

Racial Equity and Social Justice (RESJ) Impact Statement

BILL 12-23: POLICE – TRAFFIC STOPS – LIMITATIONS (THE STEP ACT)

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 12-23 will have a positive impact on racial equity and social justice (RESJ) in the County. Bill 12-23 would disproportionately benefit Black and Latinx drivers through limiting police stops for traffic offenses with the racial disparities and consensual searches. The Bill aligns with best practices for reducing racial disparities in police stops, which could improve health and other outcomes among Black, Indigenous, and Other People of Color (BIPOC) constituents. Given the potential social benefits, OLO anticipates the positive RESJ impact will be moderate to large. Overall, OLO evaluates Bill 12-23 to be an equitable policy through its prioritization of RESJ.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements (RESJIS) is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF BILL 12-23

Racial disparities in traffic stops, the most frequent type of engagement between police offices and the public, has been a concern nationally and locally.³ As described in OLO Report 2021-10, “[s]tudies show that Black and Latino drivers are stopped and searched during traffic stops for lower-level traffic violations at disproportionately higher rates compared to White drivers.”⁴ Locally, OLO Memorandum Report 2022-12 recently found that racial disparities in traffic stops persisted or worsened between FY18 and FY22.⁵

As described in the introduction staff report, the purpose of Bill 12-23, the Safety and Traffic Equity in Policing (STEP) Act, “is to promote fairness by reducing racial disparities that occur during a traffic stop, promote safety and reduce community trauma by limiting traffic stops, improve community policing relations, and further the County’s Vision Zero goals.” If enacted, Bill 12-23 would:⁶

- **Prohibit a police officer from conducting a stop for certain traffic offenses.** The Bill would prohibit traffic stops by police officers based solely on suspected violation of traffic offenses related to licensing and registration; certificate of title or insurance; window tinting; defective headlamp or taillight; illuminated license plate; minor windshield obstructions; and other provisions under Title 22 of Maryland Vehicle Law. The Bill would also prohibit traffic stops of a person for suspected violation of crossing against a walk signal or crosswalk (i.e., jaywalking). If a police officer identifies one of these offenses for a secondary violation after conducting an initial stop for a reason not prohibited under this Bill, the officer must first issue a verbal or written warning for the secondary violation and issue a citation for the second or subsequent offenses.

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- **Prohibit a police officer from conducting consent searches of a vehicle.** Under the Bill, a police officer could ask for permission to conduct a consent search of a person or vehicle only if the officer has reasonable suspicion or probable cause to believe that a criminal offense arose during the traffic stop.
- **Require the collection of data and information related to traffic stops.** The Bill would require the Chief of Police to collect, publish, and report traffic stop data on the initial reason justifying each traffic stop; biased stops on a per-police officer basis;⁷ complaints related to a biased stop by a police officer; and alleged and sustained violations of provisions of this Bill.

The provisions of this Bill would be excluded from collective bargaining. An officer who violates a provision under this Bill would be subject to disciplinary action in accordance with the state approved Uniform Disciplinary Matrix.⁸ Bill 12-23, Police – Traffic Stops – Limitations (The STEP Act), was introduced by the Council on February 28, 2023. In October 2022, OLO published Memorandum Report 2022-12, Analysis of dataMontgomery Traffic Violations Dataset. OLO builds on this report for this analysis.⁹

POLICE STOPS AND RACIAL EQUITY

For decades, it has been established that Black and Latinx drivers in the U.S. are subjected to law enforcement traffic stops at disproportionately high rates.¹⁰ This is true locally as evidenced by data describing racial and ethnic disparities in traffic stops in the Appendix. This is just one phenomenon attributed to racial profiling – a discriminatory practice by law enforcement where individuals are targeted for suspicion of crime, based on race, ethnicity, religion, or national origin.¹¹

