



April 21, 2023

Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, MD 20850

Re: Safety And Traffic Equity In Policing (STEP) Act, Bill 12-23

Dear Members of the County Council,

The ACLU of Maryland is strongly in support of the STEP Act, Bill 12-23, which furthers the essential goal of reducing racially disparate treatment by police, while also protecting public safety.

We have reviewed the testimony submitted by our coalition partner Silver Spring Justice Coalition (attached), and agree with the arguments presented there in support of the bill, including the need to amend the essential provision barring consent searches by MCPD officers in order to fully effectuate the important legislative intent behind that provision and the bill as a whole.

We thank council members Jawando and Mink for introducing this bill, and thank the council for considering our position on this legislation.

Respectfully,

A handwritten signature in blue ink, appearing to read "D. Rocah".

David Rocah
Senior Staff Attorney

Encl.

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
F/410-366-7838

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS
HOMAYRA ZIAD
PRESIDENT

DANA VICKERS SHELLEY
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL



**TESTIMONY IN SUPPORT OF THE SAFETY AND TRAFFIC EQUITY IN POLICING
(STEP) ACT, BILL 12-23
ON BEHALF OF THE SILVER SPRING JUSTICE COALITION**

The Silver Spring Justice Coalition (SSJC) is a coalition of community members, faith groups, and civil and human rights organizations from throughout Montgomery County committed to eliminating harm caused by police and empowering those communities most affected by policing. In furtherance of our mission, we urge the Council to support the STEP Act with an amendment to strengthen the consent search provision.

Montgomery County has a long history of racial disparities in traffic enforcement. The STEP Act addresses these disparities by limiting police traffic stops for some minor infractions and limiting the ability of police to search cars without cause. The STEP Act makes our community safer by allowing police to focus on dangerous driving, thus furthering our Vision Zero goals. By passing the STEP Act, Montgomery County will join jurisdictions and organizations around the country that are embracing this common-sense approach to equity and safety.

Montgomery County Has a Serious Problem With Racial Disparities in Traffic Enforcement

Racial disparities in traffic enforcement are a long-standing problem in our County. Over 20 years ago, the NAACP filed a complaint with the US Department of Justice alleging that the Montgomery County Police Department (MCPD) engaged in discriminatory traffic enforcement. That complaint led to [a memorandum of agreement](#) that ordered MCPD to collect and report data so that their discriminatory practices could be tracked. According to [a recent report by the County Council's Office of Legislative Oversight](#) (OLO), disparities in traffic enforcement persist and have even worsened in recent years. From 2018 to 2022, Black and Latinx drivers were stopped, cited, searched, and arrested at rates far exceeding their representation in our population, while White and Asian drivers were stopped at rates far below their population numbers.

Contrary to recent claims by the MCPD, the OLO data shows that non-County residents are not the source of these race-based disparities. From 2018 to 2022, 73% of stops were of County

residents, and race-based disparities were comparable for residents and non-residents.¹ MCPD's attempt to blame race-based disparities on Black interlopers from Washington, D.C. and Prince George's County is as racist as MCPD's traffic practices themselves appear to be.

Disparities in Traffic Enforcement Harm Our Community

Disparities in traffic enforcement harm our community in a multitude of ways. First, it is well documented that traffic stops can be dangerous and deadly,² with officers trained to anticipate danger and act aggressively to protect themselves. In addition, in Montgomery County, police use force against Black and brown people at far higher rates than White people (Black and Latinx people were the targets of 80% of all use-of-force incidents in 2022!).³ This combination means that Black and brown drivers are at a significantly greater risk of injury and death in Montgomery County because of disparities in traffic enforcement.

Second, racially disparate policing of any kind erodes the trust that communities place in police and in the rule of law more broadly. While MCPD and bill opponents argue that traffic stops are a necessary part of the enforcement of criminal laws, racially disparate stops undermine criminal enforcement efforts because they make it harder for the police and prosecutors to get the cooperation needed from witnesses and victims in order to prosecute crimes and keep the community safe.

Third, traffic stops can have harmful financial consequences, compounding existing race-based economic disparities.⁴ More citations means more fines to pay and more points on drivers' licenses, which can make insurance more expensive and lead to more license suspensions and revocations. Moreover, disproportionate arrests after traffic stops multiply the many harms and costs of incarceration and involvement with the criminal system.

