



Maryland Chiefs of Police Association

Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable Luke Clippinger, Chairman and
Members of the House Judiciary Committee

FROM: Darren Popkin, Executive Director, MCPA-MSA Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee
Natasha Mehu, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 27, 2024

RE: **HB 320 – Criminal Procedure – Stops and Searches – Cannabis Odor and
Admission of Evidence (Drug-Free Roadways Act of 2024)**

POSITION: **SUPPORT**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) SUPPORT HB 320. This bill would distinguish stops and searches of motor vehicles from stops and searches of individuals. The bill also removes language excluding evidence from any trial, hearing, or other proceeding.

HB 320 will still prohibit law enforcement officers from stopping or searching a motor vehicle based solely on possession or suspicion of a lawful amount of cannabis. However, HB 320 *removes a prohibition* against stopping or searching motor vehicles based solely on the odor of cannabis. HB 320 does *not* authorize a law enforcement to stop or search a motor vehicle based solely on odor. A law enforcement officer must still comply with the Fourth Amendment's commands regarding traffic encounters: stops require reasonable suspicion that criminal activity is or is about to occur and searches require probable cause to believe that evidence or contraband is present.

Currently, an individual in Maryland is legally able to possess up to 1.5 ounces of cannabis. Possession of any amount of cannabis beyond that is illegal. Possession of cannabis by individuals under the age of 21 continues to be illegal, regardless of the amount.

Prior to the partial legalization of cannabis, the Court of Appeals (now the Supreme Court of Maryland) had held that the odor of cannabis alone provides a law enforcement officer with probable cause to search a vehicle for the contraband, *Robinson v. State*, 451 Md. 94 (2017), and reasonable articulable suspicion to briefly detain to investigate if a criminal offense was occurring, *In re D.D.*, 479 Md. 206 (2022). The Court of Appeals also determined that the odor of cannabis alone did not provide an officer with probable cause to arrest a person. *Lewis v. State*, 470 Md. 1 (2020). The Court recognized the difference between reasonable suspicion and probable cause from burdens of proof in a court proceeding, and the importance of allowing police officers to use information available to investigate and enforce the criminal laws of the State. The Court's reasoning will continue to be completely true for individuals under 21 and for those smoking cannabis in public.

The Attorney General provided an Opinion discussing the impact of partial legalization on search and seizure issues. 107 Op.Att’y Gen. 153 (2022). Given that “probable cause” in the context of vehicle searches “requires only a fair probability that evidence of a crime is present,” *Id.* at 183, the Attorney General concluded that odor of cannabis in a vehicle could continue, by itself, to amount to probable cause. Similarly, the Attorney General concluded that the Supreme Court of Maryland “would hold that officers still have the authority to briefly detain someone who smells of cannabis.” *Id.* at 195.

The Attorney General very carefully and thoroughly discussed the issues surrounding searches and seizures and cannabis. The Attorney General reached the correct conclusions. Using odor of cannabis alone as grounds to briefly detain a person or to search a vehicle will not necessarily violate the Fourth Amendment and would be reasonable.

In general, if the government obtains evidence in violation of the Fourth Amendment’s reasonable articulable suspicion or probable cause requirements, the evidence is not allowed to be used by the government in a *criminal* trial. *See, e.g., Mapp v. Ohio*, 367 U.S. 643 (1961) (applying an evidence exclusionary rule to the States). Removing the exclusion provision from the statute returns the question of exclusion to the courts and will allow evidence to be admitted in civil and administrative proceedings, including police discipline hearings.

For these reasons, MCPA and MSA SUPPORT HB 320 and urge a FAVORABLE Committee report.