



RACIAL EQUITY IMPACT NOTE

DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND ▪ GENERAL ▪ ASSEMBLY

2024 Session
SB0396

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

Bill Summary

This bill separates a motor vehicle from a person or a vessel for the purposes of stop and search procedure and prohibits a law enforcement officer from initiating a stop or search of a motor vehicle based solely on (1) possession (or suspicion of possession) of cannabis that does not exceed the personal use amount or (2) the presence of cash or currency in proximity to cannabis without other indicia of an intent to distribute. The bill removes the prohibition against a law enforcement officer from initiating a stop or search of a motor vehicle based solely on the odor of burnt or unburnt cannabis and repeals the provision that makes specified evidence obtained in violation of the law inadmissible at trial or other proceedings.

Racial Equity Impact Statement

Maryland traffic stop data from 2018 through 2021 indicates that Black drivers consistently constituted over 60% of all vehicle traffic stops in the State despite comprising only 29% of the State's population. Black drivers were also over four times as likely to be subject to a warrantless vehicle search than white drivers. Data from other jurisdictions also suggests that Black individuals are disproportionately subjected to warrantless investigative stops in those jurisdictions. To the extent the bill's provisions reintroduce the use of the procedural application of vehicle stops and searches by law enforcement based solely on the odor of cannabis, Black individuals will be significantly impacted by the increased exposure to law enforcement activity.

Analysis

Chapter 802 of 2023 prohibits a law enforcement officer from conducting a stop or a search of a person, a motor vehicle, or a vessel based *solely* on one or more of the following types of evidence: (1) odor of burnt or unburnt cannabis; (2) possession (or suspicion of possession) of cannabis that does not exceed the personal use amount; or (3) the presence of cash or currency in proximity to cannabis without other indicia of an intent to distribute. The bill removes the odor of cannabis from the list of prohibited evidence or reasons for initiating a vehicle stop or search. The prohibition remains for conducting a vehicle stop or search based *solely* on suspicions of cannabis possession under the personal use amount and the presence of cash or currency.

Chapters 26 and 45 of 2022 provided for the partial legalization of cannabis. Since July 1, 2023, an adult over 21 may possess up to 1.5 ounces of cannabis without penalty. Possession of more than 1.5 ounces but less than 2.5 ounces is a civil offense, and possession of 2.5 ounces or more is a criminal offense. Several other existing cannabis-related offenses are subject to criminal penalties such as driving under the influence of cannabis, cultivating more than two cannabis plants, and distribution or intent to distribute cannabis without a license. It is a civil offense to smoke cannabis in public, on mass transit, inside indoor spaces regulated under the Clean Indoor Air Act, or in a passenger area of a motor vehicle on a highway.

Post Legalization Rules from Other Jurisdictions

Partial cannabis legalization by states and other jurisdictions has led to post legalization rules and laws addressing the odor of cannabis and its legal sufficiency in the context of vehicle searches and searches of individuals.

The New York Police Department issued a memorandum in April 2021 immediately after New York's recreational cannabis law was signed into law that stated, in part, that the smell of cannabis alone no longer establishes probable cause of a crime to search a vehicle and that searches of vehicles may only be conducted if the driver appears to be under the influence of cannabis and there is probable cause to believe that the vehicle contains evidence of "impairing" cannabis. In Nevada, where only medical cannabis is allowed, a 2021 statute protects both persons with medical cannabis cards and dispensaries from certain searches. The law provides that the mere possession of a registry identification card or a medical cannabis establishment license were not sufficient to establish probable cause to search a person or a person's property or subject a person or person's property to inspection by a governmental agency.

A 2019 Illinois statute specifically mentions that possession of a cannabis buyer identification card does not constitute either probable cause or reasonable suspicion to believe that a crime has been committed or to support a search of that person or the person's property.

