

TESTIMONY IN SUPPORT OF THE SAFETY AND TRAFFIC EQUITY IN
POLICING (STEP) ACT – BILL 12-23

Submitted by

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I. Introduction

We are law professors and a law school dean who teach and write about criminal law and procedure and racial disparities in the criminal legal system, including racial profiling. We are also longtime residents of Montgomery County where we have each either raised or mentored black American children. We all have family members and/or friends who have been victims of racial profiling in this county. Together we write in strong support of the Safety and Traffic Equity in Policing (STEP) Act, Bill 12-23. The STEP Act will increase traffic safety for police officers, drivers, and the community and will promote fairness and equity in the enforcement of traffic laws.

II. Racial Profiling and Traffic Stops

When police officers target black and brown people to stop, frisk and search them without any legal basis, they engage in racial profiling. Sadly, racial profiling is pervasive throughout the nation, including in Montgomery County. The harms of this racially discriminatory practice have been well-documented.⁵ Racial profiling not only traumatizes its victims, it also perpetuates distrust of law enforcement in black and brown communities, and all too often results in the loss of life.

Unfortunately, some police officers use traffic stops to racially profile black and brown drivers. They use traffic stops as a pretext for stopping these drivers so they can look inside their cars and ask for consent to search, even though they have no legal grounds to suspect them of criminal behavior. The Supreme Court upheld the constitutionality of these pretextual traffic stops in a case called *Whren v. United States*.⁶ *Whren* held that if a police officer has probable cause to believe that a driver has committed a traffic violation, no matter how minor the infraction, he may stop the driver. The legacy of *Whren* has been the sweeping use of traffic stops to racially profile black and brown drivers.

The Supreme Court decides whether a particular law, policy, or practice violates the United States Constitution. But in most cases, a declaration of constitutionality simply articulates the minimum protection of individual rights that is required. State and local governments are always at liberty to provide greater protection to their residents by passing laws that correct any

⁵ See generally, POLICING THE BLACK MAN: ARREST, PROSECUTION, AND IMPRISONMENT (Angela J. Davis, ed., 2017); Kristin Henning, THE RAGE OF INNOCENCE: HOW AMERICA CRIMINALIZES BLACK YOUTH (2021); Michael Pinard, *Race Decriminalization and Legal System Reform*, 95 NYU LAW REVIEW ONLINE 119 (2020); Mike Dolan Fliss et al., *Re-prioritizing traffic stops to reduce motor vehicle crash outcomes and racial disparities*, 7(3) INJURY EPIDEMIOLOGY (2020); Renée M. Hutchins, *Racial Profiling: The Law, the Policy, and the Practice*, in POLICING THE BLACK MAN: ARREST, PROSECUTION, AND IMPRISONMENT 95-134 (Angela J. Davis, ed., 2017); Roger A. Fairfax Jr., *The Grand Jury and Police Violence Against Black Men*, in POLICING THE BLACK MAN: ARREST, PROSECUTION, AND IMPRISONMENT 209-233 (Angela J. Davis, ed., 2017).

⁶ 517 U.S. 806, 813 (1996) (holding that subjective intentions do not play a role in the probable cause Fourth Amendment analysis).

harms that might still flow from a policy or practice that has been declared constitutional by the Court. The STEP Act would provide just this sort of needed protection in Montgomery County.

III. Racial Discriminatory Traffic Enforcement in Montgomery County

Montgomery County has a long history of racially discriminatory traffic enforcement. In 2000, Montgomery County and the Montgomery County Fraternal Order of Police entered into a Memorandum of Agreement (MOA) with the United States Department of Justice to settle allegations that Montgomery County police officers were enforcing traffic laws in a racially discriminatory manner.⁷ The MOA required the County to collect data on the race and ethnicity of drivers stopped for traffic violations. The MOA also required the County to identify methods for assuring the nondiscriminatory enforcement of traffic laws. The following year, the Maryland legislature passed a law requiring police officers to collect this data during traffic stops. Despite these efforts, Montgomery County police officers continue to discriminate.

Montgomery County Council's Office of Legislative Oversight examined traffic violation data between 2018 and 2022 and issued a memorandum report on its findings.⁸ According to this report, racial disparities in traffic law enforcement in Montgomery County have persisted or worsened during the five-year period under review. White female drivers were the least represented group in traffic stops, and black male drivers were the most represented group. Black and Latinx drivers were searched at much higher rates than white drivers. Significantly, and most relevant to the STEP Act, the data revealed that "Black and Latinx drivers are stopped and searched during traffic stops for lower-level traffic violations (minor traffic violations, expired registrations or equipment issues) at disproportionately higher rates compared to white drivers."⁹

IV. The Danger of Traffic Stops for Police Officers and Drivers

Police officers are trained to believe that traffic stops are extremely dangerous and could result in them being seriously injured or even killed. Although some police officers have been injured or killed during traffic stops, the largest and most comprehensive study of violence against police officers during traffic stops revealed that police officers are rarely harmed during these encounters.¹⁰ Drivers, on the other hand, are much more likely to be killed by police

⁷ Memorandum from Office of Legislative Oversight on Analysis of Data: Montgomery Traffic Violations Dataset (Oct. 25, 2022) chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.montgomerycountymd.gov/OLO/Resources/Files/2022_reports/OLORReport2022-12.pdf.

