



POLICING ADVISORY COMMISSION

August 31, 2023

The Honorable Evan Glass, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear President Glass and Members of the County Council:

Pursuant to the charter of the Policing Advisory Commission (PAC), we are pleased to provide you with our views regarding Bill 12-23, the Safety and Traffic Equity in Policing Act (STEP Act) that addresses traffic stop policy for the Montgomery County Police Department (MCPD).¹

The Policing Advisory Commission has considered the issue of traffic stops in some detail beginning in 2021. After a number of meetings, in 2021 we issued a report that included a statistical analysis of the correlation between the locations of stops and traffic crashes.² We held a public meeting in January 2023 inviting the views of the public regarding traffic stops and traffic enforcement. We met with leaders of the MCPD and with Councilmember Will Jawando regarding these issues and this bill. And we updated our 2021 report to include data through the end of 2022.

The STEP Act is a significant effort to address issues related to traffic stops that were identified in our report, and which overlap with the findings of the subsequent report by the Council's Office of Legislative Oversight in October 2022 (OLO Memorandum Report 2022-12 "Analysis of dataMontgomery Traffic Violations Dataset"). (There was also an analysis of racial disparity in traffic stops in an earlier OLO report -- OLO Report 2021-10, "A Study on Reassigning Traffic Enforcement from the Montgomery County Police Department to the Montgomery County Department of Transportation".)

¹ Following public notice of a meeting and published agenda, on August 15, 2023, the PAC met to discuss the STEP Act and our views and to consider a draft letter that had been circulated on August 14. After discussion that extended more than an hour after the scheduled adjournment, a motion to adopt in principle the draft letter with a number of oral amendments passed on a vote of 5 in favor, 1 opposed and 1 abstaining. This letter reflects the discussion and agreement. The letter has been approved by the 5 who voted yes. The member who abstained now supports the letter (voting "aye"), and the member who voted no has not changed his vote but wrote that we can "submit" the letter.

² Policing Advisory Commission, "Findings and Recommendations for Traffic Enforcement," Section III of the Appendix, p. 37 and following, (Dec. 2021 and June 2023)
<https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/PoliceAC/correspondence/FindingsRecommendationsTrafficEnforcement.pdf>

There are two issues. Most importantly, it is undeniable that there are significant racial imbalances in the incidence of traffic stops. Using the county population (as analyzed by the U.S. Census) as baseline, it is apparent that Black and Hispanic drivers are stopped and ticketed at rates far higher than White drivers.³ Second, the data regarding the location of stops reveals that the stops are not being focused at the locations with the greatest number of crashes, fatalities and injuries. We are concerned that these two issues may be related – failure to focus on safety may be contributing to the racial imbalance of those who are stopped.

The MCPD's primary rationale for traffic enforcement and traffic stops is to enhance traffic safety.⁴ PAC's statistical analysis of Montgomery County traffic stop data by location showed that the link between stops and crashes is in many cases tenuous: there are locations in Montgomery County where there are hundreds or even thousands of stops but few crashes, and others with multiple crashes and few stops. If Montgomery County traffic stops were aimed efficiently to target traffic and pedestrian safety, the ratios of stops to crashes should be similar for locations across the county. They are not. This discontinuity has been underscored by sudden changes in the number of stops performed by MCPD during the COVID emergency and subsequently. The number of stops dropped sharply (down 63% between 2019 and 2022). Traffic volume has now recovered to pre-pandemic levels, but traffic stops remain at the reduced level. If MCPD traffic stops were having a significant effect on safety, we would expect to see with the depressed number of stops a sharp uptick in crashes causing injury. However, that has not been the case; according to the State of Maryland Open Data traffic crash data set crashes are down sharply over the same period.

In light of the disconnection between traffic stops and the incidence of traffic crashes, the evidence of racial disparities raises significant questions that MCPD should address, in particular, whether the traffic stop disparities may be a result of police officers acting with unconscious bias and/or are the result of systemic bias as a consequence of existing patterns of policing.