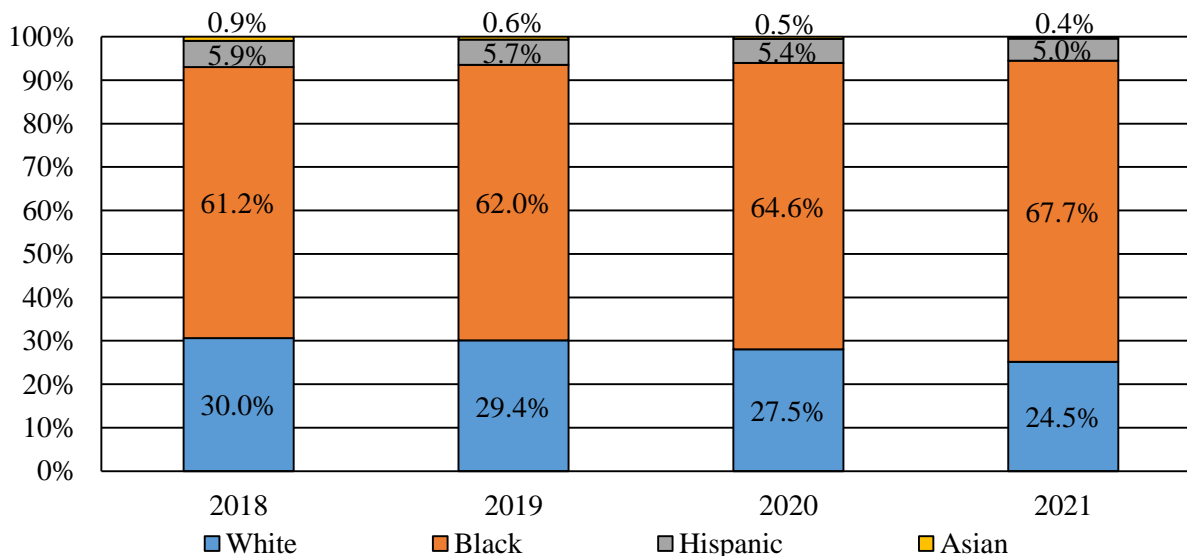
Racial Disparities of Stop and Frisk and Vehicle Stops

Studies and collected data show that racial minorities are disproportionately subject to pretextual stops, such as stop and frisk, as compared to whites. The odor of cannabis has long been used as a tool for law enforcement to conduct these pretextual stops. 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, 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.

Exhibit 1 shows traffic stop data from the Governor’s Office of Crime Prevention and Policy indicating the racial demographics of traffic stop vehicle searches based on probable cause in Maryland from 2018 through 2021. Probable cause includes various possible reasons a law enforcement officer might initiate a vehicle search, the odor of cannabis only being one of them. Even though the data does not specify the portion of searches where the smell of cannabis was the probable cause for the vehicle search, the data shows that Black drivers consistently made up over 60% of traffic stops that ended in vehicle searches based on probable cause.

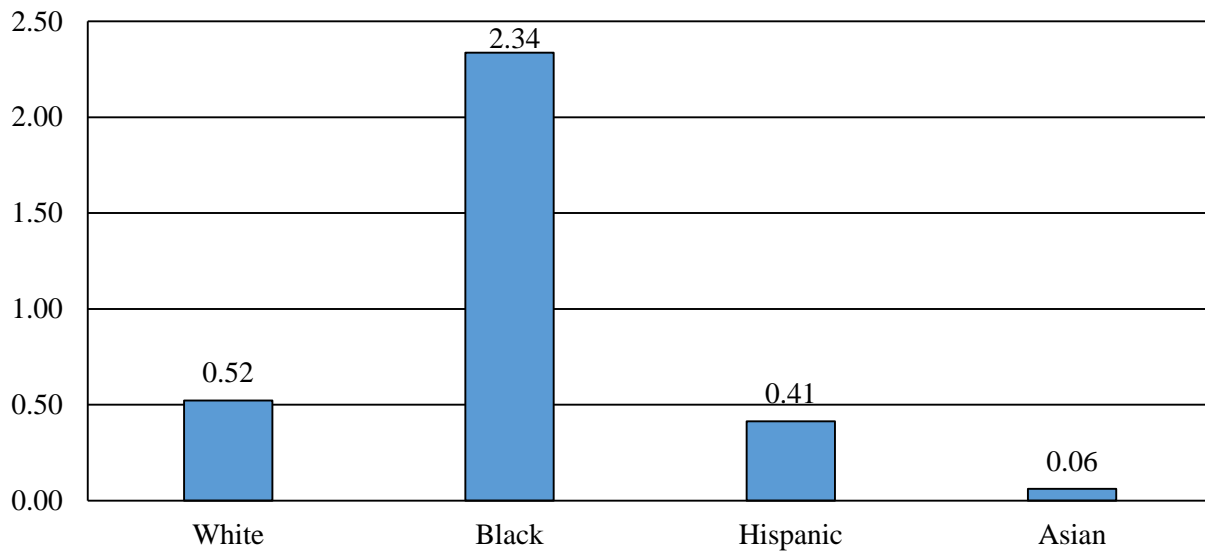
Exhibit 1
Maryland Traffic Stop Vehicle Searches Based on Probable Cause
2018-2021



