessarily reverse the sound reasoning of this body when it passed House Bill 1071 just last year.

I. Under current law, Maryland law enforcement officers are not prohibited from considering cannabis odor as part of the totality of the circumstances supporting the basis for a vehicle stop or search.

Current law only provides that cannabis odor may not be the *only* basis for a vehicle stop and search. It does nothing to prevent law enforcement officers from considering the odor of cannabis in formulating reasonable articulable suspicion for a vehicle stop or probable cause for a vehicle search.

A hypothetical scenario where police officers are not able to stop a driver who they observe smoking a cannabis blunt is a misleading distraction. Such a scenario—which is often analogized to officers not being able to stop a driver they observe actively drinking a can of beer—*exceeds* the reasonable articulable suspicion needed for a vehicle stop. Under current Maryland law, police officers can not only stop such a driver and search his car, they would also have probable cause to arrest that driver. House Bill 320 does nothing to equip officers to respond to this set of facts. Instead, House Bill 320 would allow an officer who smells the scent of cannabis—a smell that is ubiquitous in our communities—at a red light where dozens of cars are idling to *assign* that scent to a driver who the officer may want to search for any number of impermissible and unconstitutional reasons. This likely scenario presents the exact type of facts that this body hoped to avoid by passing HB1071/SB0051 less than a year ago.

II. Illegal gun interdiction is not a compelling reason to pass House Bill 320.

Gun violence prevention is a critically important public policy objective in our state. Relying on cannabis odor *alone* as the missing tool in our gun violence prevention efforts is a straw man argument. Because the links between cannabis and more serious crime are tenuous,¹ there is little

¹ Amanda Geller & Jeffrey Fagan, *Pot as Pretext: Marijuana, Race, and the New Disorder in New York City Street Policing*, *Journal of Empirical Legal Studies*, Vol. 7, 591, 623 (2011).

reason to expect that House Bill 320 will reduce violent crime, including gun crimes. The scent of cannabis does not indicate that criminal activity, including illegal gun possession, is afoot.

That gun seizures resulting from vehicle stops may have decreased in some jurisdictions since the passage of HB1071/SB0051 in the 2023 Maryland legislative session is not compelling evidence that law enforcement is unreasonably hamstrung by current law. An assertion to the contrary lacks empirical rigor and evidence of causation. Indeed, the rate of gun seizures resulting from vehicle stops and searches was exceedingly low before recent reform.² Because current law has been in effect for less than eight months, more recent data is limited; nevertheless, it is reasonable to believe that gun seizure rates during vehicle stops remain extraordinarily low since July 2023. Assuming *arguendo* that relying solely on the scent of cannabis is an effective tool for curbing gun crimes, the constitutional rights of Maryland residents, racial equity and other public policy considerations still weigh against passing House Bill 320. Courts have recognized that the effectiveness of a particular application of law enforcement stops is not relevant for determining the constitutionality of that practice.³

III. House Bill 320 would result in a return to high-discretion, low-suspicion stops that are ripe for abuse and racial profiling.

As was a significant factor in passing HB 1071 last session, limiting pretextual stops is an important part of mitigating persistent racial discrimination in policing. For decades, the alleged odor of cannabis has been used as an excuse to justify racial profiling and perform warrantless stops and searches. The research shows that Black drivers are disproportionately stopped by law enforcement compared to white drivers⁴ and that Black drivers' cars are disproportionately searched.⁵ These disparities exist despite evidence that Black drivers are not more likely to carry contraband.⁶ Allowing a vehicle stop and search based only on the scent of a legal substance expands officer discretion and increases the risk that officers will impermissibly consider race in deciding to effectuate a stop and search.

For these reasons, we urge an unfavorable report on House Bill 320.

² Joanna Silver, Senate Bill 319 Oral Testimony, Maryland General Assembly 2024 (In 2022, guns were seized in less than 0.5% vehicle stops in Montgomery County).

³ See e.g., *Floyd v. City of New York*, 959 F.Supp.2d 540, 556 (S.D.N.Y. 2013) (“I emphasize at the outset, as I have throughout the litigation, that this case is not about the effectiveness of stop and frisk in deterring or combating crime. This Court’s mandate is solely to judge the *constitutionality* of police behavior, not its effectiveness as a law enforcement tool”).

⁴ Pierson, E., Simoiu, C., Overgoor, J. *et al.* A large-scale analysis of racial disparities in police stops across the United States. *Nat Hum Behav* 4, 736, 737 (2020) (“[W]e found that black drivers were, on average, stopped more often than white drivers. In particular, among state patrol stops, the annual per-capita stop rate for black drivers was 0.10 compared to 0.07 for white drivers; and among municipal police stops, the annual per-capita stop rate for black drivers was 0.20 compared to 0.14 for white drivers”).

⁵ *Id.* at 738 (“Among stopped drivers, we found that black and Hispanic individuals were, on average, searched more often than white individuals”).

⁶ *Id.* at 739.