We note that MCPD official policy repeatedly prohibits racial discrimination in enforcement. MCPD Headquarters Memorandum 14-02 (June 25, 2014) says, "Discrimination in any form, including racial profiling, is strictly prohibited..." FC 1000, specifically addressing traffic management, prohibits officers from making race-based stops:

"Montgomery County Department of Police is commitment [sic] to unbiased law enforcement in all encounters between officer and the community. Discrimination in any form, including racial profiling and bias policing is strictly prohibited and the department will take immediate and appropriate action to investigate all allegations concerning such actions. Officers will not stop or

³ Demographics of the population is the standard used for analysis of potential disparities in traffic stops. Although it is an imperfect base for comparison it is informative when differences are significant. Further analysis of traffic stop data, such as analysis of the pattern of tickets issued by race and ethnicity and the residence of drivers and the location of the stop, and requests for vehicle searches following stops by race and ethnicity and residence of drivers can refine the analysis and offer further insight into the degree of confidence in the patterns shown in the overall traffic stop data.

⁴ "It is the policy of this department to promote the safe and efficient movement of traffic within the county. . . The goals of the system are to facilitate the safe and expeditious flow of vehicular and pedestrian traffic and to reduce traffic collisions and their resultant fatalities and injuries." (FC 1000 Traffic Management System II., Effective July 1, 2022)

detain any individual(s) based exclusively on their race, ethnicity, or national origin, unless this information relates to a specific “lookout” regarding a suspect’s physical description concerning a criminal investigation or other legitimate law enforcement action.” (FC 1000, Traffic Management System, Section IX.A. (Effective July 1, 2022))

Elsewhere, “complaints that allege racial prejudice” are defined as “serious allegations of misconduct” in the disciplinary process set forth in MCPD policy (Function Code 301, effective August 16, 2022).

In meeting with us, MCPD Chief Marcus Jones stated that no analysis of racial disparities in traffic stops had been conducted to date and that he would like additional and independent research on this point. However, the disparities revealed by the OLO report and the PAC data analysis must be seen in light of the participation of the MCPD and the County in a Memorandum of Agreement (MOA) with the U.S. Department of Justice entered into on January 14, 2000, “to institute management practices by the MCPD that **will promote nondiscriminatory law enforcement** and community support for the MCPD and its officers.” (emphasis added). A key allegation in the complaint to the Department of Justice that initiated the MOA was that MCPD traffic stops were being made in a racially discriminatory manner. Subsection IV.H of the MOA provided for analysis of traffic stop data by “comparison of racial/ethnic percentages.” We encourage the MCPD to acknowledge the disparities and to undertake any studies necessary to support management changes that will eliminate them.

The PAC believes, that, if evident, officers demonstrating unconscious bias should be retrained. If evident, systemic issues should be addressed through better data analytics, revision of the contributing policies, and better communication with Montgomery County communities. The MCPD should be reviewing and assessing the factors that drive the high number of stops made in Montgomery County, and the potential factors resulting in disproportionate stops. In this regard, MCPD should be more aggressive in identifying and addressing the potential factors leading to the observed disparities.

The proposed STEP Act takes direct aim at disparities in ways that overlap with our recommendations but are not identical to them. The Act offers three core reforms:

1. It provides a specific list of offenses for which officers may not stop a vehicle in proposed Code section 35-27(c). These “barred” offenses include suspected violations of Maryland Vehicle Law regarding certificates of title, vehicle licensing, registration or insurance, missing or damaged equipment, lighting, and excessive window tinting or other windshield obstructions, for example. It also would bar the stop of a pedestrian for pedestrian violations such as crossing against a cross walk signal or crossing at other than a crosswalk. It further requires that if in the course of a stop for an offense other than those “barred,” there is evidence of a violation of a “barred” offense, in the case of a first offense, only a warning (verbal or written) may be issued, and a citation may only be issued for a subsequent such offense.
2. It seeks to eliminate the authority of police officers to request permission from a driver to conduct a consensual search of their vehicle. Instead, consent searches may only be requested “if reasonable suspicion or probable cause for a criminal offense arises during the stop.” (Proposed code section 35-27(e)(2)).
3. It requires additional data collection and annual reporting.

