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**Testimony of John R. DelBarba, Assistant Legal Counsel**  
**Office of Chief Public Defender**

**JUDICIARY COMMITTEE - MARCH 31, 2025**

**Raised Bill No. 7258**  
**AN ACT CONCERNING DRIVING**  
**UNDER THE INFLUENCE OF OR WHILE CONSUMING CANNABIS**

**The Office of Chief Public Defender (OCPD) is strongly opposed to *Raised Bill No. 7258, An Act Concerning Driving Under the Influence of or While Consuming Cannabis*, as there are fundamental problems with 3 of the 4 Sections of this Bill. OCPD will also offer brief commentary on Section 1. The raised bill repeals C.G.S. Sections 53a-213a, 53a-213b, and 54-33p and substitutes language in each statute. It also provides in Section 1 a feasibility study of instituting a blood tetrahydrocannabinol (THC) level at which point a driver is per se driving while intoxicated, in a manner analogous to blood alcohol content. While OCPD takes no position on the feasibility study, OCPD strongly opposes the remaining sections of this bill.**

**Section 1 -** While OCPD isn't necessarily in disagreement with the concept of this Section, the current science is very clear. Drug tests commonly used today cannot reliably detect how recently someone used cannabis or even whether they were impaired when an accident occurred. Blood tests used by law enforcement typically measure THC (Delta 9-tetrahydrocannabinol), the chief psychoactive component of the drug. "Since THC accumulates and lingers in fat tissue, daily cannabis users may maintain constant elevations of THC in the blood even long after the psychoactive effects abate."<sup>1</sup>

Law enforcement has tried in some of the States mentioned in this section to improve upon this situation for drivers by measuring THC in blood. But even when you are measuring THC itself in the blood, which is psychoactive, it doesn't necessarily tell you how long ago the person used it. And the reason for that is THC is a very fat-soluble substance, and the THC comes out of the blood and gets stored and builds up in a person's body fat. For people who use cannabis nearly every day (such as

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<sup>1</sup> Michael Kosnett, MD, MPH, an associate adjunct professor and cannabis researcher at the Colorado School of Public Health in the Department of Environmental & Occupational Health.

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medical users), the level in their blood can be rather high. It can even sometimes be as high or higher after not smoking for more than a day than the level of an occasional user right after they smoked.

It is already well known that **urine** drug tests measure an inactive metabolite of THC called carboxy THC (THC-COOH). So they are measuring something in the urine that doesn't even have psychoactive effects. More than that, it stays positive long after the acute psychomotor and neurocognitive effects of using cannabis last. OCPD suggests that urine tests are currently useless.

The feasibility of studying THC in blood – and in theory how that would be done – brings with it a whole host of questions and other constitutional issues concerning the invasive intrusion into the human body to obtain a person's blood absent a warrant at roadside, for example. The security of one's privacy against arbitrary intrusion by the police is at the core of the Fourth Amendment and basic to a free society. **OCPD takes no position on this feasibility study other than noting the previous comments.**

**Section 2** - Section 2 adds the following highlighted language to subsection (c) of 53a-213a: No peace officer shall stop a motor vehicle for a violation of this section if such violation is the sole reason for such stop, **unless such officer (1) observes active cannabis consumption, and (2) detects the odor of burnt cannabis.**

First, this is a major wholesale change from current law which **prohibits** a motor vehicle stop if such violation is the **sole reason** for such stop. OCPD is unclear why there is a need for this change since this statute was just passed July 1, 2021.

From a constitutional analysis, it would appear that the inclusion of this language is an attempt to create a constitutional basis such as probable cause and/or a reasonable and articulable suspicion in order to provide a basis to stop a motor vehicle and support this added language. OCPD suggests that the detection of burnt cannabis is simply not enough to provide that basis.

The scent of burnt marijuana is in a growing number of areas and seems to be almost everywhere these days.<sup>2</sup> It is also not a criminal offense to actually smoke marijuana. The next question is whether or not observation of "active cannabis consumption" tied together with the scent is enough. OCPD suggests that mere observation of "active cannabis consumption" is NOT enough to provide a reasonable and articulable suspicion to stop a motor vehicle as this element of observation is unconstitutionally vague. Active cannabis consumption by who? A driver? A passenger? Someone

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<sup>2</sup> See e.g., Medic Grow: How Long does Weed Smell Last & How to get Rid of Weed Smell: Quantity of Weed Consumed Smoking a small amount of weed (1-2 grams) typically produces a lighter smell that can dissipate within 1-4 hours in well-ventilated areas.

In contrast, smoking a larger quantity of weed (5 grams or more) results in a stronger odor that may linger for 12-24 hours.

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smoking marijuana who may be talking to someone else in a vehicle who is in a stopped car? OCPD believes that this would not pass Fourth Amendment analysis, and this would lead to further litigation and target primarily our disenfranchised communities.<sup>3</sup>

**OCPD suggests that Section 2 be stricken from the bill.**

**Section 3** - Section 3 adds the exact same language to subsection (c) of 53a-213b and the only difference is this section addresses passengers in a motor vehicle: No peace officer shall stop a motor vehicle for a violation of this section if such violation is the sole reason for such stop, **unless such officer (1) observes active cannabis consumption, and (2) detects the odor of burnt cannabis.** For all of the reasons stated above and below, OCPD suggests that this Section also be stricken from the bill.

