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SB 396 Criminal Procedure - Stops and Searches - Cannabis Odor and Admission of Evidence
Hearing before the Senate Judicial Proceedings Committee, February 2, 2024

Position: Unfavorable

The Public Justice Center (PJC) is a nonprofit civil rights and anti-poverty legal services organization that seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. The PJC envisions a just society where Black, Latine, Indigenous, Asian, and other historically exploited people are free from systems of oppression, exploitation, and all expressions of discrimination. This will shift power and resources to BIPOC (Black, Indigenous, and other people of color) across Maryland.

SB 396 is an attempt to rollback critical criminal justice reform legislation enacted just last session, 2023 Md. Laws ch. 802, a scant seven months after it took effect. Last year's landmark legislation protects against unlawful searches in Maryland post-legalization of cannabis. In the past, officers routinely relied on the plain smell of marijuana for probable cause, reasoning that the odor alone was evidence of a crime—and that individuals had no right to maintain the privacy of their criminal activity. The smell of cannabis alone no longer implies criminal activity. **Thus, there is no justification for this rash repeal.**

Police encounters that begin based on the odor of marijuana undermine the right to privacy and enable racial profiling. Racial disparities in policing are perpetuated by systemic exclusion and discrimination and fueled by implicit and explicit bias. **This is especially true in motor vehicle stops.** In 2021, Black people were nearly 41% of all police stops in the state of Maryland despite being only 31.4% of the state population. Police are twice as likely to search Black drivers **and their vehicles** during traffic stops as white drivers. These disparities are not by accident but are a byproduct of the long history of white supremacy in this state and country. Allowing police to use the smell of a legal drug to establish probable cause exacerbates existing disparities and its prohibition must remain the law of Maryland.

It remains the logical and necessary extension of the General Assembly's work in 2022 to legalize recreational marijuana to maintain all the 2023 limits on the use of marijuana odor in police encounters.

For the foregoing reasons, the PJC urges an unfavorable report on SB 396. Should you have any questions, please contact Jeniece Jones, Executive Director, at 410-400-6952, or jonesj@publicjustice.org.

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