⁸ *Id.*

⁹ *Id.*, at 4.

¹⁰ Jordan B. Woods, *Policing, Danger Narratives, and Routine Traffic Stops*, 117 MICH. L. REV. 635 (2019), https://repository.law.umich.edu/mlr/vol117/iss4/2?utm_source=repository.law.umich.edu%2Fmlr%2Fvol117%2Fiss4%2F2&utm_medium=PDF&utm_campaign=PDFCoverPages ("Under a conservative estimate, the rate for a felonious killing of an officer during a routine traffic stop was only 1 in every 6.5 million stops, the rate for an assault resulting in serious injury to an officer was only 1 in every 361,111 stops, and the rate for an assault against officers (whether it results in injury or not) was only 1 in every 6,959 stops).

officers during traffic stops.¹¹ Since 2017, more than 800 drivers have been killed by police officers during traffic stops, according to the Mapping Police Violence database.¹²

Because police officers are falsely taught that traffic stops are extremely dangerous, it is not surprising that they approach every traffic stop as a potential threat to their lives, regardless of the nature of the traffic stop. Samuel Dubose, Philando Castile, Walter Scott, and Tyre Nichols are just a few of the many black American drivers killed by police officers who stopped them for a minor traffic offense or because they were wrongfully identified as a crime suspect. Samuel Dubose was stopped on the suspicion that he was missing a front license plate.¹³ Philando Castile was stopped because the officer mistakenly identified him as a robbery suspect.¹⁴ The police officer who killed Walter Scott stopped him for a broken brake light.¹⁵ The officers who stopped and brutally beat Tyre Nichols to death falsely claimed that he was engaged in reckless driving.¹⁶ Video footage of each of these brutal killings expose the aggressive and violent tactics of the police officers despite the absence of any apparent threat to the officers from the men killed. For example, Philando Castile was calmly reaching for his driver's license. Dubose, Scott, and Nichols were all trying to run away.

Police officers must of course continue to conduct traffic stops because some traffic violations pose a danger to others and require immediate action. Reckless driving and driving while intoxicated, for example, can result in serious injury or death. Police officers must always have the authority to stop drivers who are engaging in these dangerous behaviors while driving. However, there are many traffic violations that are not a safety risk and thus do not require immediate action by the police. A person driving with expired tags, tinted windows, or a nonfunctioning rear lamp does not pose an immediate safety risk. A police officer can arrange for a traffic ticket to be mailed for these non-safety traffic violations. Speed and red-light cameras already perform this function very efficiently. The STEP Act will only prohibit traffic stops for minor, non-safety violations and will allow police officers to properly refocus their attention on the traffic violations that pose the greatest risk of danger to drivers and others.

¹¹ Bernd Debusmann Jr., *Why do so many police traffic stops turn deadly*, BBC (Jan. 31, 2023), <https://www.bbc.com/news/world-us-canada-64458041>.

¹² *Police Violence Map*, Mapping Police Violence, (June 17, 2023), https://mappingpoliceviolence.us/?gad=1&gclid=CjwKCAjwkeqkBhAnEiwA5U-uM_RdAQeUECb0OhMczeWQIGbk_00XCsbLDVsbaj0uzQHrVRUKOvqfhoCDpUQAvD_BwE.

¹³ *The Shooting of Samuel Dubose: University Police Officer Shoots and Kills Non-University-Affiliated Motorist During Off-Campus Traffic Stop*, 129 HARV. L. REV. 1168 (Feb. 2016).

¹⁴ *The Death of Philando Castile and the Trial of Jeronimo Yanez*, MPRNews, (last visited June 29, 2023), <https://www.mprnews.org/crime-law-and-justice/philandocastile>.

¹⁵ *Say Their Name: Green Library Exhibit: Walter Scott*, Stanford Libraries, (last visited June 29, 2023), <https://exhibits.stanford.edu/saytheirnames/feature/walter-scott>.

¹⁶ Phil Helsel, Marlene Lenthang, Doha Madani, *Harrowing videos show police fatally beating Tyre Nichols, who cries out for his mother*, NBCNews, (Updated Jan. 28, 2023, 5:23 AM), <https://www.nbcnews.com/news/nbcblk/memphis-police-set-release-video-showing-fatal-beating-tyre-nichols-rcna67710>.

V. The STEP Act Will Increase Traffic Safety and Promote Racial Equity

The STEP Act would prohibit traffic stops by Montgomery County police officers for traffic offenses under the Maryland Vehicle Law, related to:

- licensing and registration;
- a certificate of title or insurance;
- window tinting;
- a defective headlamp or taillight;
- an unilluminated license plate;
- minor obstructions, including, signs, posters, and other nontransparent materials on the windshields; and
- various provisions under Title 22.