Modern policing in the U.S. emerges from a legacy of racial inequity. The earliest policing efforts, slave patrols, were charged with policing free and enslaved Black people to instill fear and deter slave revolts.¹² The growth of police departments in the early twentieth century coincided with the expansion of car ownership in the U.S.¹³ As traffic law enforcement increased police interactions with average citizens, racial inequities surfaced. By the 1930s, the NAACP began receiving numerous complaints of police abuse and violence towards Black drivers.¹⁴

In *Pulled Over: How Police Stops Define Race and Citizenship*, its authors consider the investigatory stop, “a police stop where the intent is not to sanction a driving violation but to look for evidence of more serious criminal wrongdoing.” The authors distinguish investigatory stops from traffic-safety stops, arguing “[t]he investigatory stop is why [B]lacks are stopped at much higher rates than [W]hites and why police pursue intrusive lines of questioning and searches more commonly in stops of [B]lacks than of [W]hites.” Observations from the book include: ¹⁵

- Investigatory stops arose as a practice in police departments in the 1970s and 1980s amid harsher enforcement of ordinary street disorder and drugs. Investigatory stops have since evolved to become an institutionalized practice, “supported and legitimated by rules, training, and law, and that spread widely to become a commonly accepted activity.”
- Regardless of officer discriminatory intent, investigatory stops inherently exacerbate racial disparities by “encouraging officials to act on implicit [racial] stereotypes when deciding whom to stop.” Officers typically identify a pretext – often a minor traffic violation – to justify an investigatory stop, though the intent is “to criminally investigate the driver in the hope of making an arrest.” Yet, the vast majority of stops and searches do not uncover illegal activity. Thus, investigatory stops sacrifice “the liberty and dignity of large numbers of innocent people, who are disproportionately racial minorities, in pursuit of a small number who are dangerous or carrying contraband.”

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- Black drivers recognize when they are being subjected to an investigatory stop, and recall these experiences with fear and resentment, despite officer politeness. In contrast, “Whites almost exclusively experience traffic-safety stops and generally judge these stops to be basically fair.” The stark difference in how police stops are experienced by Black drivers and White drivers makes them “a defining aspect of the racial divide in America.” All in all, the experiences of BIPOC with investigatory stops “erodes drivers’ overall trust in the police, willingness to call the police for help, sense of their own freedom to drive, and sense of their place in society.”

OLO Report 2021-10 cited several studies indicating that Black and Latinx drivers in the U.S. are stopped and searched for minor traffic violations – technical violations of the traffic code as opposed to dangerous or unsafe driving – at disproportionately high rates compared to White drivers.¹⁶ OLO Memorandum Report 2022-12 subsequently studied racial disparities in over 300,000 traffic stops by the Montgomery County Police Department (MCPD) between FY18 and FY22, finding the following at the local level:¹⁷

- Asian and White drivers accounted for smaller percentages of traffic stops (6% and 35%, respectively) than their population percentages (16% and 43%, respectively). Asian and White drivers were also underrepresented in searches (3% and 21%, respectively) and arrests (3% and 21%, respectively).
- Black drivers accounted for a higher percentage of traffic stops (30%), searches (43%), and arrests (38%) than the percentage of the adult population that is Black (18%).
- Latinx drivers accounted for a higher percentage of traffic stops (21%), searches (31%), and arrests (35%) than the percentage of the population that is Latinx (19%).
- Overall, White female drivers were the most underrepresented group in traffic stops, and Black male drivers were the most overrepresented group.

Moreover, as noted in the Appendix, racial disparities in traffic stops were evident among MCPD traffic stops by jurisdiction. For example, while Black people accounted for 18 percent of County residents between FY18 and FY22 and 27 percent of MCPD traffic stops among Montgomery County drivers, they accounted for 41 percent of traffic stops among other jurisdiction drivers. Conversely, White people accounted for 43 percent of County residents, 36 percent of traffic stops among Montgomery County drivers, and 32 percent of traffic stops among other jurisdiction drivers.

