

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 2-24: POLICE – TRAFFIC STOPS – CONSENT SEARCH OF MOTOR VEHICLE AND DATA COLLECTION

SUMMARY

The Office of Legislative Oversight anticipates Bill 2-24 will have a positive impact on racial equity and social justice (RESJ) in the County. Black and Latinx drivers would disproportionately benefit from limitations on consent searches. Bill 2-24 also aligns with several recommendations for reducing racial disparities in police stops. OLO evaluates Bill 2-24 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 2-24

The Fourth Amendment to the U.S. Constitution, “protects citizens from unreasonable search and seizure.”³ The Fourth Amendment establishes that, “[t]he government may not conduct any searches without a warrant, and such warrants must be issued by a judge and based on probable cause.”⁴

The U.S. Supreme Court has established exceptions “that make a warrantless search or seizure reasonable and legal.”⁵ During a traffic stop, the most common exceptions used by a police officer include:⁶

- Probable cause to believe there is evidence of a crime in a vehicle;
- The owner or occupant of the vehicle has been arrested and the search is related to the arrest; or
- The owner or occupant has given the officer consent for the search.

The purpose of Bill 2-24, The Freedom to Leave Act, “is to build community trust by prohibiting consent searches of motor vehicles during a traffic stop, which disproportionately affect Black and Brown residents and corrode public trust in law enforcement and the government.” Bill 2-24 replaces Bill 12-23, the STEP Act, to include components that do not conflict with state law.⁷ If enacted, Bill 2-24 would:⁸

- **Prohibit consent search of a motor vehicle or person during a traffic stop.** Bill 2-24 would prohibit a Montgomery County Police Department (MCPD) officer from asking a driver or occupant for consent to search a vehicle or person during a traffic stop. The Bill would also prohibit an officer from using consent as the sole basis to authorize the search of a vehicle or person during a traffic stop.

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- **Prohibit consent to extend duration of a traffic stop.** Bill 2-24 would prohibit an MCPD officer from asking a driver or occupant for consent to extend the duration of a traffic stop beyond the time needed to address the primary purpose of the stop. The Bill would also prohibit an officer from using consent as the sole basis to authorize the extended duration of a traffic stop.
- **Require the collection of certain data and information related to traffic stops.** Bill 2-24 would require an MCPD officer to collect several data points during each traffic stop, ranging from the number of police officers that responded to the traffic stop to the observed violation that initially prompted the stop and the type of detention used during the stop.
- **Require annual reporting of traffic stop data.** Bill 2-24 would require MCPD to provide an annual report to the County Executive and County Council on the analysis of the traffic stop data points and race-based data that is reported to the state and make the report publicly available on MCPD's website. Other information that would be required in the report includes MCPD's rationale for emphasizing traffic enforcement in certain areas; any de-identified data that shows trends or patterns on a per-police officer basis; and any complaints and de-identified data on discrimination-related traffic stop complaints received by MCPD or the Police Accountability Board.

An MCPD officer who violates a provision of the Bill would be subject to disciplinary action in accordance with the state-approved Uniform Disciplinary Matrix.⁹ Additionally, the provisions of this Bill would not be subject to collective bargaining.¹⁰

The Council introduced Bill 2-24, Police – Traffic Stops – Consent Search of Motor Vehicle and Data Collection, on February 6, 2024.

This RESJIS builds on the RESJIS for Bill 12-23, Police – Traffic Stops – Limitations (The STEP Act), which OLO published in April 2023.¹¹ Please refer to this RESJIS for more background on police stops and racial equity.

CONSENT SEARCHES AND RACIAL EQUITY

A consent search is one of several exceptions that allow police officers to legally conduct a search or seizure without a warrant or probable cause. As described in *Was that a Yes or a No? Reviewing Voluntariness in Consent Searches*, in a typical consent search,

“a police officer asks a person for permission to search their person, home, car, or belongings, and the person either says “yes” or “no.” When a person consents to a search, their consent acts as a waiver of the Fourth Amendment protections they would otherwise enjoy.”¹²

A series of Supreme Court rulings through the late 1960s and mid-1990s enabled the growth of consent searches¹³ just as investigatory stops were becoming an increasingly common policing practice. In *Pulled Over: How Police Stops Define Race and Citizenship*, the authors describe an investigatory stop as “a police stop where the intent is not to sanction a driving violation but to look for evidence of more serious criminal wrongdoing.”¹⁴ 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 and have since evolved to become an institutionalized practice.

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- Regardless of officer discriminatory intent, investigatory stops inherently exacerbate racial disparities and 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.”
- Black drivers recognize when they are being subjected to an investigatory stop, and recall these experiences with fear and resentment, despite officer politeness. 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.”

Research supports that compared to other searches, consent searches are more likely to be used by law enforcement in a racially disparate way.¹⁶ For example, a study from researchers at the University of Texas at Austin of over 900,000 traffic stop searches by police across five states found that Black people were more likely to be subject to consent searches.¹⁷

Racial disparities also characterize consent searches locally. Table 1 summarizes consent searches by race and ethnicity during traffic stops conducted by MCPD between 2016 and 2022. The data shows that Black drivers were largely overrepresented in consent searches – while Black constituents accounted for 17 percent of the population, they accounted for 45 percent of consent searches. Latinx drivers were slightly overrepresented in consent searches, while White and Asian drivers were largely underrepresented.

