

**COUNTY COUNCIL FOR MONTGOMERY COUNTY MARYLAND****HEARING:**

Public Hearing on Bill No. 2-24, Feb. 27, 2024

**DATE OF TESTIMONY:**

Feb. 26, 2024

**TESTIMONY OF THE POLICING PROJECT AT NYU SCHOOL OF LAW IN  
SUPPORT OF BILL NO. 2-24**

One of the best ways to ensure transparent, effective, and ethical policing is for the public to be democratically involved in setting expectations for police practices *before* police act, instead of *after* something has gone wrong.<sup>1</sup> Collecting and publishing comprehensive data on police officer interactions with members of the public, many of which occur by way of traffic stops, is important for furthering transparency and determining how to effectively remedy the racial disparities that unfortunately persist in traffic enforcement. Likewise, setting forth in advance clear rules restricting the ability of law enforcement officers to engage in suspicionless consent searches furthers effective and ethical policing.

We thus submit this testimony in support of Bill No. 2-24, the Freedom to Leave Act (“the Act”).

**The Act Would Further Transparency By Providing for the Collection and Publication of  
Important Additional Traffic Stop Data**

The additional traffic stop data collected and published under the Act would give lawmakers, researchers, officers, and members of the public a more complete picture of traffic enforcement in Montgomery County. This, in turn, would put both law enforcement and lawmakers in a better position to conduct only effective stops and remedy the racial disparities currently present in traffic

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<sup>1</sup> As part of its mission to advance democratic accountability in policing, the Policing Project has created a number of model laws, all of which are informed by best practices in existing legislation and vetted by an advisory committee consisting of law enforcement officials, academics, police reform experts, and impacted community members. Our comprehensive model statutes on [police data collection and transparency](#) and [pretextual traffic stops/consent searches](#) were vetted through this process and form the basis of our testimony today. Our testimony also draws on the American Law Institute’s Principles of Policing on [data collection & transparency](#) and [consent searches](#).

stops in Montgomery County.<sup>2</sup> For example, collecting data on the type and amount of contraband found during stops would allow for a more meaningful assessment of the effectiveness (or ineffectiveness) of stops for particular infractions. Further, collecting data on frisks, searches, and uses of force would provide lawmakers, researchers, and the public with more comprehensive information on the social costs and invasiveness of particular traffic stops. The additional data also would expose whether particular (de-identified) officers are disproportionately likely to use force and conduct ineffective searches, or whether the problem is more widespread across the police department.

Comprehensive traffic stop data collection has helped police jurisdictions abandon poorly performing programs, while implementing programs that are more likely to further both traffic and public safety. For example, after data revealed the [ineffectiveness of the city of Nashville's policy](#) of widespread stops for minor traffic violations, the Nashville Police Department changed their practices and [stops fell 90%](#) as a result and crime rates did not rise. Further, [data from 3.5 million traffic stops](#) by Connecticut's 107 law enforcement agencies since 2013 show that when agencies deprioritized low-level stops, [arrests for DUIs increased](#), suggesting that officers' time was being used more effectively.

### **The Act Would Also Help Mitigate The Harms Posed By Suspicionless Consent Searches**

It is important to reduce the intrusiveness of the many traffic stops that take place, minimizing the fishing expeditions that disproportionately target people of color. One way to accomplish this is to limit police officers' ability to conduct consent searches.

Consent searches far too often impose unnecessary costs on members of the public and, in doing so, undermine public trust in the police. Importantly, consent searches often are not voluntary in any meaningful sense of the word. The data show that the vast majority of people consent to searches when asked by police officers, raising serious doubts about whether these searches are truly voluntary.<sup>3</sup> Indeed, psychological research suggests that people asked to consent often do not feel free to refuse because they either fear the consequences of refusal or because they feel uncomfortable declining to comply with a request from an authority figure.<sup>4</sup> It is consequently unsurprising that many people who experience consent searches feel the searches are intrusive and unsettling.

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<sup>2</sup> See, e.g., *OLO Memorandum Report 2022-12: Analysis of data*, Montgomery Traffic Violations Dataset (Oct. 25, 2022) [https://www.montgomerycountymd.gov/OLO/Resources/Files/2022\\_reports/OLORReport2022-12.pdf](https://www.montgomerycountymd.gov/OLO/Resources/Files/2022_reports/OLORReport2022-12.pdf).

<sup>3</sup> See, e.g., L.A. Police Dep't, *Arrest, Discipline, Use of Force, Field Data Capture and Audit Statistics and the City Status Report Covering Period of January 1, 2006-June 30, 2006*, at 8 (2006) (reporting that of 16,228 requests for consensual search made during the first half of 2006, 16,225, or 99.9 percent, were granted); Alexander Weiss & Dennis P. Rosenbaum, Univ. of Illinois at Chicago, *Illinois Traffic Stops Statistics Act 2010 Annual Report: Executive Summary 10* (2011) (reporting that in 2010, requests for consent to search during a traffic stop were granted 82 percent of the time).

<sup>4</sup> See, e.g., Marcy Strauss, *Reconstructing Consent*, 92 J. Crim. L. & Criminology 211, 240-241 (2001).

Just like traffic stops, there is a significant risk that consent searches are used in racially disparate ways that do not advance public safety. For instance, a 2014 study found that Illinois state police were more than two times more likely to ask Hispanic motorists for consent to search, even though police were more than two times more likely to find contraband in searches of white motorists.<sup>5</sup>

Recognizing the above, a growing number of jurisdictions—including [Connecticut](#), [Oregon](#), and [San Francisco](#)—have restricted the ability of police to engage in consent searches.

### **Conclusion**

The additional traffic stop data collect under the Freedom to Leave Act (Bill No. 2-24) would allow lawmakers, law enforcement, and community members alike to better assess the effectiveness of the Montgomery County Police Department’s traffic stop policies and reduce the unacceptable racial disparities currently present in the County. The Act further would help reduce the harms that flow from consent searches, many of which are not voluntary in any meaningful sense of the word. We thus support the Freedom to Leave Act.

Thank you for considering our testimony.

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<sup>5</sup>ACLU of Illinois, *Racial Disparity in Consent Searches and Dog Sniff Searches: An Analysis of Illinois Traffic Stop Data from 2013* (2014).