



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

AGENDA ITEM #12A
February 6, 2024
Introduction

SUBJECT

Bill 2-24, Police – Traffic Stops – Consent Search of Motor Vehicle and Data Collection
("Freedom to Leave Act")

Lead Sponsor: Councilmember Jawando

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A; Bill introduction

DESCRIPTION/ISSUE

Bill 2-24 would:

- (1) prohibit consent search of a motor vehicle or person by a police officer during a traffic stop;
- (2) require the collection of certain data and information related to traffic stops;
- (3) require annual reporting of traffic stop data in the County;
- (4) exclude the limitations on traffic stops from collective bargaining; and
- (5) generally amend the County law regarding the policing of motor vehicles.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

This report contains:

Staff Report
Bill 2-24
Maryland Transportation Article §25-113

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M E M O R A N D U M

February 2, 2024

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: Bill 2-24, Police – Traffic Stops - Consent Search of Motor Vehicle and Data Collection (“Freedom to Leave Act”)

PURPOSE: Introduction – no Council votes required

Bill 2-24, Police – Traffic Stops - Consent Search of Motor Vehicle and Data Collection, may also be referenced as the “Freedom to Leave Act,” sponsored by Lead Sponsor Councilmember Jawando, is scheduled to be introduced on February 6, 2024. A public hearing is tentatively scheduled for February 27, 2024, at 1:30 p.m.¹ and a Public Safety Committee worksession will be scheduled at a later date.

Bill 2-24 would:

- (1) prohibit consent search of a motor vehicle or person by a police officer during a traffic stop;
- (2) require the collection of certain data and information related to traffic stops;
- (3) require annual reporting of traffic stop data in the County;
- (4) exclude the prohibitions on traffic stops from collective bargaining; and
- (5) generally amend the County law regarding the policing of motor vehicles.

PURPOSE

The purpose of Bill 2-24 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 also seeks to improve data collection related to traffic stops, promote transparency, and strengthen data analysis capabilities related to traffic stops within the County.

BACKGROUND

I. The Fourth Amendment Search and Seizure Clause

The Fourth Amendment of the United States Constitution provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated (U.S. Const. amend. IV). Similarly, the Maryland Constitution provides the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures. In a nutshell, when the clause applies, it requires that a search

¹ #freedomtoleaveact

and seizure be pursuant to 1) a **warrant**, or 2) be justified by one of the **exceptions to the warrant requirement**. There are many exceptions to the law that make a warrantless search or seizure reasonable and legal.

When a police officer makes a traffic stop, a passenger, like the driver, is seized for Fourth Amendment purposes and therefore to conduct a warrantless search of the person or motor vehicle – an exception must apply. The Supreme Court has established valid exceptions, which among others, these are the most common exceptions used by an officer during an traffic stop: 1) probable cause to believe that there is evidence of a crime in a vehicle; 2) the owner or occupant of the vehicle has been arrested and the search is related to the arrest (SIR), or 3) **the owner or occupant has given the officer consent for the search**.

Automobile Exception – Probable Cause

In *Nathan v. State*, 370 Md. 648, 665-66 (2002), the Maryland Court of Appeals, now called the Maryland Supreme Court, held that police officers who have probable cause to believe that contraband or other evidence of criminal activity inside an automobile that has been stopped may search without obtaining a warrant. In essence, the Court makes clear that probable clause alone is insufficient for a warrantless search, but rather, its **probable clause PLUS evidence of a crime would be found**. If supported by probable cause, every part of the vehicle that may conceal an object of the search may be searched. (citing, *United States v. Ross*, 456 U.S. 798, 825 (1982).

Automobile Exception – Consent Search

The consent exception is when a person waives their Fourth Amendment rights. To be effective, there are **two requirements for consent** to be valid. It must be **voluntary** and **not given under threat or compulsion**. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973).

The Montgomery County Police Department allows an officer to obtain consent by an individual during a traffic stop. MCPD's policy² regarding consent searches not only meets the constitutional requirement for voluntariness, but the officer is required to articulate the rationale for the search, advise the person they may refuse, and if consent is given, it must be recorded on the officer's body worn camera and a department approved consent form must be signed by the person.

