Committee: PS
Committee Review: At a future date
Staff: Ludeen McCartney, Legislative Attorney
Purpose: To introduce agenda item – no vote expected
Keywords: #STEPAct

AGENDA ITEM #2B
February 28, 2023
Introduction

SUBJECT

Bill 12-23, Police – Traffic Stops – Limitations

Lead Sponsor: Councilmember Jawando

Co-Sponsor: Councilmember Mink

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A; Bill introduction

DESCRIPTION/ISSUE

Bill 12-23 would:
- (1)   prohibit a stop for certain traffic offenses by a police officer;
- (2)   prohibit consent searches of a vehicle by a police officer;
- (3)   require the collection of data and information related to traffic stops;
- (4)   exclude the limitations on traffic stops from collective bargaining; and
- (5)   generally amend the County law regarding motor vehicle traffic policing.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

This report contains:

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M E M O R A N D U M

February 23, 2023

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: Bill 12-23, Police – Traffic Stops - Limitations

PURPOSE: Introduction – no Council votes required

Bill 12-23, Police – Traffic Stops - Limitations, sponsored by Lead Sponsor Councilmember Jawando with Co-Sponsor Councilmember Mink, is scheduled to be introduced on February 28, 2023. Bill 12-23 would be known as The Safety and Traffic Equity in Policing (STEP) Act. A public hearing is tentatively scheduled for June 19, 2023 at 1:30PM and a Public Safety Committee worksession will be held on July 17, 2023.

Bill 12-23 would prohibit a police officer from conducting a traffic stop for certain offenses under the Maryland Vehicle Law;[1] prohibit consent searches of a vehicle by a police officer; require the collection of data and information related to traffic stops; exclude the limitations on traffic stops from collective bargaining; and generally amend the County law regarding motor vehicle traffic policing.

PURPOSE

The purpose of this bill 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.

BACKGROUND

Traffic stops are the most frequent type of engagement between police officers and their communities, and at times, may result in harsher consequences than the stop warrants. Pretextual stops are disproportionately carried out against people of color and return little public safety benefits.

In 2021, the Office of Legislative Oversight (OLO) Report 2021-10, A Study on Reassigning Traffic Enforcement from the Montgomery County Police Department to the Montgomery County Department of Transportation, summarizes "…social science research on current racial disparities in traffic enforcement. It notes that racial disparities in traffic stops vary by the type of stop. Black and Latinx drivers are stopped and searched during traffic stops for lower-level traffic violations (minor traffic violations, expired registration, or equipment issues)

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[1] Provisions of the Maryland Vehicle Law are codified in Titles 13, 16, 17, 21, and 22 of the Transportation Article of the Annotated Code of Maryland.

at disproportionately higher rates compared to White drivers."[2] Further, the OLO Report cites, that a traffic stop occurred more for technical traffic code violations and not necessarily because a driver was driving in an unsafe manner. OLO conducted a dataset analysis of traffic citations by the Section of the Maryland Code. *See,* OLO Memorandum report 2022-12.

Jurisdictions Limiting Traffic stops

To lessen the racial disparity in traffic enforcement and increase safety, several states and cities have changed or are studying ways to alter traffic enforcement. Berkley, California removed altogether traffic enforcement from the police to the transportation division. Other jurisdictions have banned its police officers from making stops for minor traffic offenses, including, Oakland, California; Lansing, Michigan; Fayetteville, North Carolina; Madison, Wisconsin; and the Commonwealth of Virginia.

The City of Philadelphia ("The City") passed the Driving Equity Law that went into effect in March 2022.[3] The City was one of the first municipalities to place limitations on traffic stops by a police officer for offenses it determined as "secondary violations." The City reclassified secondary violations to include, among others, unregistered vehicles, certificates of insurance, broken single taillights, and minor vehicle obstructions.[4]

Traffic Enforcement in the County

State law governs traffic enforcement in Maryland, specifically, under the Transportation Article, Title 11 through Title 27, also known as, the Maryland Vehicle Law. State and local law enforcement officers are authorized by state law to enforce traffic laws, stop and detain drivers, issue citations, and/or arrest individuals for violations. This authority is limited to enforcing the provisions in the Maryland Vehicle Law and within the officer's sworn jurisdiction unless the officer is acting under a mutual aid agreement.[5] A mutual aid agreement allows a County police officer to conduct a traffic stop throughout the County where authorized. County police officers can make traffic stops on County and state roads.

The Maryland Vehicle Law also provides, that the County has limited authority to exercise and legislate its own police power to regulate the stopping, standing, and parking of vehicles, and to regulate traffic using police officers and traffic control devices in the County.[6] Section 11-130 of the Transportation Article, defines local authority, as "[…] a local body that, under the laws of this State, has the authority to enact laws and adopt local police regulations relating to traffic." This Bill seeks to regulate within that scope.