The Act would also limit a police officer's authority to request permission to conduct a search of a person or vehicle during a traffic stop. Officers will no longer be permitted to ask for consent to search unless there is reasonable suspicion or probable cause to believe that a criminal offense arose during the stop. In addition to increasing traffic safety by requiring officers to refocus on dangerous traffic violations, the limitations will also promote officer and driver safety by limiting interactions that often result in the serious injury or death of the officer or driver.

A recent study of traffic fatalities in the state of Maryland concluded that the main causes of traffic deaths were "speeding and aggressive driving, drug and alcohol impairment, distracted driving, and the failure to use seat belts."¹⁷ Other studies demonstrate that traffic stops for minor traffic violations do not promote traffic safety. One such study analyzed traffic stop data from 33 state patrol divisions across the country and concluded that there was no association between traffic stops and death rates from crashes.¹⁸

In addition to promoting traffic safety, the STEP Act will advance racial equity in the enforcement of traffic laws. The report issued by the Office of Legislative Oversight confirms the continued racial disparities in the enforcement of these laws and makes it clear that traffic stops for minor traffic offenses are a major cause of these disparities. Black and Latinx drivers are stopped for low-level traffic offenses at a much higher rate than other drivers. The STEP Act would prohibit these traffic stops.

¹⁷ WTOP News, *New dashboard tracks every fatal crash in Maryland*, Maryland Matters, (Apr. 15, 2023), <https://www.marylandmatters.org/2023/04/15/new-dashboard-tracks-every-fatal-crash-in-maryland/?eType=EmailBlastContent&eId=0479ffd1-0175-4c9a-9e1e-8237d6a1a4e0>.

¹⁸ Katelynn C. Bachman et al., *Traffic stops do not prevent traffic deaths*, 91(1) J. OF TRAUMA & ACUTE CARE SURGERY 141 (July 2021).

VI. The Commonwealth of Virginia and Other Jurisdictions Have Passed Laws and Policies Similar to the STEP Act

In 2020, the Virginia General Assembly passed HB 5058 – a law that is very similar to the STEP Act. This law prohibits law enforcement officers throughout the state of Virginia from stopping drivers for low-level traffic offenses. It also excludes from court proceedings any evidence found during such an unlawful stop.¹⁹ Other jurisdictions that have passed laws or policies similar to the STEP Act include Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; Fayetteville, North Carolina; Lansing, Michigan; Berkeley, California; and Oakland, California.²⁰

The Chief of Police of Fayetteville, North Carolina implemented policies similar to the STEP Act in 2013. Significantly, the policies were passed after the Department of Justice found racial disparities in the enforcement of Fayetteville’s traffic laws. In 2020, academics from the University of North Carolina, in connection with the University’s Injury Prevention Research Center, conducted a comprehensive study of the impact of the policies between 2013 and 2016. The study also documented the harmful impact of racial profiling on Black and Latinx drivers and their communities. The study concluded that the policies significantly increased traffic safety and reduced racial disparities in traffic law enforcement.²¹

VII. Conclusion

We choose to live in Montgomery County and raise our families here in part because of its diversity and our belief that it is a jurisdiction committed to racial equity, fairness, and inclusion. As academics who have studied the harmful impact of racial profiling, we are appalled that the very practices we have studied and advocated against for decades exist in our own community. The documented racial disparities in traffic enforcement and the resulting harm to our community is a stain that must be removed. The STEP Act will be a sound and effective remedy for the harms produced by the current practices and will simultaneously promote safety for police officers and drivers. We strongly urge the Council to pass the STEP Act.

¹⁹ HB 5058, 1st Spec. Sess., (Va. 2020).

²⁰ PHILA., PA., CODE tit. 12 §§ 1700-1705 (2021); PITTSBURGH, PA. CODE tit. 5, art. 1, chp. 503, § 17 (2021); Mike Dolan Fliss et al., *Re-prioritizing traffic stops to reduce motor vehicle crash outcomes and racial disparities*, 7(3) INJURY EPIDEMIOLOGY (2020); John Zevalking, *July 2020: Lansing Police Department Responds to Community Policing Concerns, Embraces Police Reforms*, MICH. STATE APP. DEF. OFF. & CRIM. DEF. RES. CTR., <https://www.sado.org/Articles/Article/804> (last visited June 28, 2023); Catherine Hsu, *Berkeley City Council looks to reduce racial disparities in policing*, THE DAILY CALIFORNIAN (Feb. 24, 2021), <https://www.dailycal.org/berkeley-city-council-looks-to-reduce-racial-disparities-in-policing>; OAKLAND CA. CITY COUNCIL RESOLUTION No. 88607 C.M.S. (2021); S.F., CAL., POLICE DEPT. GENERAL ORDER 9.07 (proposed), <https://sf.gov/resource/2022/police-commission-announcements> (last visited June 28, 2023).

²¹ Mike Dolan Fliss et al., *Re-prioritizing traffic stops to reduce motor vehicle crash outcomes and racial disparities*, 7(3) INJURY EPIDEMIOLOGY (2020).