Other Jurisdictions - Ban on Consent Searches

Once a traffic stop occurs, the power dynamic increases in the favor of the police; police officers have the *discretion* to solicit a consent search. Many jurisdictions have sought to level the bargaining power by prohibiting or limiting consent searches with the intent to provide a different framework that put safeguards in place so a drivers would not feel compelled to submit to a search during a traffic stop.

² FC 710 – MCPD Consent Searches Policy Directive. [Directives - 700 -Search, Seizure, and Evidence, Montgomery County Police, Montgomery County, MD \(montgomerycountymd.gov\)](#)

A few jurisdictions have implemented limitations on consent searches, for example, Connecticut (2020), Rhode Island (2004), Minnesota (2003), New Jersey (2001), and San Francisco (2001).

II. Duration of Motor Vehicle Traffic Stop

Constitutional limits also control what the officer can do once the driver has been stopped. A stop generally cannot last longer than necessary to accomplish its original purpose, which is normally to investigate the traffic violation and issue a warning or citation if appropriate. *See, e.g., Ferris v. State*, 355 Md. 356, 372 (1999). But an officer may continue to detain the vehicle if the officer has reasonable suspicion that some other criminal activity is afoot. *Id.* And an officer may also request consent to search the vehicle or its occupants. *See id.*; *Scott v. State*, 247 Md. App. 114, 132, 150-52 (2020).

MCPD's Traffic Management System³ on traffic enforcement provides guidance for police officers to ensure a traffic stop is least intrusive and addresses the specific purpose of the stop absent an exception; however, it also permits for a traffic stop to extend beyond the underlying basis of the stop if the driver provides consent to the continuation.

III. Maryland Transportation Article (§25-113) – Race-Based Traffic Stop Data

Since 2001, State law requires law enforcement officers in Maryland report annually to the Maryland Statistical Analysis Center aggregated data related to traffic stops.⁴ The data elements include the following: gender of driver; race of driver; driver's date of birth; agency that made the stop; time of day the stop occurred; approximate duration of stop; vehicle registration; driver's county of residence; reason for the stop; type of search (if a search occurred); outcome of the search (if search occurred); outcome of the traffic stop; and arrest reason (if an arrest occurred).

The most recent [Governor's Office of Crime Control and Prevention, Race-based Traffic Stop Data Analysis](#) (released in March 2022). The online dashboard provides a breakdown on total traffic stops and if it resulted in a search, the search reason by ethnicity/race, see: <https://goccp.maryland.gov/>.

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*, provided a statistical summary of searches and arrests made during traffic stops, and the data show that...lack drivers accounted for 43% of searches and 38% of arrests during traffic stops, while Black adults account for 18% of the County's adult population. Similarly, Latinx drivers accounted for 31% of searches and 35% of arrests, while Latinx adults

³ FC No. 1000, dated July 1, 2022, [Traffic Management System](#). Last accessed on February 1, 2024.

⁴ Governor's Office of Crime Control and Prevention. Traffic Stop Data Reporting. <https://goccp.maryland.gov/crime-statistics/law-enforcement-reports/traffic-stop-data/>. Last accessed on February 1, 2024.

accounted for 19% of the County’s adult population. On the other hand, Asian and White drivers were underrepresented in searches and arrests.” (Page 10 of OLO Report 2021-10).

BILL SPECIFICS

First, Bill 2-24 would prohibit a police officer from asking a driver occupant of a motor vehicle consent to search the vehicle or person during a traffic stop; and it would also prohibit the officer from solely relying on consent voluntarily provided by the driver or occupant as the authority or basis to search the motor vehicle.

Second, a police officer may not prolong or exceed the time necessary to address the primary purpose of the stop (*i.e., traffic violation*) by asking the driver or occupant consent to continue engagement with the officer; in addition, the officer may not base the authority to search a motor vehicle or person during a traffic stop solely on consent provided by the driver or occupant of the motor vehicle.

An officer who violates a provision under this Article would be subject to disciplinary action in accordance with the State-Approved Uniform Disciplinary Matrix.

