

Chapter 802

(House Bill 1071)

AN ACT concerning

Criminal Procedure – Reasonable Suspicion and Probable Cause – Cannabis
Criminal Law and Procedure – Cannabis – Fines for Smoking in Public, Stops,
and Searches

FOR the purpose of ~~providing that a finding or determination of reasonable suspicion or probable cause relating to possession of contraband or other criminal activity may not be based solely on evidence of the odor of certain cannabis, the possession of or suspicion of possession of cannabis, or the presence of money in proximity to cannabis; providing that, subject to a certain limitation, the odor of certain cannabis or the possession of or suspicion of possession of cannabis may be factors in the totality of the circumstances leading to reasonable articulable suspicion to justify a certain investigation or probable cause to justify a certain arrest or search; providing that evidence obtained in violation of this Act is not admissible in certain proceedings; and generally relating to reasonable suspicion and probable cause.~~
altering the maximum fines for smoking cannabis in a public place; prohibiting a law enforcement officer from initiating a stop or a search of a person, a motor vehicle, or a vessel based solely on certain factors; prohibiting, under certain circumstances, a law enforcement officer from conducting a search of a certain area of a motor vehicle or vessel; providing that evidence obtained in violation of certain provisions of this Act is not admissible in certain proceedings; and generally relating to cannabis.

BY repealing and reenacting, with amendments,

Article – Criminal Law

Section 5–601(c)(4)

Annotated Code of Maryland

(2021 Replacement Volume and 2022 Supplement)

(As enacted by Chapter 26 of the Acts of the General Assembly of 2022)

BY adding to

Article – Criminal Procedure

Section 1–211

Annotated Code of Maryland

(2018 Replacement Volume and 2022 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Criminal Law

5–601.

(c) (4) The smoking of cannabis in a public place is a civil offense punishable by:

- (i) for a first finding of guilt, a fine not exceeding ~~[\$250]~~ \$50; and
- (ii) for a second or subsequent finding of guilt, a fine not exceeding ~~[\$500]~~ \$150.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Criminal Procedure

1-211.

~~(A) A FINDING OR DETERMINATION OF REASONABLE SUSPICION OR PROBABLE CAUSE RELATING TO POSSESSION OF CONTRABAND OR OTHER CRIMINAL ACTIVITY MAY NOT BE BASED SOLELY ON EVIDENCE OF:~~

~~(1) THE ODOR OF RAW OR BURNT CANNABIS;~~

~~(2) THE POSSESSION OF OR SUSPICION OF POSSESSION OF CANNABIS;~~

~~OR~~

~~(3) THE PRESENCE OF MONEY IN PROXIMITY TO CANNABIS.~~

~~(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE ODOR OF RAW OR BURNT CANNABIS OR THE POSSESSION OF OR SUSPICION OF POSSESSION OF CANNABIS MAY BE FACTORS IN THE TOTALITY OF THE CIRCUMSTANCES LEADING TO:~~

~~(I) REASONABLE ARTICULABLE SUSPICION TO JUSTIFY AN INVESTIGATION OF WHETHER A PERSON IS DRIVING, OPERATING, OR CONTROLLING A MOTOR VEHICLE OR VESSEL WHILE IMPAIRED BY DRUGS; OR~~

~~(II) PROBABLE CAUSE TO JUSTIFY AN ARREST OF A PERSON OR THE SEARCH OF A VEHICLE OR VESSEL BASED ON A PERSON DRIVING, OPERATING, OR CONTROLLING A MOTOR VEHICLE OR VESSEL WHILE IMPAIRED BY DRUGS.~~

~~(2) A SEARCH UNDER THIS SUBSECTION SHALL BE LIMITED TO AN AREA OF A VEHICLE OR VESSEL THAT IS:~~

~~(I) READILY ACCESSIBLE TO THE DRIVER OR OPERATOR; OR~~

~~(H) REASONABLY LIKELY TO CONTAIN EVIDENCE RELEVANT TO THE CONDITION OF THE DRIVER OR OPERATOR.~~

~~(C) EVIDENCE DISCOVERED OR OBTAINED IN VIOLATION OF THIS SECTION, INCLUDING EVIDENCE DISCOVERED OR OBTAINED WITH CONSENT, IS NOT ADMISSIBLE IN A TRIAL, A HEARING, OR ANY OTHER PROCEEDING.~~

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023.~~

(A) A LAW ENFORCEMENT OFFICER MAY NOT INITIATE A STOP OR A SEARCH OF A PERSON, A MOTOR VEHICLE, OR A VESSEL BASED SOLELY ON ONE OR MORE OF THE FOLLOWING:

(1) THE ODOR OF BURNT OR UNBURNT CANNABIS;

(2) THE POSSESSION OR SUSPICION OF POSSESSION OF CANNABIS THAT DOES NOT EXCEED THE PERSONAL USE AMOUNT, AS DEFINED UNDER § 5-601 OF THE CRIMINAL LAW ARTICLE; OR

(3) THE PRESENCE OF CASH OR CURRENCY IN PROXIMITY TO CANNABIS WITHOUT OTHER INDICIA OF AN INTENT TO DISTRIBUTE.

(B) IF A LAW ENFORCEMENT OFFICER IS INVESTIGATING A PERSON SOLELY FOR DRIVING OR ATTEMPTING TO DRIVE A MOTOR VEHICLE OR VESSEL WHILE IMPAIRED BY OR UNDER THE INFLUENCE OF CANNABIS IN VIOLATION OF § 21-902 OF THE TRANSPORTATION ARTICLE OR § 8-738 OF THE NATURAL RESOURCES ARTICLE, THE LAW ENFORCEMENT OFFICER MAY NOT CONDUCT A SEARCH OF AN AREA OF A MOTOR VEHICLE OR VESSEL THAT IS NOT:

(1) READILY ACCESSIBLE TO THE DRIVER OR OPERATOR OF THE MOTOR VEHICLE OR VESSEL; OR

(2) REASONABLY LIKELY TO CONTAIN EVIDENCE RELEVANT TO THE CONDITION OF THE DRIVER OR OPERATOR OF THE MOTOR VEHICLE OR VESSEL.

~~SECTION 3. AND BE IT FURTHER ENACTED, That the Exclusionary Rule and its exceptions, as judicially determined, applies to this Act.~~

(C) EVIDENCE DISCOVERED OR OBTAINED IN VIOLATION OF THIS SECTION, INCLUDING EVIDENCE DISCOVERED OR OBTAINED WITH CONSENT, IS NOT ADMISSIBLE IN A TRIAL, A HEARING, OR ANY OTHER PROCEEDING.

SECTION ~~4~~ 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect July 1, 2023, contingent on the taking effect of Section 4 of Chapter 26 of the Acts of the General Assembly of 2022, and if Section 4 of Chapter 26 does not become effective, Section 1 of this Act, with no further action required by the General Assembly, shall be null and void.

SECTION ~~5~~ 4. AND BE IT FURTHER ENACTED, That, except as provided in Section 4 of this Act, this Act shall take effect July 1, 2023.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 28, 2023.