BILL SPECIFICS

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[2] OLO Report 2021-10.
https://www.montgomerycountymd.gov/OLO/Resources/Files/2021_Reports/OLOReport21-10.pdf
[3] City of Philadelphia City Council.
https://phila.legistar.com/LegislationDetail.aspx?ID=5007830&GUID=065348E0-F4F6-4B6A-A088-DFF5358E73CD&Options=ID|Text|&Search=210636. Accessed February 20, 2023.
[4] OLO Report at Page 11.
[5] Section 2-105 of the Criminal Procedure Article, Maryland Annotated Code.
[6] Section 25-102 of the Transportation Article, Maryland Annotated Code.

Bill 12-23 would prohibit traffic stops by Montgomery County police officers based solely on the suspected violation of the following traffic offenses under the Maryland Vehicle Law, related to:

- licensing and registration;
- certificate of title or insurance;
- window tinting;
- defective headlamp or taillight;
- illuminated license plate;
- minor obstructions, including, signs, posters, and other nontransparent materials on the windshields; and
- various provisions under Title 22.

The Bill also prohibits an officer from traffic stop of a person for a suspected violation of crossing against a walk signal or crosswalk, better known as, jaywalking.

A police officer who conducts an initial traffic stop for a reason not prohibited under this Bill, and identifies, as a secondary violation, a provision that is included in Section 35-27(c), must, first issue a verbal or written warning for the secondary violation, and for second or subsequent offenses, issue a citation, see lines 76-80 of the Bill.

Further, the Bill limits a police officer's authority to request permission to conduct a search of a person or vehicle during a traffic stop, regardless of whether the person consents to the search. Consent would not be permissible; instead, the officer must have reasonable suspicion or probable cause to believe that a criminal offense arose during the stop to conduct a search. An officer who violates a provision under this Article would be subject to disciplinary action in accordance with the State-Approved Uniform Disciplinary Matrix.

Under the Bill, the Chief of Police would be required to collect regular analysis of traffic stop data, report annually to the Council, and publish on its website:

- information on each traffic stop that describes the initial reason justifying the stop;
- any deidentified data collection for bias-related stops on a per-police officer basis;
- any complaints received related to a biased stop by a police officer; and
- a list of alleged and sustained violations of the provisions in this Bill.

The provisions of this Bill would not be subject to collective bargaining.

This packet contains: Circle #
    Bill 12-23   1

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Jawando
Co-Sponsor: Councilmember Mink

AN ACT to:
(1)   prohibit a stop by a police officer for certain traffic offenses;
(2)   prohibit consent searches of a vehicle by a police officer;
(3)   require the collection of data and information related to traffic stops;
(4)   exclude the limitations on traffic stops from collective bargaining; and
(5)   generally amend the County law regarding motor vehicle traffic policing.

By amending
    Montgomery County Code
    Chapter 33, Personnel and Human Resources
    Section 33-80

By adding
    Montgomery County Code
    Chapter 35, Police
    Article V, Traffic Stops
    Sections 35-26, 35-27, 35-28, and 35-29

Boldface	*Heading or a defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland, approves the following act:

1   **Sec 1. Short Title.**

2   This Act may be cited as "The Safety and Traffic Equity in Policing (STEP)

3   Act."

4   **Sect 2. Section 33-80 is amended and Article V of Chapter 35 (Sections**

5   **35-26, 35-27, 35-28, and 35-29) is added as follows:**

6   **33-80. Collective bargaining.**

7   *   *   *

8   (c)   *Exemptions*.

9   (1)   Nothing contained in this article shall be construed to limit the

10   discretion of the employer voluntarily to discuss with the

11   representatives of its employees any matter concerning the

12   employer's exercise of any of the enumerated rights set forth in

13   subsection 33-80(b) above, but such matters shall not be subject

14   to bargaining.

15   (2)   The minimum standards of the policies adopted by the Police

16   Chief under Section 35-22 must not be subject to bargaining.

17   (3)   <u>The provisions under Article V in Chapter 35 must not be subject</u>

18   <u>to collective bargaining.</u>

19   *   *   *

20   **<u>ARTICLE V. TRAFFIC STOPS.</u>**

21   **<u>35-26. Definitions.</u>**

22   (a)   <u>*Definitions*. In this Section, the following terms have the meanings</u>

23   <u>indicated.</u>

24   <u>*Biased stop* means a traffic stop in which a member inappropriately</u>

25			considers characteristics such as race, ethnicity, national origin,
26			religion, sex, sexual orientation, gender identity or expression, socio-
27			economic status, age, or disability, in deciding whether to initiate a stop.
28			*Maryland Vehicle Law* means the Transportation Article of the
29			Maryland Code, specifically, Title 13, 16, 17, 21, and 22, as amended.
30			*Police officer* means a sworn officer employed by the County to direct
31			or regulate traffic or arrest for violations of any provisions of the
32			Maryland Vehicle Law, local traffic laws, or regulations.
33			*Traffic stop* means any instance when a police officer stops the driver
34			of a motor vehicle in the County and detains the driver for any period
35			of time.