Third, the Bill requires a police officer must collect several data points during each traffic stop, including:

- (1) the number of police officers that responded to the traffic stop;
- (2) the number of police officer vehicles present during the duration of the traffic stop;
- (3) the specific violation of the Maryland Vehicle Code the police officer initially observed prior to conducting the traffic stop;
- (4) the duration of the stop measured in minutes;
- (5) indicate whether an officer performed a frisk or full search of a person or any occupant during the traffic stop;
- (6) the type and amount of contraband found, if any;
- (7) the type of detention form used during the stop, whether the person: remained in the vehicle; was removed from the vehicle; was placed in handcuffs, or was placed in the patrol car; and
- (8) if initiated, specify the nature of force used against the person and the reason for the force.

Further, the Chief of Police must annually collect and report the analysis of traffic stop data mentioned above for each preceding year, including the race-based data already reported to the State, to the County Executive and County Council, and make it publicly available on MCPD’s website. In addition to each traffic stop data points, the report to the Council must include:

- an explanation related to the Department’s rationale for emphasizing traffic enforcement in certain areas;
- any deidentified data collected that provides information on trends or patterns on a per-police officer basis; and
- any complaints and deidentified data collected related to complaints received by the MCPD or the County’s Police Accountability Board concerning a traffic stop,

in which a police officer is alleged to have inappropriately considered certain characteristics in deciding whether to initiate a traffic stop.

Lastly, the provisions of this Bill would not be subject to collective bargaining and must comply with the U.S. and State Constitution.

This packet contains:

Bill 2-24

Maryland Transportation Article §25-113

Circle #

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Bill No. 2-24
Concerning: Police – Traffic Stops –
Consent Search of Motor Vehicle & Data
Collection (“Freedom to Leave Act”)
Revised: 2/1/2024 Draft No. 7
Introduced: February 6, 2024
Expires: December 7, 2026
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Jawando

AN ACT to:

- (1) prohibit consent search of a motor vehicle or person by a police officer during a traffic stop;
- (2) require the collection of certain data and information related to traffic stops;
- (3) require annual reporting of traffic stop data in the County;
- (4) exclude the prohibitions on traffic stops from collective bargaining; and
- (5) generally amend the County law regarding the policing of motor vehicles.

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

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

Sec 1. Section 33-80 is amended and Article V of Chapter 35 (Sections 35-26, 35-27, 35-28, and 35-29) is added as follows:

33-80. Collective bargaining.

* * *

(c) Exemptions.

(1) Nothing contained in this article shall be construed to limit the discretion of the employer voluntarily to discuss with the representatives of its employees any matter concerning the employer's exercise of any of the enumerated rights set forth in subsection 33-80(b) above, but such matters shall not be subject to bargaining.

(2) The minimum standards of the policies adopted by the Police Chief under Section 35-22 must not be subject to bargaining.

(3) The provisions under Article V in Chapter 35 are not subject to collective bargaining.

* * *

ARTICLE V. TRAFFIC STOPS.

35-26. Short Title.

This Article may be known and cited as the "Freedom To Leave Act."

35-27. Definitions.

Definitions. In this Section, the following terms have the meanings indicated:

Consent search means a search that occurs when a person gives a police officer permission, whether verbally or implied by conduct, to search the person, property, or motor vehicle.

Motor vehicle has the same meaning as defined in §11-135 of the Maryland Transportation Article.

Police officer means a sworn officer employed by the County to direct

or regulate traffic or arrest for violations of any provisions of the Maryland Vehicle Law, local traffic laws, or regulations.

Traffic stop means any instance when a police officer stops the driver of a vehicle and detains the driver for any period of time for a violation of the Maryland Vehicle Law.

35-28. Traffic Stops

(a) *Intent. The intent of this Article is to:*

(1) build community trust by prohibiting consent searches of motor vehicles, which disproportionately affect Black and Brown residents and corrode public trust in law enforcement and the government; and

(2) improve data collection related to traffic stops to promote transparency and strengthen data analysis capabilities related to traffic stops within the County.

(b) *Consent search of motor vehicle – prohibited.*

(1) A police officer may not ask consent to search a motor vehicle or person during a traffic stop; and

(2) may not base the authority to search a motor vehicle or person during a traffic stop solely on consent provided by the driver or occupant of the motor vehicle.

(c) *Duration of traffic stop based on consent – prohibited.*

(1) A police officer must not ask consent of a driver or occupant of a motor vehicle to extend the duration of the traffic stop beyond the time needed to address the primary purpose of the stop; and

(2) the police officer may not base the authority to extend the duration of the traffic stop solely on consent by the driver or occupant of the motor vehicle.

