



June 29, 2023

Dear Chief,

The ACLU of Maryland is contacting police departments across Maryland to ensure all personnel are made aware of the changes in the law legalizing cannabis (marijuana) in the state, as well as important changes in the law regarding stops and searches based solely on the odor of cannabis. Both measures become effective July 1, 2023:

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- Cannabis becomes legal for recreational use by individuals 21-years-old and over in the state of Maryland on July 1. Adults may then purchase and possess a personal amount use (up to 1.5 ounces) of cannabis (Article II, Section 17(b) of the Maryland Constitution - Chapter 26). Criminal penalties for possession of up to 2.5 ounces have been eliminated. Only civil citations can be issued for possession amounts greater than 1.5 ounces and less than 2.5 ounces (Criminal Law Article 5–601.1).
- With these new measures taking effect, the Maryland legislature also passed additional protections in HB 1071, which protect against the stop or search of a person or vehicle based solely on the odor of cannabis. HB 1071 requires that in order to legally support a vehicle stop for suspected cannabis impairment, the officer must provide some evidence of impairment. As is done with most alcohol-impaired stops and searches, the officer must provide concrete evidence of impairment beyond the odor of cannabis. (Criminal Procedure Article- 1-211.). The odor of cannabis is not illegal.
- The new law forbids officers from using odor in combination with the possession of the personal use amount (up to 1.5 ounces) of cannabis as justification to search a person or vehicle. In addition officers may not use the proximity of cash with the possession of the personal use amount as justification to search a person or vehicle.
- The legal cannabis industry is largely a cash-based business due to industry regulations and standards. In addition, banking is historically inaccessible in low-income communities and cash – in any amount – is a perfectly legal medium of currency used by many Maryland residents. After July 1, law enforcement officers who stop or arrest Marylanders over 21 who have cash and the personal use amount of cannabis will be out of compliance with the new law.

- Evidence obtained by a stop or search that was based on the odor of cannabis alone, or its proximity to cash, or the possession of the personal use amount in proximity to cash, will be subject to the exclusionary rule, that is, if an unlawful search is conducted, anything found would be inadmissible in court.

With these changes set to take place on July 1, 2023, the ACLU of Maryland wants to make sure law enforcement departments across the state are adequately informed of these changes to: 1) protect the new rights of Marylanders from violation and 2) caution law enforcement agencies about the consequences of unlawful investigations. It is our hope that these changes are communicated to all officers and staff, and that policing practices and procedures around cannabis are updated to reflect the changes in the law – the ultimate will of the people.

We will be monitoring the implementation of the law in the weeks and months ahead. Thank you for your review and sharing of this important information.

Sincerely,
Dana Vickers Shelley, Executive Director
American Civil Liberties Union of Maryland