Multiple studies suggest disproportionately targeting BIPOC drivers in police stops is ineffective in uncovering illegal activity or reducing crime.¹⁸ Nonetheless, as described in *Pulled Over*, investigatory stops can have harmful effects on BIPOC communities in terms of relations with police and general sense of equality in society.¹⁹ Further, a 2020 study published in the *Journal of Ethnic and Health Disparities* describes how police profiling impacts the health of Black Americans, identifying violent confrontations with police that cause injury or death among the potential harms.²⁰

The authors of *Pulled Over* contend that addressing racial disparities in police stops must go deeper than training officers to be polite and respectful when conducting stops, offering the following three recommendations:²¹

- Changing professional norms within police departments to avoid car and pedestrian stops except when there is clear evidence of unsafe driving or criminal activity.
- Prohibiting pretextual stops except when justified by overriding public safety need. This would be supported by requiring officers to record their reason for each stop and allowing officers to conduct a criminal records search on a driver only after the legal basis for a stop is reported and recorded.

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- Prohibiting consent searches unless there is probable cause to believe a crime has been committed. Searches should be conducted only with supervisor authorization and evidence justifying searches should be recorded and evaluated by supervisors.

Along with other jurisdictions, the County has also explored addressing racial disparities in police stops through reassigning traffic law-enforcement, including automated traffic enforcement, to a non-police agency.^{22,23}

ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Bill 12-23 on RESJ in the County, OLO considered two related questions:

- Who are the primary beneficiaries of this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

For the first question, OLO considered the likely demographics of drivers who could no longer be stopped by MCPD for traffic offenses specified in the Bill, as well as of drivers who could no longer be subjected to consent searches. Table 1 demonstrates that Black and Latinx drivers were overrepresented among citations for the specified traffic offenses, while White and Asian drivers were underrepresented. Of note, Table 1 summarizes demographics of all citations received under Title 22, however Bill 12-23 would not prohibit stops for all traffic offenses under this Title.

Table 1: Traffic Citations by Driver Race or Ethnicity and Maryland State Code Transportation Article Title, FY18-22

Title	Total	Asian	Black	Latinx ²⁴	Native American	White	Other
Adult Population	819,119	16%	18%	19%	<1%	43%	4%
Title 13: Cert. of Title and Reg. of Vehicles	34,554	4%	42%	21%	<1%	27%	5%
Title 16: Drivers' Licenses	58,621	2%	41%	33%	<1%	19%	4%
Title 17: Required Security	5,699	2%	51%	24%	<1%	18%	4%
Title 22: Equipment of Vehicles	9,914	3%	32%	36%	<1%	23%	6%

Source: Adapted from OLO Memorandum Report 2022-12.

Table 2 demonstrates that from FY 2018 to FY 2022 Black and Latinx drivers were also overrepresented among consent searches, while White and Asian drivers were underrepresented.

Table 2: Consent Searches by Driver Race or Ethnicity, FY18-FY22

Driver Race or Ethnicity	Adult Population	Consent Searches
Total	819,119	3,072
Asian	16%	2%
Black	18%	51%
Latinx	19%	22%
Native American	<1%	<1%
White	43%	23%
Other	4%	2%

Source: OLO Analysis of Traffic Violations Dataset, dataMontgomery.

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For the second question, OLO considered how the Bill could address racial inequities in police stops. As previously discussed, racial inequities in police stops are particularly harmful for BIPOC communities in terms of health, relations with police, and general sense of equality in society. Through limiting police stops for certain traffic offenses and consent searches, Bill 12-23 is aligned with general recommendations for reducing racial disparities in police stops. Requiring data collection on the initial reason justifying each stop also supports the specific recommendation for limiting pretextual stops.

OLO Memorandum Report 2022-12 calculated disparity scores for the six titles of the Maryland Vehicle Law that generated the most citations between FY18 and FY22. The disparity score measures the degree of racial disparities for citations issued within each title, with a higher score indicating larger racial disparities and a lower score indicating smaller racial disparities.²⁵ Table 3 below orders the titles by their disparity scores from largest to smallest. Bill 12-23 would limit police stops for all offenses under the titles with the first, second, and fourth largest disparity scores, and limit police stops for certain offenses under the title with the third largest disparity score.