(d) Disciplinary action. A violation of this Section by a police officer is subject to disciplinary action in accordance with the Approved Uniform Disciplinary Matrix prepared by the Maryland Police Training and Standards Commission.

(e) Compliance with laws. The provisions under this Article must comply with the Constitution of the United States and the State of Maryland.

(f) Scope of liability. The heightened standard to prohibit consent search of motor vehicle by a police officer under this Section must not be construed to alter standards of civil or criminal liability.

35-29. Data Collection and Reporting Requirements.

(a) Data collection of traffic stops. A police officer must, in conjunction with requirements under §25-113 of the Transportation Article of the Maryland Code, collect data and information for each traffic stop and report the following:

- (1) the number of police officers that responded to the traffic stop;
- (2) the number of police officer vehicles present during the duration of the traffic stop;
- (3) the specific violation of the Maryland Vehicle Code the police officer initially observed prior to conducting the traffic stop;
- (4) the duration of the stop time-stamped in minutes;
- (5) indicate whether an officer performed a frisk or full search of a person or any occupant during the traffic stop;
- (6) the type and amount of contraband found, if any;
- (7) the type of detention form used during the stop, whether the person:
 - (A) remained in the vehicle;
 - (B) was removed from the vehicle;

(C) was placed in handcuffs, or

(D) was placed in the patrol car; and

(8) if initiated, specify the nature of force used against the person and the reason for the force.

(b) Annual report – required. By April 1 of each year, the Chief of Police must submit to the County Executive, the County Council, and publish on its website, a report on traffic stops for the preceding year on the following:

(1) all race-based data collected and reported to the State under §25-113 of the Transportation Article of the Maryland Code;

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

(3) an explanation related to the Department’s rationale for emphasizing traffic enforcement in certain areas;

(4) any deidentified data collected that provides information on trends or patterns on a per-police officer basis; and

(5) any complaints and deidentified data collected related to complaints received by the Montgomery County Police Department or the County’s Police Accountability Board concerning a traffic stop, in which a police officer is alleged to have inappropriately considered 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 traffic stop.

(c) The data elements required under subsection (a) and (b) are the minimum the Department must collect and report.

(d) Nothing in this section prohibits the Department from voluntarily collecting additional data.

Statutes Text

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§25–113.

(a) (1) In this section the following words have the meanings indicated.

(2) “Law enforcement agency” means an agency that is listed in § 1–101(c) of the Public Safety Article.

(3) “Law enforcement officer” means any person who, in an official capacity, is authorized by law to make arrests and who is an employee of a law enforcement agency.

(4) “Maryland Police Training and Standards Commission” means the unit within the Department of Public Safety and Correctional Services established under § 3–202 of the Public Safety Article.

(5) “Maryland Statistical Analysis Center” means the research, development, and evaluation component of the Governor’s Office of Crime Prevention, Youth, and Victim Services.

(6) (i) “Traffic stop” means any instance when a law enforcement officer stops the driver of a motor vehicle and detains the driver for any period of time for a violation of the Maryland Vehicle Law.

(ii) “Traffic stop” does not include:

1. A checkpoint or roadblock stop;
2. A stop of multiple vehicles due to a traffic accident or emergency situation requiring the stopping of vehicles for public safety purposes;
3. A stop based on the use of radar, laser, or vascar technology; or
4. A stop based on the use of license plate reader technology.

(b) The Maryland Police Training and Standards Commission, in consultation with the Maryland Statistical Analysis Center, shall develop:

(1) A model format for the efficient recording of data required under subsection (d) of this section on an electronic device, or by any other means, for use by a law enforcement agency;

(2) Guidelines that each law enforcement agency may use as a management tool to evaluate data collected by its officers for use in counseling and improved training;

(3) A standardized format that each law enforcement agency shall use in reporting data to the Maryland Statistical Analysis Center under subsection (e) of this section; and

(4) A model policy against race–based traffic stops that a law enforcement agency may use in developing its policy in accordance with subsection (g) of this section.

(c) (1) Subject to paragraph (2) of this subsection, this section applies to each law enforcement agency that has one or more law enforcement officers.

(2) Except as provided in subsection (e)(2) of this section, this section does not apply to a law enforcement agency that is subject to an agreement with the United States Department of Justice that requires the law enforcement agency to collect data on the race or ethnicity of the drivers of motor vehicles stopped.

