



POSITION ON PROPOSED COUNTY LEGISLATION

BILL: Freedom to Leave Act

FROM: Michael Beach, District Public Defender for Montgomery County

POSITION: Favorable

DATE: February 27, 2024

Consent searches are not truly consensual. When stopped by law enforcement, drivers, and other individuals inevitably feel undue pressure to consent and then endure the humiliation of a search of their vehicle or person in public that often yields nothing incriminating. Racial profiling is real in Montgomery County, as it is in so many other places, and when police are allowed to seek and obtain consent to search a vehicle or person without probable cause, it risks incentivizing traffic stops and other police-citizen encounters that are – consciously or subconsciously – based on impermissible biases. Public worry about safety is real, it is particularly acute in the County right now, and it is exacerbated by sensational local and national media coverage that is too often lacking in context. It is also a reality that the overreaction by the criminal legal system to this public fear and sensational media coverage falls disproportionately on Black and Brown residents and guests of the County. Just a few months ago, the local jail population in Montgomery County was 62% African-American, which is wildly out of proportion with the County’s general population demographics.

While there is a lot of focus recently on “getting firearms off the streets,” that phrase neither justifies the high percentage of humiliating and fruitless consent searches, nor justifies the disparity in arrest and incarceration of nonviolent Black and Brown men for nonviolent firearms offenses. Within our office, I assign the felony and misdemeanor cases likely to wind up in Circuit Court. In December, I examined my assignment spreadsheet for all non-violent firearm possession offenses I had assigned since July 1st. These nonviolent cases did *not* include any assaults, robberies, carjackings or any offense where a gun was fired, brandished, threatened, or used in any way. During this almost 6-month time period, I assigned 40 such cases that ended up in Circuit Court for prosecution. 67.5% of these clients were Black -- a worse racial disparity than presented by the jail population. Of the other 13 clients, 2 were Asian-American, 4 were identified as Hispanic, and 5 others had Hispanic surnames, although it wasn't clear whether they identified as White or Hispanic. If none identified as Hispanic, then 85% of these arrests for nonviolent offenses were for non-white defendants. If they all identified as Hispanic, then 95% of these arrests for nonviolent offenses were for non-white defendants. 55% of these 40 clients were denied pretrial release. This limited data set reflects what we have always known as public defenders about the overpolicing, overprosecution and overincarceration of Black and Brown communities. This bill will thus not only protect the dignity of the disproportionate number of Black and Brown men subject to the humiliation of a futile vehicle or personal search, it will also help prevent even worse racial disparities from pervading our criminal legal system as efforts to reimplement the failed and reactionary policies of the 1980s and 1990s tragically take root again.