Fourth, race-based disparities in the enforcement of low-level traffic infractions are frequently the result of pretextual traffic stops in which officers implicitly or explicitly hope that stopping a driver will yield evidence of criminal conduct, even though they don't have an independent legal basis to make a criminal stop. This often leads police to prolong stops by questioning drivers and pressuring them to consent to searches of their cars. These encounters can be humiliating, traumatic (and as discussed above, dangerous) for targeted drivers and they take valuable policing resources away from the enforcement of serious traffic offenses.

¹[OLO Memorandum Report 2022-12](#), pp. 11-12.

²<https://www.nytimes.com/2021/10/31/us/police-traffic-stops-killings.html>.

³Montgomery County Police Department [Annual Use of Force Report, 2022](#) at pg. 12.

⁴The Fines and Fees Justice Center Clearinghouse, <https://finesandfeesjusticecenter.org/>.

Disparities in Traffic Enforcement Cannot be Justified By the Need to Investigate Criminal Conduct

The use of racist and harmful pretext stops to ferret out criminal conduct can occasionally yield results (a claim that MCPD relies heavily on in opposing the STEP Act). However, it is a needle in a haystack approach that is extremely ineffective. For example, MCPD leadership recently testified at a hearing of the Council's Public Safety Committee and shared that last year, 172 firearms were seized during 35,000 traffic stops; that is less than .5% of all stops! In years past, that percentage was even smaller.⁵

Research from jurisdictions around the country reveals similar data, with contraband being seized during a very small percentage of traffic stops. For example, a study of traffic stops and policing strategies in Nashville, Tennessee found that only 1.6% of all traffic stops resulted in custodial arrests, and those were often for license violations or drugs, leading the study's authors to conclude that the city could reduce traffic stops without an associated rise in serious crime.⁶ In addition, a study of 20 million records of traffic stops in North Carolina from 2002-2016 showed that, of all stops, just .03% led to both the discovery of contraband and an arrest.⁷ Moreover, a recent analysis of the eight largest police departments in California found that officers confiscate firearms in an average of 0.5% of searches conducted during vehicle stops. Looking at all vehicle stops, 0.04% of stops in Los Angeles resulted in firearms seizures, and 0.3% of those in Oakland did.⁸

Not surprisingly, therefore, there is also research showing that limiting stops for minor infractions does not negatively impact criminal enforcement. For example, in 2013, Fayetteville, North Carolina reprioritized traffic stops to emphasize safety stops (as opposed to equipment, regulatory, or criminal investigation-driven traffic stops) in order to prevent crashes and reduce racial disparities. An academic study of the intervention found that violent crime outcomes were unchanged and that non-violent crime outcomes were reduced.⁹ In another study of two jurisdictions in Connecticut that

⁵Policing Advisory Commission, [Findings and Recommendations for Traffic Enforcement](#), December 2021, at pp. 11-12.

⁶Chohlas-Wood, A., Goel, S., Shoemaker, A., & Shroff, R. (2018, November 19). *An Analysis of the Metropolitan Nashville Police Department's Traffic Stop Practices*. Stanford Computational Policy Lab. <https://policylab.stanford.edu/media/nashville-traffic-stops.pdf>

⁷Baumgartner, F. R., Epp, D. A., & Shoub, K. (2018). *Suspect citizens: What 20 million traffic stops tell us about policing and race*. Cambridge University Press. pp. 54, 230.