36 **35-27. Traffic Stops – Limitations.**

37	(a)		*Intent.* The intent of this Article is to:
38		(1)	promote fairness to reduce racial disparities;
39		(2)	promote safety and reduce community trauma;
40		(3)	improve community policing relations; and
41		(4)	further the County's Vision Zero goals.
42	(b)		*Compliance with laws.* The provisions under this Section must comply
43			with the Constitution of the United States and the State of Maryland.
44	(c)		*Limitation on traffic stops.* A police officer must not conduct a stop or
45			detain a person operating a motor vehicle, solely for a suspected
46			violation of the following provisions of the Maryland Vehicle Law:

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47   (1)   under Title 13, 16, or 17 of the Transportation Article, including

48   certificates of title, vehicle licensing, registration, or insurance;

49   or

50   (2)   under Title 22 of the Transportation Article:

51   (A)   §22-101(a). Driving with improper equipment;

52   (B)   §22-201.1. Lighted lamps required;

53   (C)   §22-201.2. Use of headlights while windshield wipers are

54   operated under certain weather conditions;

55   (D)   §22-203(b). Headlights;

56   (E)   §22-204(f). Illumination of rear license plate;

57   (F)   §22-206. Stop lamps and turn signals;

58   (G)   §22-209. Color of lamps and lighting equipment;

59   (H)   §22-210(c). Rear red-light reflectors;

60   (I)   §22-219(a). Stoplights;

61   (J)   §22-219(g). Glare or dazzling lamp lights;

62   (K)   §22-223. Use of multi-beam road lighting;

63   (L)   §22-226(a). Number of driving lights required;

64   (M)   §22-404(a). Signs, posters, and other nontransparent

65   materials on windshields; or

66   (N)   §22-406. Window Tinting; and

67   (O)   nothing in this subsection prohibits a police officer from

68   conducting a traffic stop if the driver of a motor vehicle

69   does not have at least one lighted headlamp and one rear

70   lamp light displayed; or

4

(4)

71   (3)   a police officer must not conduct a traffic stop of a person for a

72   suspected pedestrian violation under Title 21 of the

73   Transportation Article:

74   (A)   §21-203(c). Crossing against a walk signal; or

75   (B)   §21-503. Crossing at other than crosswalks.

76   (d)   *Warning and citations for secondary violations.* A police officer who

77   conducts a traffic stop and identifies, as a secondary traffic violation, a

78   violation of any Maryland Vehicle Law stated in subsection (c), must:

79   (1)   for the first offense, issue a verbal or written warning; and

80   (2)   for a second or subsequent offense, issue a citation.

81   (e)   *Limitation on questioning and consent searches.*

82   (1)   A police officer must not extend the duration of a traffic stop for

83   longer than needed to address the original purpose of the stop

84   unless:

85   (A)   there is reasonable articulable suspicion that a crime has

86   been committed; or

87   (B)   is being committed.

88   (2)   A police officer must only ask for permission to conduct a

89   consent search of a person or vehicle if reasonable suspicion or

90   probable cause for a criminal offense arises during the stop.

91   (f)   *Disciplinary action.* A violation of a provision under subsection (c) or

92   (e) by a police officer would be subject to disciplinary action in

93   accordance with the Approved Uniform Disciplinary Matrix prepared

94   by the Maryland Police Training and Standards Commission.

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95 **35-28.** **Reporting requirements.**

96   (a) *Reporting requirements.*

97   (1) In conjunction with the reporting requirements under §25-113 of

98   the Transportation Article of the Maryland Code, a police officer

99   must collect data and information for each traffic stop that

100   describes the initial reason justifying the stop; and

101   (2) a police officer may, under a policy directive or applicable law,

102   issue a warning or citation for an offense that differs from the

103   initial reason for the stop, but the report must state the initial

104   reason.

105   (b) *Annual report – required.* By July 1 of each year, the Chief of Police

106   must submit to the County Executive and the County Council and

107   publish on its website, a report for the preceding year on:

108   (1) data on each traffic stop as specified in subsection (a);

109   (2) any deidentified data collection related to biased stops on a per-

110   police officer basis;

111   (3) any complaints received by the Montgomery County Police

112   Department related to a biased stop by a police officer; and

113   (4) a list of allegations and sustained violations of the provisions in

114   this Article by a police officer.

115 **35-29.** **Severability clause.**

116   The provisions of this Article are severable and if any

117   provisions, clause, sentence, section, word, or part is held illegal,

118   invalid, unconstitutional, or inapplicable to any person or

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119   circumstances, such illegality, invalidity, or unconstitutionality, or

120   inapplicability must not affect or impair any of the remaining

121   provisions, clauses, sentences, sections, words or parts of the Article or

122   their applications to other persons or circumstances. It is the legislative

123   intent that this Article would have been adopted if such illegal, invalid,

124   or unconstitutional provision, clause, sentence, section, word, or part

125   had not been included, and if the person or circumstance to which the

126   Article or part is inapplicable had been specifically exempted from such

127   provisions.