Table 1: MCPD Traffic Stop Consent Searches by Race and Ethnicity, 2016-2022

Race and ethnicity	Number of Consent Searches	Percent of Consent Searches	County Population
Asian	41	2.3%	14.5%
Black	811	45.4%	17.3%
Latinx	394	22.1%	18.6%
White	480	26.9%	45.9%
Other	60	3.4%	0.4%
Total	1,786		

Source: OLO Analysis of Race-Based Traffic Stop Data Dashboard, Maryland Governor's Office of Crime Prevention, Youth, and Victim Services; Table DP05, 2016 American Community Survey 5-Year Estimates, Census Bureau.

In order for a consent search to be valid, the consent must be voluntary and come from someone who is authorized to give it.¹⁸ However, advocates and scholars have questioned whether consent searches can truly be voluntary.¹⁹ In *Eliminate Consent Searches*, the DC Justice Lab and STAAND explain:

"It is not easy to say no to an officer. After all, police have the badge, the gun and the authority to arrest. In addition to controlling every situation, police have a reputation for punishing individuals who are uncooperative or not sufficiently submissive. In every officer-civilian encounter, officers hold all the power. Consent searches are never really consensual."²⁰

Their report also notes the legacy and current reality of police violence against Black people has fostered distrust and fear in police that makes consent "a survival tactic, not a choice" for many Black people.²¹

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The effectiveness of consent searches for improving public safety has also been questioned. The University of Texas at Austin study found that compared to probable cause searches, consent searches were on average 30 percent less likely to successfully locate contraband.²² Table 2 summarizes arrests resulting from consent searches by race and ethnicity during traffic stops conducted by MCPD officers between 2016 and 2022. The data shows that 15 percent of drivers subjected to a consent search were arrested as a result of the search. Further, while MCPD officers subjected Black drivers to nearly double the consent searches of White drivers, they were less likely to arrest Black drivers as a result of a consent search than White drivers.

Table 2: MCPD Arrests Resulting from Traffic Stop Consent Searches by Race and Ethnicity, 2016-2022

Race and ethnicity	Number of Consent Searches	Number of Arrests Resulting from Consent Searches	Percent of Arrests Resulting from Consent Searches
Asian	41	9	22.0%
Black	811	106	13.1%
Latinx	394	51	12.9%
White	480	81	16.9%
Other	60	12	20.0%
Total	1,786	259	14.5%

Source: OLO Analysis of Race-Based Traffic Stop Data Dashboard, Maryland Governor's Office of Crime Prevention, Youth, and Victim Services.

ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Bill 2-24 on RESJ in the County, OLO recommends the consideration of 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 subjected to consent searches. Table 1 in the previous section demonstrates that from 2016 to 2022, Black drivers, and to a lesser extent, Latinx drivers were overrepresented among consent searches, while White and Asian drivers were largely underrepresented. As such, OLO anticipates that Black and Latinx drivers are the primary beneficiaries of Bill 2-24.

For the second question, OLO considered how the Bill could address racial inequities in police stops. As discussed in the RESJIS for Bill 12-23, 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.²³ Through limiting consent searches, Bill 2-24 is aligned with recommendations for reducing racial disparities in police stops. Requiring data collection on the initial reason justifying each stop also supports recommendations for limiting pretextual stops – stops for minor traffic violations that facilitate discriminatory investigatory stops.

OLO anticipates Bill 2-24 will have a positive impact on RESJ in the County. Black and Latinx drivers would disproportionately benefit from limitations on consent searches. Bill 2-24 also aligns with several 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. Overall, OLO evaluates Bill 2-24 to be an equitable policy through its prioritization of RESJ.

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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.²⁴ OLO anticipates Bill 2-24 will have a positive impact on RESJ. 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.

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 [The Constitution](#), The White House.

⁴ Ibid.

⁵ [Introduction Staff Report for Bill 2-24](#), Montgomery County Council, Introduced February 6, 2024.

⁶ Ibid.

⁷ Ginny Bixby, [“Jawando tries a new bill to limit police searches after AG nixes STEP Act,”](#) MoCo360, February 6, 2024.

⁸ Introduction Staff Report for Bill 2-24

⁹ [Statewide Police Disciplinary Matrix Resource Guide](#), Maryland Police and Correctional Training Commissions, Updated March 9, 2023.

¹⁰ Introduction Staff Report for Bill 2-24

¹¹ [RESJ Impact Statement for Bill 12-23](#), Office of Legislative Oversight, April 17, 2023.

¹² James C. McGlinchy, [“Was that a Yes or a No? Reviewing Voluntariness in Consent Searches,”](#) Virginia Law Review, April 2018, pg. 305.

¹³ Megan Dias, et. al., [“Consent Searches: Evaluating the Usefulness of a Common and Highly Discretionary Police Practice,”](#) Journal of Empirical Legal Studies, December 2023, pg. 38.

¹⁴ Charles R. Epp, Steven Maynard-Moody, Donald Haider-Markel, *Pulled Over: How Police Stops Define Race and Citizenship* (University of Chicago Press, 2014)

¹⁵ Ibid.

¹⁶ Megan Dias, et. al., pg. 36.

¹⁷ Ibid., pg. 37.

¹⁸ [Warrantless Searches and Seizures: Consent Searches](#), Georgetown Law Journal 45th Annual Review of Criminal Procedure, 2016.

¹⁹ Roseanna Sommers and Vanessa K. Bohns, [“The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance,”](#) Yale Law Journal, May 23, 2019, pg. 1968.

²⁰ [“Eliminate Consent Searches,”](#) DC Justice Lab and STAAND, October 2020, pg. 4.

²¹ Ibid., pg. 1-2.

²² Megan Dias, et. al., pg. 36.

²³ RESJ Impact Statement for Bill 12-23

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²⁴ Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council