⁸Premkumar, D., Skelton, A., & Lofstrom, M. (2023). How Often Are Firearms Confiscated During Traffic Stops? Public Policy Institute of California. <https://www.ppic.org/blog/how-often-are-firearms-confiscated-during-traffic-stops/>

⁹Fliss, M.D., Baumgartner, F., Delamater, P. et al. (2020). Re-prioritizing traffic stops to reduce motor vehicle crash outcomes and racial disparities. *Injury Epidemiology*, 7(3). <https://doi.org/10.1186/s40621-019-0227-6>

reprioritized traffic enforcement to focus on dangerous driving and promote racial equity, crime dropped by 5%.¹⁰

The STEP Act Will Increase Traffic Safety and Further the County's Vision Zero Goals

In addition to claiming that the STEP Act will harm efforts to fight crime, MCPD and other opponents worry that the law will decrease traffic safety. Available data shows that the opposite is true; reprioritizing traffic stops to focus on dangerous driving increases traffic safety. First and foremost, recent data from right here in Maryland shows that in 2022, the four greatest causes of death from traffic incidents were speeding and aggressive driving, drug and alcohol impairment, distracted driving, and the failure to use seat belts (which caused the deaths, not the accidents).¹¹

In addition, the above-discussed study of Fayetteville, North Carolina's reprioritization of traffic stops found that when safety stops (as opposed to equipment, registration, and criminal investigation stops) increased from 30% of all stops to 80% of all stops, traffic fatalities dropped by 28%, and traffic crashes dropped by 13%.¹² In Newington, Connecticut, after local police shifted enforcement priorities away from lighting violations towards moving violations, they saw a 250% increase in stops that resulted in a DUI arrest over a 4-year period.¹³ In New Haven, Connecticut, the Chief of Police reprioritized traffic enforcement to focus on dangerous driving after finding significant racial disparities in enforcement. The following year, the department reported that accidents dropped by 10%.¹⁴

Multiple large-scale studies of crash data also demonstrate that traffic stops for low-level traffic enforcement do not promote traffic safety. For example, an analysis of five years of crash data conducted

¹⁰Ross, M. B., Kalinowski, J. J., & Barone, K. (2020). Testing for disparities in traffic stops: Best practices from the Connecticut model. *Criminology & Public Policy*, 19(4), 1289–1303. <https://doi.org/10.1111/1745-9133.12528>. Condon, T. (2022, January 31). After poor start, CT anti-racial profiling effort is making progress. *Hartford Courant*. <https://www.courant.com/politics/hc-pol-racial-profiling-20220131-s3goxbcd5fgv7blw4uejfe7gte-story.html>

¹¹[New Dashboard Tracks Every Fatal Crash in Maryland](#), *Maryland Matters*, April 15, 2023.

¹²Fliss, M.D., Baumgartner, F., Delamater, P. et al. (2020). Re-prioritizing traffic stops to reduce motor vehicle crash outcomes and racial disparities. *Injury Epidemiology*, 7(3). <https://doi.org/10.1186/s40621-019-0227-6>

¹³Condon, T. (2022, January 31). After poor start, CT anti-racial profiling effort is making progress. *Hartford Courant*. <https://www.courant.com/politics/hc-pol-racial-profiling-20220131-s3goxbcd5fgv7blw4uejfe7gte-story.html>

¹⁴Ross, M. B., Kalinowski, J. J., & Barone, K. (2020). Testing for disparities in traffic stops: Best practices from the Connecticut model. *Criminology & Public Policy*, 19(4), 1289–1303. <https://doi.org/10.1111/1745-9133.12528>

by the Connecticut Racial Profiling Prohibition Advisory Board found that equipment issues were a contributing factor in 12% of crashes, but the equipment issues that were identified – brake, steering, power train, and tire issues – did not align with the equipment issues that led police to make traffic stops and issue traffic citations (because those issues were not visible to police when they were on patrol).¹⁵

In another instance, the Journal of Trauma and Acute Care Surgery analyzed traffic stop data from 33 state patrol divisions across the country to determine whether there was a correlation between higher rates of traffic stops in a given patrol and lower rates of motor vehicle crash deaths. The study found no association between traffic stops and death rates from crashes. As a result, the study concluded that strategies to reduce death from motor vehicle crashes should consider alternative strategies, such as motor vehicle modifications, community-based safety initiatives, improved access to health care, or prioritizing trauma systems.¹⁶ Following this rationale, and recognizing the race-based disparities in traffic enforcement, the Congressional Black Caucus recently urged the United States Department of Transportation to do what it could to address race-based disparities in traffic enforcement by directing funds from the 2021 Bipartisan Infrastructure Law to create reforms such as eliminating financial barriers to vehicle registration and upgrading traffic lights.¹⁷

Jurisdictions Around the Country are Passing Laws and Policies Similar to the STEP Act and National Justice Reform Organization Are Supporting Those Efforts

In recognition of the fact that decreasing stops for low-level traffic enforcement is critical to promoting equity and safety, jurisdictions and police departments around the country have passed a range of laws and policies similar to the STEP Act. This includes the states of Virginia and Oregon, as well as Philadelphia, Pittsburgh, San Francisco, Oakland, Los Angeles, Seattle, West Hollywood, Memphis and several police departments in Connecticut. Other jurisdictions such as the states of Washington, California, and Connecticut are in the process of considering similar legislation.

