



Maryland (2024) Testimony in opposition of repealing prohibitions on warrantless searches

I am a Maryland resident who has worked professionally in the field of marijuana policy for nearly 30 years. I am currently the Deputy Director of NORML – the National Organization for the Reform of Marijuana Laws, a nationwide public interest advocacy organization based in Washington, DC.¹

During my professional career, I have authored several books on cannabis, health, and public safety and my writing has been featured in over two dozen academic anthologies. In 2022, I was the lead witness before Congress at the hearing “Developments in State Cannabis Laws and Bipartisan Cannabis Reforms at the Federal Level,”² which was convened by the House Committee on Oversight and Reform, Subcommittee on Civil Rights and Civil Liberties.

I am providing testimony today in opposition to Senate Bill 396, which repeals existing restrictions on police that prohibits them from engaging in warrantless searches based solely upon the alleged odor of cannabis.

The possession and use of cannabis products, including low-THC hemp-derived products, is legal in Maryland. **Those adults who engage in the use of these state-legal products should not surrender their 4th Amendment rights to be free from warrantless searches by police.** State law currently prohibits driving under the influence of cannabis, and it further prohibits motor vehicle passengers from smoking cannabis. There is no need for this additional legislation.

Historically, Maryland police have used allegations of ‘smelling marijuana’ as a pretext to disproportionately search the vehicles of Blacks and other minorities. Specifically, African Americans constitute 60 percent of all traffic stops in the state despite comprising only 29% of Maryland’s population.³ And they are four times as likely to have their vehicles searched.⁴ A significant portion of these searches do not result in police finding cannabis in the vehicle, and peer-reviewed data raises questions as to whether police can even properly identify the smell of

¹ <https://norml.org/about-norml/staff>

²

<https://oversightdemocrats.house.gov/legislation/hearings/developments-in-state-cannabis-laws-and-bipartisan-cannabis-reforms-at-the>

³ <https://mgaleg.maryland.gov/Pubs/BudgetFiscal/2023RS-SB0051-REIN.pdf>

⁴

<https://www.marylandmatters.org/2023/03/15/commentary-the-smell-of-marijuana-and-the-stain-of-racism>



cannabis under real-world circumstances.⁵ **Passage of SB 396 will perpetuate this discriminatory conduct by Maryland's police officers.**

In my own life, **I have been falsely accused by police of operating a vehicle that 'smelled like marijuana' as a pretext for a warrantless search.** In this instance, the vehicle I was driving had been purchased from an auto dealership days earlier and had been extensively cleaned and detailed. No marijuana had ever been possessed in the vehicle. Nonetheless, a police officer alleged that he smelled the odor of cannabis from my open window during a traffic stop. He then proceeded to search my vehicle despite my protests. His search yielded no contraband of any kind. Ultimately, I was not even issued a traffic ticket following this encounter. These unconstitutional police encounters will be exacerbated if lawmakers move forward with SB 396.

Lawmakers acted wisely when they enacted HB 1071 last year forbidding police from engaging in these interactions. Please keep the current law in place **and reject SB 396.**

⁵ Doty et al., 2004. Marijuana odor perception: Studies modeled from probable cause cases. *Law and Human Behavior* 28: 223-233. <https://pubmed.ncbi.nlm.nih.gov/15141780>
"Our findings suggest that the odor of marijuana was not reliably discernable by persons with an excellent sense of smell in either case. These studies are the first to examine the ability of humans to detect marijuana in simulated real-life situations encountered by law enforcement officials and are particularly relevant to the issue of probable cause."