**Section 4** - Section 4 addresses circumstances that shall not constitute in part or in whole probable cause or reasonable suspicion and shall not be used as a basis to support any stop or search of a person or motor vehicle. Section 4 adds the following highlighted language to subsection (a)(1) of 54-33p which provides the following carve out to this rule: *The odor of cannabis or burnt cannabis, unless a law enforcement official observes active consumption of cannabis related to such odor.*

Again, this is a major wholesale change from current law which **prohibits** any stop or search of a person or motor vehicle under these circumstances. OCPD is not aware of any reason or data as to why there is a need for this change since this statute was just passed July 1, 2021.

This change under Section 4 actually takes things a step further and becomes more constitutionally troubling – attempting to add the observation of legal conduct and in essence turn it into a factor law enforcement may use when conducting a Terry stop. First, it is not a criminal offense to actually smoke marijuana. What difference does it make if law enforcement sees someone walking down the street smoking marijuana? It is not a crime. There is no basis whatsoever to stop and therefore institute a seizure by way of stopping an individual under most circumstances. Unless it falls within

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<sup>3</sup> See e.g., 92 A.L.R.7<sup>TH</sup> Art. 1 § 12. **Vehicle search not justified based on odor of marijuana where decriminalized** The courts in the following cases held that the odor of marijuana did not justify a vehicle search where marijuana was decriminalized.

#### **Massachusetts**

*Com. v. Rodriguez*, 472 Mass. 767, 37 N.E.3d 611 (2015) The Massachusetts Supreme Judicial Court held that the odor of burnt marijuana alone **did not justify a vehicle stop** and search where possession of small amounts was decriminalized;

*Com. v. Craan*, 469 Mass. 24, 13 N.E.3d 569 (2014) The Massachusetts Supreme Judicial Court held that the odor of unburnt marijuana alone did not provide probable cause for a vehicle search where possession of very small amounts of marijuana was decriminalized.

#### **Minnesota**

*State v. Torgerson*, 995 N.W.2d 164 (Minn. 2023) The Minnesota Supreme Court held that the odor of marijuana alone did not provide probable cause justifying a vehicle search under the automobile exception to the warrant requirement.

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the exclusions noted below, it is not a crime.<sup>4</sup> To use legal behavior as a basis or ruse to stop someone by law enforcement would be clearly problematic under both our Federal and State Constitution.<sup>5</sup>

Additionally, as has already been articulated, OCPD suggests that the odor of cannabis or burnt cannabis is simply not enough to provide any stop of any person or motor vehicle. The scent of burnt marijuana lingers for hours, and it is not a criminal offense to actually smoke marijuana in most situations. **OCPD requests that Section 4 be stricken from the bill.**

**In conclusion, OCPD requests that the Committee take no action on this bill. In the alternative, OCPD requests that Sections 2, 3, and 4 be stricken from this bill.** Thank you.

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<sup>4</sup> See exclusions: <https://uwc.211ct.org/connecticuts-legalized-recreational-marijuana-cannabis-law/>. In general, there is still a prohibition smoking of marijuana in state parks, on beaches, on the water, in workplaces, hotels and within 25 feet of an entrance.

<sup>5</sup> See e.g., 92 A.L.R.7th Art. 1 § 13. **Stop of person not justified based on odor of marijuana where decriminalized** The following authority held that the odor of marijuana did not justify an order to a person to exit from a vehicle where marijuana was decriminalized.

#### **Massachusetts**

*Com. v. Cruz*, 459 Mass. 459, 945 N.E.2d 899 (2011) The Massachusetts Supreme Judicial Court held that the odor of burnt marijuana, combined with other factors, did not provide a reasonable suspicion justifying an order for a defendant to exit a validly stopped vehicle where possession of small amounts of marijuana was decriminalized.

#### **§ 14. Search or frisk of person not justified based on odor of marijuana where decriminalized**

The courts in the following cases held that the odor of marijuana did not justify a search or frisk of a person where marijuana was decriminalized.

#### **Maryland**

*Lewis v. State*, 470 Md. 1, 233 A.3d 86 (2020) The Maryland Court of Appeals held that the odor of marijuana on a person, without more, did not provide probable cause to conduct a warrantless search of the person incident to arrest where possession of small amounts of marijuana was decriminalized.

*Pacheco v. State*, 465 Md. 311, 214 A.3d 505 (2019) The Maryland Court of Appeals held that the odor of marijuana and observation of a marijuana joint in a car did not provide probable cause to believe that a defendant possessed more than the decriminalized amount of marijuana justifying a search of a driver's person in addition to the car.

*Norman v. State*, 452 Md. 373, 156 A.3d 940 (2017) The Maryland Court of Appeals held that in Maryland, where possession of less than 10 grams of marijuana had been decriminalized, the odor of marijuana emanating from a car alone did not give rise to a reasonable, articulable suspicion that a passenger was armed and dangerous to justify a pat-down search.

#### **New York**

*People v. Brukner*, 55 Misc. 3d 194, 43 N.Y.S.3d 851 (County Ct. 2016) A New York court held that police did not have a lawful basis for conducting a stop and forcible frisk search of a pedestrian based only on the odor of marijuana emanating from his person where possession of less than 25 grams of marijuana was decriminalized.