



**TESTIMONY IN SUPPORT OF THE FREEDOM TO LEAVE ACT, BILL 2-24
ON BEHALF OF THE SILVER SPRING JUSTICE COALITION
FEBRUARY 27, 2024**

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 Freedom to Leave Act.

SSJC was a strong proponent of the predecessor to this bill, the STEP Act. In our testimony in support of the STEP Act, we urged the Council to adopt the strongest possible ban on consent searches conducted during traffic stops. We did this because we know that consent searches are a key driver of racial disparities in traffic enforcement and in the harms that can result from a traffic stop. While the STEP Act could not move forward because of a conflict with state law, the Freedom to Leave Act gives this Council another chance to address our County's long and shameful history of racial disparities in traffic enforcement, its disproportionate use of force against people of color, and the lack of trust that so many Black and brown community members have in law enforcement.

***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 agreement¹ that ordered MCPD to collect and report data so that their discriminatory practices could be tracked. More recently, a report by the County Council's Office of Legislative Oversight (OLO) found that disparities in traffic enforcement persist and have even worsened in recent years. From 2018 to 2022, Black and Latinx drivers were stopped, cited,

¹DOJ Press Release, January 14, 2000.

<https://www.justice.gov/archive/opa/pr/2000/January/024cr.htm>

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searched, and arrested at rates far exceeding their representation in our population, while White and Asian drivers were stopped at rates far below their representation in the County's population.²

The Practice of Prolonging Traffic Stops and Pressuring Drivers Into Allowing Their Cars to Be Searched is an Essential Component of Racially Disparate Pretext Traffic Stops

If police officers cannot go beyond the stated purpose of their traffic stop and search a stopped car, they will be far less likely to stop it in the first place. The nexus between racist pretext stops and searches in Montgomery County is clear: from 2018 to 2022, Montgomery County Police conducted 30,664 searches during traffic stops, **74% of those searches were of Black or Latinx community members**. During a similar time period (2016 to 2022), **Black and Latinx drivers constituted 67.5% of all searches based on consent**.³ Nationally, over 90% of all warrantless searches in the U.S. are conducted using consent as the legal basis,⁴ and a recent study in California revealed that police ask Black and Latinx drivers for consent searches more often than white drivers.⁵

Consent Searches Are Often Not Truly Consensual Because of the Coercive Nature of the Police-civilian Relationship, Particularly for People of Color

While the power imbalance between police and civilians is obvious on its face, research shows that people are more likely to comply with a request from a person in a position of authority.⁶ This is particularly true when the person in the position of authority is carrying a gun and has the power to detain, arrest, and even kill you, usually with impunity. This power imbalance is so great that even informing someone of their right to refuse consent does not significantly increase the likelihood that they will exercise that right. As researchers have concluded, "The reason people comply with police . . . is social, not informational. The social demands of police-citizen interactions persist even when people are informed of their rights."⁷ For this reason, the fact that the Montgomery County Police Department has a newly implemented policy of advising people of their right to refuse consent and of

²OLO Memorandum Report, 2022-12.

<https://www.justice.gov/archive/opa/pr/2000/January/024cr.htm>

³Montgomery County Office of Legislative Oversight, RESJ Statement, pg. 3.

<https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/2024/Bill2-24.pdf>

⁴Roseanna Sommers & Vanessa K. Bohns, The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance, The Yale Law Journal (2019).

https://www.yalelawjournal.org/pdf/SommersBohns_w4cmjkwe.pdf

⁵<https://oag.ca.gov/system/files/media/ripa-board-report-2022.pdf>

⁶Roseanna Sommers & Vanessa K. Bohns, The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance, The Yale Law Journal (2019).

https://www.yalelawjournal.org/pdf/SommersBohns_w4cmjkwe.pdf

⁷Id.

obtaining written confirmation of consent, does not make this bill any less imperative; these prophylactic measures are simply not enough.

It is not just fear that drives someone to comply when they would prefer not to; it is the daily pressures of life. It is common for officers to tell the person that “you will be out of here more quickly if you just let me have a look inside your car,” or even to threaten to detain the person until a drug-sniffing dog can be brought to the scene, which could greatly extend the duration of a stop. When someone is trying to get to work, to pick up a child from school, or just live their lives, it often feels easier to simply comply, rather than exercise their right to refuse. All of these pressures are compounded for members of marginalized communities for whom economic imperatives, such as not being late to work so that they won’t lose their job, are so much greater. People of color, young people, and people for whom English is not their first language are all far less likely to understand and assert their right to refuse consent to extend the duration of their traffic stop and the search of their car. As a recent report by the DC Justice Lab concluded, “*consenting is a survival tactic, not a choice.*”⁸

Pretext Traffic Stops, Prolonged Detentions, and Consensual Searches Harm Our Community

Because traffic stops are the most common way that people interact with police officers, especially in a suburban environment like Montgomery County, they are a common way that people are at risk of harm from police. It is well documented that traffic stops can be dangerous and deadly.⁹ In Montgomery County, harm by police falls disproportionately on our most vulnerable community members, with police using 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!).¹⁰ 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 and in searches conducted during traffic stops.

Racially disparate policing of any kind erodes the trust that communities place in police and in the rule of law more broadly. While bill opponents argue that consent searches and consensual detentions during stops are a necessary part of the enforcement of criminal laws, the reality is that 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.

⁸<https://dcjusticelab.org/wp-content/uploads/2022/04/EliminateConsentSearches.pdf>, at pg. 2.