STEP Act traffic stop restrictions

The STEP Act seeks to address the problem of racial disparities in traffic stops with a blanket prohibition on stops for specified “minor violations.” The PAC report calls for a substantial reduction in the number of stops in order for the MCPD to be more efficient.⁵ However, our report did not specify any traffic violations to be de-emphasized. We deferred to a list of “minor stops” provided for in the July 2021 OLO report. Legislatively, the PAC favors clarity and the approach of specification of offenses to deemphasize, as provided for in the STEP Act. However, the PAC has some concerns with some of the violations to be excluded from traffic stops in the STEP ACT:

- A violation of Transportation Article § 22-101. Driving with improper equipment prohibited. “(a) (1) A person may not drive and the owner may not cause or knowingly permit to be driven on any highway any vehicle or combination of vehicles that: (i) Is in such unsafe condition as to endanger any person...” (emphasis added) should remain a permissible basis for a traffic stop because of the explicit safety standard.
- Violations of Transportation Article § 22-219(a) (Brake light) We do not believe that stoplight violations are minor, and they are appropriate to continue to be targeted and ticketed by officers.
- A violation of Transportation Article § 22-406. Excessive window tinting is an offense because it makes traffic stops more dangerous – officers cannot see the behavior of persons within the vehicle and whether a weapon is being brandished or concealed. We believe excessive window tinting should continue to be an appropriate cause for a traffic stop.

STEP Act consent search prohibition

The PAC has concerns about the STEP Act provisions eliminating the ability of a police officer to request a driver’s consent to conduct a search. Current Constitutional law permits a police officer to make a search of a motor vehicle or its compartment that is not consented to if the officer has probable cause or articulable grounds for a reasonable suspicion that a crime may have occurred. As drafted in the STEP Act, it appears that the possibility of all “consent searches” would be eliminated and only unconsented-to-searches would take place.

The PAC is persuaded that searches pursuant to the consent of the driver can be a potentially useful tool for law enforcement but we recognize that such requests can be intimidating. The latest MCPD policy for consent searches, adopted on February 10, 2023, provides that:

1. Officers must show that consent was given voluntarily and not due to “duress or intimidation.” (Function Code 710.II.A).
2. Officers “should be able to articulate their rationale for requesting the search.” (Function Code 710.II.B).
3. Officers “shall advise the person(s) involved that they have the right to refuse consent for the search.” (Function Code 710.II.C).

⁵ Montgomery County Policing Advisory Commission, “Findings and Recommendations for Traffic Enforcement,” (June 2023), (“We do not accept that more stops mean more effective and better policing traffic enforcement. On the contrary, we believe that an appropriate mission for MCPD traffic enforcement is that it be effective, efficient, and equally enforced.” Recommendation 1, New mission.)(“ Specifically, minor violations should not be used by MCPD officers as the basis for a traffic stops. Recommendation 2, Focus on what matters.)

4. Officers “shall capture the advisement and the person(s) acknowledgement and verbal approval/disapproval on a department-authorized recording device,” (e.g., body worn camera, etc.). (Function Code 710.II.D).
5. Officers should complete a MCP Form 120 for every consent search and to record the nature of the consent (“written preferred”) and with “completed...demographic data” and forward the report by email to MCPD Policy and Planning Division. (Function Code 710.II.E and F).
6. The policy says that “The person giving consent to search can place limitations or conditions on the consent search or withdraw consent at any time.” (Function Code 710.II.H).

The PAC believes, to minimize intimidation and to assure that the policy is followed, that a standard protocol be established and mandated of a script for requesting consent to search, to include all the elements of the current MCPD policy as well as explicitly advising the person whose consent is being sought that they “can place limitations or conditions on the consent search or withdraw consent at any time” as the current MCPD policy provides.

STEP Act data collection and annual report

The STEP Act also calls for the collection of additional data. We support the Act’s call for additional data collection, and the requirement that officers report the primary reason for the stop to improve MCPD data analysis. This data collection is within the capability of MCPD today and could be implemented tomorrow. Since the reporting software assumes that the first offense entered is the primary offense, MCPD should require that officers enter the primary reason for the stop first.

The PAC also supports the Act’s call for an annual report on traffic enforcement. The STEP Act does not require MCPD to show the impact of traffic enforcement on safety, or to explain why it has adopted the specific strategies that it has deployed. Bias at the level of individual officers is important, as noted above, but systemic impacts are likely to be considerably more important, and attention should continue to be focused on these broader concerns.

In conclusion, the PAC believes that the STEP Act is a positive effort to address central concerns regarding policing in Montgomery County: both the racial disparities in traffic stops and the burden imposed by unnecessary stops on both drivers and county resources. We hope that the Council will fully address the issues that the STEP Act raises.

Respectfully submitted on behalf of the PAC,

Eric E. Sterling, Chair, PAC

Ty McKinney, Vice Chair, PAC