Table 3: Top Six Titles of Maryland Vehicle Law Generating the Most Citations by Racial Disparity Score, FY18-FY22

Title	Disparity Score
Title 17: Required Security	77 points
Title 16: Drivers' Licenses	76 points
Title 22: Equipment of Vehicles	66 points
Title 13: Cert. of Title and Reg. of Vehicles	56 points
Title 20: Accidents and Accident Reports	55 points
Title 21: Rules of the Road	44 points

Source: Adapted from OLO Memorandum Report 2022-12.

Taken together, OLO anticipates Bill 12-23 will have a positive impact on RESJ in the County. Bill 12-23 would disproportionately benefit Black and Latinx drivers through limiting police stops for traffic offenses that currently have among the largest racial disparities. Black and Latinx drivers would also disproportionately benefit from limitations on consent searches. Bill 12-23 aligns with recommendations for reducing racial disparities in police stops, which could improve health, relations with police, and general sense of equality in the community for BIPOC constituents. Given the potential social benefits, OLO anticipates the positive RESJ impact will be moderate to large. Overall, OLO evaluates Bill 12-23 to be an equitable policy through its prioritization of RESJ.

RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.²⁶ OLO anticipates Bill 12-23 will have a positive impact on RESJ in the County. As such, OLO does not offer recommended amendments.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

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CONTRIBUTIONS

OLO staffer Janmarie Peña, Performance Management and Data Analyst, drafted this RESJ impact statement.

APPENDIX

Select Tables from OLO Memorandum Report 2022-12

Montgomery County Police Department Traffic Stops by Driver Race or Ethnicity, FY18-22

Race/Ethnicity and Gender	FY18	FY19	FY20	FY21	FY22	5-Year Change	5-Year Total	Adult Population*
Total	117,585	116,668	72,246	29,333	40,207	-77,378	376,039	819,119
Asian	7%	7%	6%	5%	5%	-1 pt	6%	16%
Female	3%	3%	2%	2%	2%	-1 pt	3%	8%
Male	4%	4%	4%	3%	3%	-1 pt	4%	8%
Black	31%	30%	31%	30%	30%	-1 pt	30%	18%
Female	11%	11%	11%	10%	11%	<1 pt	11%	9%
Male	20%	19%	20%	20%	19%	-1 pt	20%	9%
Latinx	20%	20%	20%	23%	22%	+2 pts	21%	19%
Female	6%	6%	6%	6%	6%	+1 pt	6%	9%
Male	14%	15%	14%	17%	16%	+2 pts	15%	9%
Native American	<1%	<1%	<1%	<1%	<1%	<1 pt	<1%	<1%
Female	<1%	<1%	<1%	<1%	<1%	<1 pt	<1%	<1%
Male	<1%	<1%	<1%	<1%	<1%	<1 pt	<1%	<1%
White	36%	36%	35%	32%	28%	-8 pts	35%	43%
Female	14%	15%	14%	12%	11%	-3 pts	14%	22%
Male	22%	22%	21%	20%	17%	-5 pts	21%	22%
Other	7%	7%	8%	9%	14%	+8 pts	8%	4%
Female	2%	2%	3%	3%	5%	+3 pts	3%	2%
Male	4%	4%	5%	6%	9%	+5 pts	5%	2%

Montgomery County Police Department Traffic Stops by Driver Residency, FY18-22

Race or Ethnicity	Montgomery County Residents		Other Jurisdictions
	Traffic Stops	Adult Population	Traffic Stops
Total	274,313	819,119	101,180
Asian	7%	16%	4%
Black	27%	18%	41%
Hispanic	22%	19%	16%
Native American	<1%	<1%	<1%
White	36%	43%	32%
Other	8%	4%	7%