⁹<https://www.nytimes.com/2021/10/31/us/police-traffic-stops-killings.html>.

¹⁰Montgomery County Police Department [Annual Use of Force Report, 2022](#) at pg. 12.

Moreover, pretext traffic stops that result in the issuance of traffic tickets can have harmful financial consequences, compounding existing race-based economic disparities.¹¹ More citations mean more fines to pay and more points on drivers' licenses, which can make insurance more expensive and lead to more license suspensions and revocations. And, disproportionate arrests after traffic stops and searches multiply the many harms and costs of incarceration and involvement with the criminal legal system.

In addition, just as we argued in our STEP Act testimony that wasting officer time on low-level traffic infractions makes our roads less safe, not more, prolonging traffic stops to follow a hunch (a hunch that is often based on implicit bias) also removes officers from doing the important work of keeping our County safe from people who are actually engaged in criminal activity and dangerous driving.

Last, but certainly not least, standing on the side of the road surrounded by police while you are detained and searched can be humiliating and traumatic. The people driving by have no idea that the person they are seeing on the side of the road surrounded by police while their car is being searched “consented,” to being there. The emotional impact of this practice cannot be overstated. And, given that more often than not, it will be a Black man standing on the side of the road, this practice feeds already existing racist beliefs about Black men and criminality.

The Need to Investigate Criminal Conduct, Including Firearms Offenses, Does Not Justify Continuing the Harmful Practice of Prolonging Traffic Stops and Coercing Drivers Into Allowing Police to Search Their Cars

Opponents of bills like this contend that eliminating consensual searches will prevent police from getting guns off our streets. But the data does not support this asserted need. In Montgomery County in 2022, 172 guns were seized during 35,000 traffic stops¹² – in other words, less than ½ of 1% of all traffic stops result in gun seizures.

Data from around the country reflect similar numbers. 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, for all offenses, including firearms.¹³ Similarly, a study of 20 million traffic stop records in

¹¹The Fines and Fees Justice Center Clearinghouse, <https://finesandfeesjusticecenter.org/>.

¹²Briefing to the Transportation/Environment and Public Safety Committees of the Montgomery County Council, February 6, 2023, beginning at approximately minute 1:30:00. https://montgomerycountymd.granicus.com/player/clip/16676?view_id=169&redirect=true&ch=3eb410096b7046c63f6e892648d30832

¹³Chohlas-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>

North Carolina from 2002-2016 showed that, of all stops, just .03% led to the discovery of contraband and an arrest.¹⁴ 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.¹⁵

Given the small benefit and high cost of consent searches, limits to consent searches are included in many of the laws and policies regulating traffic stops being adopted throughout the country.¹⁶ Of note is that in the state of Oregon, after the Oregon Supreme Court found that suspicionless consent searches violated its state constitution and ordered them to stop, 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 2020.¹⁷ ***Thus, limiting consent searches decreased unnecessary searches and made the searches that did take place more likely to yield a positive result.***

This result is not surprising when you consider that officers have other avenues through which they can search a car that do not involve coercive fishing expeditions. If an officer has reasonable and articulable suspicion of criminal activity, they can lawfully extend the duration of a traffic stop beyond its intended purpose to investigate further.¹⁸ If an investigation during a traffic stop leads to the arrest of someone in the car, officers can search the car incident to that arrest,¹⁹ and if a car is impounded as a result of the arrest of a driver during a traffic stop, officers can also conduct an inventory search of that car.²⁰ Of course, if at any point, an officer has probable cause to believe that evidence of a crime or

¹⁴Baumgartner, 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.

¹⁵Premkumar, 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/>

¹⁶See, e.g., Connecticut Sec. 54-330: https://www.cga.ct.gov/current/pub/chap_959.htm#sec_54-330 ; see also ACLU Testimony for the Maryland House Judiciary Committee (Mar. 13, 2018): https://www.aclu-md.org/sites/default/files/field_documents/hb_1133_consent_search_ban.pdf (detailing bans on certain consent searches in Rhode Island, Minnesota, New Jersey, and California).

¹⁷Portland Police Bureau Strategic Services Division. (2021). *Stops Data Collection 2020 Annual Report*. p. 18-21. <https://www.portlandoregon.gov/police/article/785420> .

¹⁸See, e.g., *Ferris v. State*, 355 Md. 356, 372 (1999).

¹⁹See *Rodriguez v. State*, 258 Md. App. 104, 117, 295 A.3d 658, 666 (2023) (the search incident arrest exception allows police to search a vehicle incident to a recent occupant's arrest if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of the arrest).

²⁰See *Duncan v. State*, 281 Md. 247, 258–59, 378 A.2d 1108, 1116 (1977) (“police may, without regard to probable cause, and, thus, absent a warrant, constitutionally enter an automobile and unlocked compartments therein, and inventory and seize articles found, provided the vehicle had been otherwise legally taken into police custody and the inventorying was pursuant to a standard police procedure.”).

contraband will be found in a car, they can search it without a warrant.²¹ All of these lawful mechanisms, based on actual, articulable facts, not hunches, can be utilized by police. As the data from Oregon shows, when law enforcement take the time to conduct real investigations, relying on one of these other non-coercive avenues, they are more likely to find evidence of a crime.

For all of these reasons, we urge the Council to vote to enact this important bill.

²¹*See, e.g., Nathan v. State*, 370 Md. 648, 665-66 (2002).

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