Source: Governor’s Office of Crime Prevention and Policy

Exhibit 2 further shows that in 2021, the number of probable cause searches was disproportionately high for Black drivers compared to general population demographics. Specifically, the number of Black drivers subjected to probable cause searches were overrepresented by a ratio of 2.34, meaning they were more than twice as likely to have their vehicle searched by law enforcement without a warrant compared to their proportion of the State’s population.

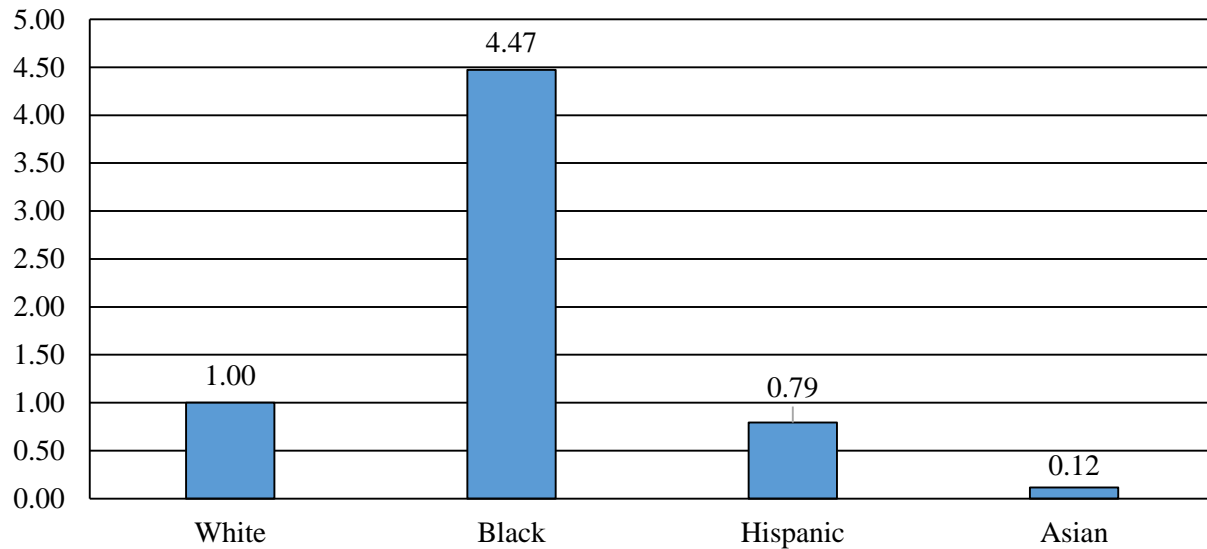
Exhibit 2
Disproportionality Ratios
Probable Cause Vehicle Searches
2021



Source: Governor's Office of Crime Prevention and Policy

Exhibit 3 shows the racial disparity ratios for vehicle searches during traffic stops in Maryland. The data shows that Black drivers have a racial disparity ratio of 4.47, meaning that they were more than four times as likely to experience a warrantless vehicle search based on probable cause during a traffic stop when compared to white drivers in 2021.

Exhibit 3
Disparity Ratios
Probable Cause Vehicle Searches
2021



Source: Governor's Office of Crime Prevention and Policy

Conclusion

The bill's provisions would allow a law enforcement officer to once again use the odor of cannabis either as a reasonable suspicion to stop a motor vehicle or as probable cause to search an individual's motor vehicle during a traffic stop. The bill's provisions would likely increase the volume of investigative stops of drivers as well as warrantless vehicle searches based on probable cause. Based on the disparities evident in statewide traffic stop data, the bill will likely impact Black drivers to the greatest extent by increasing exposure to warrantless enforcement activity. The magnitude of the impact depends on the extent to which vehicle stops and searches based on the odor of cannabis increase as a result of the bill.

