



SENATE BILL 0589

RICH GIBSON, HOWARD COUNTY STATE'S ATTORNEY

POSITION: UNFAVORABLE SB 0589

February 12, 2021

My name is Rich Gibson, I am the State's Attorney for Howard County. Part of my obligations as State's Attorney is to advocate for laws that enhance the safety and well-being of our community; that is the reason I am writing today to oppose Senate Bill 0589.

This bill is a criminal's dream. The goals of our laws cannot be to promote criminality. There is nothing wrong with wrongdoers being caught and held accountable for their criminal conduct. In fact, the safety of our society depends on the lawful interception of criminals engaged in criminal conduct.

This bill, if passed, would deny officers performing a car stop the ability to determine who the passengers are in the car they are stopping. So, if a person with an open warrant for murder is a passenger in a car that is stopped for speeding, under this bill, the officer would be denied the opportunity to learn who the passenger is. The consequences of that would be that the murderer would not be apprehended at that moment for their heinous crime and society would be put at risk for their future crimes simply because the officer could not determine who this person is based upon this law. This also poses a significant safety risk for the officer. Moreover, section (IV)(3)(I) and (III) of this proposed bill is not consistent with common sense or our current laws TA § 16-112, TA § 13-409, and TA § 26-203 which require the individual stopped in a vehicle to

provide information (license and registration upon request) to the stopping officer.

Furthermore, a “*Terry stop*”, which is the detention of an individual based upon reasonable suspicion that a crime has been, is being, or will soon be committed, lasts as long as it takes to reasonably confirm or dispel the existence of criminal activity. This bill, if enacted, will impede the rate at which information becomes available to the police. Therefore, it will lawfully lengthen the time it takes to conclude a stop. The stop either withers into release or blossoms into probable cause within a reasonable period to either confirm or dispel the existence of criminal activity. Any stops, after this law were to be enacted, will take longer.

Section (D)(1) of this proposed bill, if passed, would prevent an officer from seizing a “personal item” from an individual without a warrant. This would be in direct contradiction to two hundred (200) years of settled Supreme Court case law regarding search incident to arrest and the Carroll Doctrine. Moreover, it is patently dangerous, if an officer has pulled someone over for driving under the influence and the officer saw within the car: an open bottle of alcohol, a loaded gun, a syringe filled with heroin, or even a ticking time bomb; then under this proposed bill they could not seize those objects because they are all personal items belonging to the individual stopped.

Finally, Section (D)(2) is also in direct contradiction with settled law defined by the Supreme Court of the United States. The Supreme Court has made clear that police can lawfully use deception and misrepresent facts in order to obtain information (See, Frazier v Cupp, 89 S. Ct. 1420 (1969), and Oregon v. Mathiason 97 S. Ct 711 (1977)). To be clear, there are limits to deception police can engage in; that they cannot run afoul of an individual’s 4th, 5th and 6th Amendment rights, but what is proposed

in this bill goes too far and is in contradiction with settled Supreme Court law.

I ask that the legislature give Senate Bill 0589 an unfavorable report.