(d) Each time a law enforcement officer makes a traffic stop, that officer shall report the following information to the law enforcement agency that employs the officer using the format developed under subsection (b)(1) of this section:

(6)

- (1) The date, location, and time of the stop;
 - (2) The approximate duration of the stop;
 - (3) The traffic violation or violations alleged to have been committed that led to the stop;
 - (4) Whether a search was conducted as a result of the stop;
 - (5) If a search was conducted, the reason for the search, whether the search was consensual or nonconsensual, whether a person was searched, and whether a person's property was searched;
 - (6) Whether any contraband or other property was seized in the course of the search;
 - (7) Whether a warning, safety equipment repair order, or citation was issued as a result of the stop;
 - (8) If a warning, safety equipment repair order, or citation was issued, the basis for issuing the warning, safety equipment repair order, or citation;
 - (9) Whether an arrest was made as a result of either the stop or the search;
 - (10) If an arrest was made, the crime charged;
 - (11) The state in which the stopped vehicle is registered;
 - (12) The gender of the driver;
 - (13) The date of birth of the driver;
 - (14) The state and, if available on the driver's license, the county of residence of the driver; and
 - (15) The race or ethnicity of the driver as:
 - (i) Asian;
 - (ii) Black;
 - (iii) Hispanic;
 - (iv) White; or
 - (v) Other.
- (e) (1) A law enforcement agency shall:
- (i) Compile the data described in subsection (d) of this section for the calendar year as a report in the format required under subsection (b)(3) of this section; and
 - (ii) Submit the report to the Maryland Statistical Analysis Center no later than March 1 of the following calendar year.
- (2) A law enforcement agency that is exempt under subsection (c)(2) of this section shall submit to the Maryland Statistical Analysis Center copies of reports it submits to the United States Department of Justice in lieu of the report required under paragraph (1) of this subsection.
- (f) (1) The Maryland Statistical Analysis Center shall analyze the annual reports of law enforcement agencies submitted under subsection (e) of this section based on a methodology developed in consultation with the Maryland Police Training and Standards Commission.
- (2) (i) On or before September 1 each year, the Maryland Statistical Analysis Center shall post on its website in a location that is easily accessible to the public a filterable data display showing all data collected under this section for the previous calendar year.
- (ii) A filterable data display under this paragraph shall allow a person to:

1. Filter the traffic stop data by county or municipality or law enforcement agency; and
2. Review various visuals associated with data items reported under subsection (d) of this section.

(iii) Beginning with data collected for calendar year 2018, the Maryland Statistical Analysis Center shall include and maintain data from all prior years in the filterable data display.

(iv) When the Maryland Statistical Analysis Center updates a filterable data display under this section, the Governor's Office of Crime Prevention, Youth, and Victim Services shall provide electronic and written notice of the update to the General Assembly in accordance with § 2–1257 of the State Government Article.

(g) (1) A law enforcement agency shall adopt a policy against race-based traffic stops that is to be used as a management tool to promote nondiscriminatory law enforcement and in the training and counseling of its officers.

(2) (i) The policy shall prohibit the practice of using an individual's race or ethnicity as the sole justification to initiate a traffic stop.

(ii) The policy shall make clear that it may not be construed to alter the authority of a law enforcement officer to make an arrest, conduct a search or seizure, or otherwise fulfill the officer's law enforcement obligations.

(3) The policy shall provide for the law enforcement agency to periodically review data collected by its officers under subsection (d) of this section and to review the annual report of the Maryland Statistical Analysis Center for purposes of paragraph (1) of this subsection.

(h) (1) If a law enforcement agency fails to comply with the reporting provisions of this section, the Maryland Statistical Analysis Center shall report the noncompliance to the Maryland Police Training and Standards Commission.

(2) The Maryland Police Training and Standards Commission shall contact the law enforcement agency and request that the agency comply with the required reporting provisions.

(3) If the law enforcement agency fails to comply with the required reporting provisions within 30 days after being contacted by the Maryland Police Training and Standards Commission, the Maryland Statistical Analysis Center and the Maryland Police Training and Standards Commission jointly shall report the noncompliance to the Governor and the Legislative Policy Committee of the General Assembly.

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