Information Sources: Governor's Office of Crime Prevention and Policy; Office of the Attorney General; Bureau of Justice Statistics; National Conference of State Legislatures; American Civil Liberties Union of New York; Department of Legislative Services

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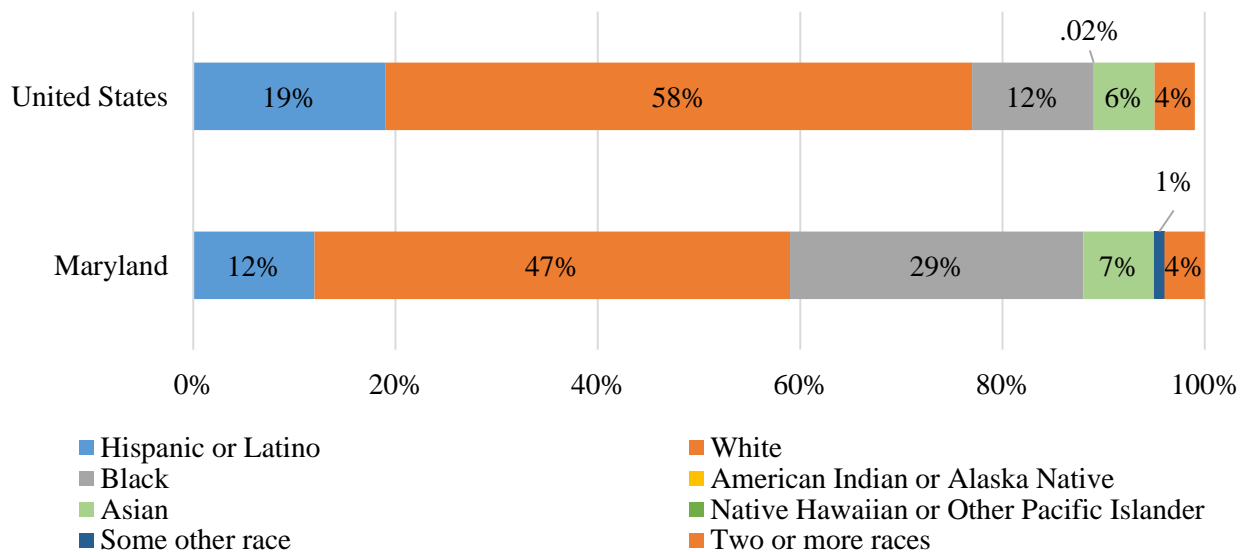
Appendix – Maryland Demographics

Race and Ethnicity of the Maryland Population

Maryland’s 2020 census population is 6,177,244, a 7% increase from the 2010 census count and approximately 2% higher than the 2019 census population estimates. In addition to an increase in population, Maryland’s racial demographics have become more diverse. Maryland is now a state in which racial minorities make up a majority of its total population. Notable changes relevant to this shift are the increase in groups who identify as “other” and “multiracial” (*i.e.*, two or more racial identities), which total 5% of the State’s population. Additionally, the change in demographics is due to the decrease in the number of individuals who only report “white” as their racial group. Despite this decrease, non-Hispanic whites remain the largest race demographic group in the State at 47% of the State’s population.

Compared to the U.S. population overall, Maryland’s population of individuals who identify as a single race is more diverse. Maryland is ranked as the fourth most diverse state by the U.S. Census Bureau’s [Diversity Index](#). As shown in **Exhibit 1**, in Maryland, 47% identify as white alone compared to 58% of the national population. Similarly, 51% of the population identify as non-white or multi-racial compared to 38% of the national population. In both the State and national populations, the largest shares of the non-white population are individuals who are Black, with 29% of the State population identifying only as Black and another 2.5% identifying as Black in combination with some other race. Maryland’s Asian population is 7%, which is slightly higher than the Asian share of the national population of 6%. The State’s overall population by ethnicity, however, is slightly less diverse than the U.S. population; 12% of the State’s population identified as Hispanic or Latino compared to 19% of the U.S. population.

Exhibit 1
U.S. and Maryland Population by Race and Ethnicity
2020



Source: U.S. Census Bureau, 2020 Census Redistricting Data (Public Law 94-171), Table ID P2, HISPANIC OR LATINO, AND NOT HISPANIC OR LATINO BY RACE.