In addition, many national organizations are advocating for legislation and policies like the STEP Act to increase equity and safety including the [Vera Institute of Justice](#); the [NYU Policing Project](#);

¹⁵Letter to the Logistics Subcommittee, Police Transparency and Accountability Task Force from Connecticut Racial Profiling Prohibition Advisory Board. (2021, February 4). RE: Evaluation and recommendations of a primary and secondary traffic enforcement system. https://www.cga.ct.gov/jud/tfs/20200116_Police%20Transparency%20and%20Accountability%20Task%20Force/Related%20Materials/Primary%20vs.%20Secondary%20Offense%20System%20Merits.pdf

¹⁶Sarode, A. L. et al. (2021). Traffic stops do not prevent traffic deaths. *The Journal of Trauma and Acute Care Surgery*, 91(1), pp. 141–147. <https://doi.org/10.1097/TA.0000000000003163>

¹⁷[Congressional Black Caucus presses Buttigieg to reform ‘racist traffic enforcement.’](#) *The Hill*, April 10, 2023.

the [Center for Policing Equity](#); the [Urban Institute](#); and the [Law Enforcement Action Partnership](#) (LEAP). These organizations recognize that legislation like the STEP Act is a critical piece of the police reform needed to achieve racial equity and decrease policing harms, and that this legislation simultaneously furthers the goals of so many communities to increase traffic safety and effectively address criminal enforcement.

The STEP Act Can Be Even Stronger By Clarifying the Consent Search Language

SSJC's position is that the STEP Act should be amended to make clear that a police officer cannot search a car or a person during a traffic stop unless they have a legal basis other than consent.

An important component of the STEP Act is the provision that seeks to limit the ability of police to conduct a consent search during a traffic stop. The practice of pressuring drivers into allowing their cars to be searched when there is no independent legal basis to do so is an essential part of the racist police practice of pretext traffic stops and a significant cause of the race-based disparities that this bill seeks to address. Put simply, if police officers cannot convince drivers to consent to a search, they will be far less likely to conduct a pretext stop.

Given this, and given that consent searches are a source of humiliation and harassment, limits to these practices are included in many of the laws and policies being adopted throughout the country. Of note is that in the state of Oregon, after the Oregon Supreme Court found that suspicionless consent searches violated its state constitution, the Portland Police Department reported its lowest ever recorded search rate the following year. However, the rates of contraband found in searches *increased* during the same period, from 41.8% in 2016 to 60% in 2020.¹⁸ Thus, limiting consent searches decreased unnecessary searches and made the searches that did take place more likely to yield a positive result.

Unfortunately, language in the STEP Act that limits consent searches is unclear and does not go far enough to ensure that consent can no longer form the only basis for the search of a car. In its current form, the bill allows police to ask for permission to conduct a consent search of a person or vehicle "if reasonable suspicion or probable cause for a criminal offense arises during the stop." This language is broader than the legal standards currently required to search a car or a person without their consent and if adopted, it will continue to serve as a motivation for officers to conduct pretext stops for the traffic violations that the STEP Act does not address. In order to prevent all consent searches and provide the greatest protection against racist pretext stops, the bill must be amended to make it clear that consent searches are not allowed during traffic stops by the MCPD; an MCPD officer should not search a car or a person during a traffic stop unless they have a legal basis other than consent.

We thank the Council for its consideration of our testimony in support of this important bill.

¹⁸Portland Police Bureau Strategic Services Division. (2021). *Stops Data Collection 2020 Annual Report*. p. 18-21. <https://www.portlandoregon.gov/police/article/785420>.