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¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools. <https://www.racialequitytools.org/glossary>

² Ibid

³ Introduction Staff Report for Bill 12-23, Montgomery County Council, Introduced February 28, 2023. https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2023/20230228/20230228_2B.pdf

⁴ Leslie Rubin and Blaise DeFazio, OLO Report 2021-10, Office of Legislative Oversight, July 27, 2021. https://www.montgomerycountymd.gov/OLO/Resources/Files/2021_Reports/OLOReport21-10.pdf

⁵ Natalia Carrizosa, OLO Memorandum Report 2022-12, Office of Legislative Oversight, October 25, 2022. https://www.montgomerycountymd.gov/OLO/Resources/Files/2022_reports/OLOReport2022-12.pdf

⁶ Introduction Staff Report for Bill 12-23

⁷ Under Bill 12-23, a biased stop is defined as a traffic stop in which a member inappropriately considers characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, socio-economic status, age, or disability, in deciding whether to initiate a stop.

⁸ Statewide Police Disciplinary Matrix, Maryland Police Training & Standards Commission, June 9, 2022. https://mdle.net/pdf/Commission_Approved_Uniform_Disciplinary_Matrix.pdf

⁹ Carrizosa

¹⁰ David A. Harris, “Racial Profiling: Past, Present, and Future?” Criminal Justice Magazine, American Bar Association, January 21, 2020. https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2020/winter/racial-profiling-past-present-and-future/

¹¹ “Racial Profiling: Definition,” American Civil Liberties Union. <https://www.aclu.org/other/racial-profiling-definition>

¹² Michael A. Robinson, “Black Bodies on the Ground: Policing Disparities in the African American Community—An Analysis of Newsprint From January 1, 2015, Through December 31, 2015,” Journal of Black Studies, April 7, 2017. <https://journals.sagepub.com/doi/10.1177/0021934717702134>

¹³ Josh Keefe, “A Brief History of the Traffic Stop (Or How the Car Created the Police State),” Observer.com, July 26, 2016. <https://observer.com/2016/07/a-brief-history-of-the-traffic-stop-or-how-the-car-created-the-police-state/>

¹⁴ Liz Mineo “Legal Historian Traces ‘Racism on the Road,’” The Harvard Gazette, November 22, 2021. <https://news.harvard.edu/gazette/story/2021/11/historian-urges-end-to-police-traffic-law-enforcement/>

¹⁵ Charles R. Epp, Steven Maynard-Moody, Donald Haider-Markel, *Pulled Over: How Police Stops Define Race and Citizenship* (University of Chicago Press, 2014)

¹⁶ Rubin and DeFazio

¹⁷ Carrizosa

¹⁸ Karin D. Martin and Jack Glaser, “The Indefensible Problems with Racial Profiling,” Society and Culture: Debates on Immigration, 2012. https://gspp.berkeley.edu/assets/uploads/research/pdf/Martin_Glaser- Racial_Profiling-Debates_Immigration_2012.pdf

¹⁹ Epp, Maynard-Moody, and Haider-Markel

²⁰ Cato T. Laurencin and Joanne M. Walker, “Racial Profiling is a Public Health and Health Disparities Issue,” Journal of Racial and Ethnic Health Disparities, 2020. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7231642/>

²¹ Epp, Maynard-Moody, and Haider-Markel

²² Rubin and DeFazio

²³ Rebecca Tan, “Should Police be in Charge of Traffic Enforcement? In a Suburb Beset by Racial Inequities, Lawmakers Aren’t Sure.” The Washington Post, August 10, 2020. https://www.washingtonpost.com/local/md-politics/montgomery-police-bias-traffic-/2020/08/07/818fd860-d72e-11ea-aff6-220dd3a14741_story.html

²⁴ Throughout this RESJIS, Latinx people are not included in other racial groups.

²⁵ Refer to Page 13 in OLO Memorandum Report 2022-12 for disparity score calculation.

²⁶ Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council