



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

**Testimony for SB 589
Criminal Procedure – Police Officers – Stop Procedures
(Know Your Rights Act)
Before the Judicial Proceedings Committee
On February 17, 2021**

Good afternoon Mr. Chairman, members of the Judicial Proceedings Committee,

It is not always clear when a police stop has started or when it has ended. This lack of clarity gives law enforcement officers an upper hand in their interactions with civilians. A “good citizen”¹ will submit to an officer rather than risk an unknown range of criminal penalties or risk the officer’s immediate use of force. The aim of SB 589 is to bring clarity and calm to police stops by requiring officers to explain an individual’s rights.

In *Utah v. Strieff*, Justice Sotomayor summed up the powers police have when stopping people:

“This Court has allowed an officer to stop you for whatever reason he wants—so long as he can point to a pretextual justification after the fact. That justification must provide specific reasons why the officer suspected you were breaking the law, but it may factor in your ethnicity, where you live, what you were wearing, and how you behaved. The officer does not even need to know which law you might have broken so long as he can later point to any possible infraction—even one that is minor, unrelated, or ambiguous.”²

At the point of initial contact is where individuals have the greatest need to exercise their rights—the police stop—there are blurred lines as to civil rights. While in many circumstances people have the right to terminate an encounter and leave, this is not the case when police have initiated a stop. The Maryland Office of the Public Defender’s “Know Your Rights” advice encapsulates the conundrum: “If you are stopped by the police, on the street or in a car: Always ask if you are free to leave (even if you are a passenger). If you are free to leave, do so quietly. If you are not free to leave, stay silent.”³ This advice reflects what individuals know: that they are generally uncertain as to whether they are free to leave, and therefore must ask if a stop is over. While OPD’s advice suggests individuals can ask questions, it is not always clear when individuals are even permitted to pose this fundamental question: “am I free to leave?” These blurred lines make it impossible for individuals to effectively assert their right to terminate the encounter and leave. This is true

¹ I. Bennett Capers, *Criminal Procedure and the Good Citizen*, 118 COLUM. L. REV. 653, 655 (2018).

² *Utah v. Strieff*, 136 S. Ct. 2056, 2069–70 (2016) (Sotomayor, J., dissenting) (internal citations omitted).

³ MARYLAND OFFICE OF THE PUBLIC DEFENDER, *Know Your Rights* (last visited Feb. 14, 2021), <https://www.opd.state.md.us/know-your-rights>.

whether an officer wants to ask questions, “seize” or stop a person, or conduct a search. Many individuals may be free to go when an officer asks questions. When the line between a stop and not-a-stop is blurred, however, individuals will submit to questions to be on the safe side – either because they don’t want to get in trouble or because they don’t want to provoke an escalation. Beyond answering an indefinite line of questions, an individual facing blurred lines in a police encounter may submit to any range of invasions of their personal liberties. Worse, when an officer assumes a posture of unquestioned control as a matter of everyday practice,⁴ then the stopped individual knows that defying the officer comes at the risk of punishment or retaliatory actions.

The automatic deference to police means that officers can obtain “consent” to conduct searches very easily. Law professor Seth Stoughton, a former police officer, explained how easy it was to obtain consent to pedestrian searches without letting an individual know that they were being “stopped:”

My go-to phrase was some variant of “Hey, lemme talk at you for a minute.” I might know that the individual I was approaching was not free to leave and that I would take steps to stop them from leaving, if necessary, but I didn’t want them to realize that. In part, that was an example of policing in the shadow of the law: I had learned that as long as they didn’t know that they were being seized there was a good chance that the interaction would be legally considered to be consensual rather than a seizure.⁵

The lack of clarity in police stops applies to both pedestrian and traffic stops. The power dynamic, which police routinely use to their advantage in executing stops, is exacerbated when you take into account the disproportionate targeting of Black individuals. An often-stated fact that bears repeating is that police disproportionately stop Black citizens across the United States. In California, pursuant to the Racial and Identity Profiling Act in 2015, law enforcement agencies reported by 2020 that “[w]hile African Americans make up roughly 6% of the population in [reporting jurisdictions], they made up slightly more than 15% of all stops.⁶

A 2018 book examining 20 million traffic stops over 16 years in North Carolina, announced key findings:

- Blacks were 63 percent more likely to be stopped even though, as a whole, they drive 16 percent less. Taking into account less time on the road, blacks were about 95 percent more likely to be stopped;
- Blacks were 115 percent more likely to be searched in a traffic stop (5.05 percent for Blacks, 2.35 percent for Whites); and
- Contraband was more likely to be found in searches of White drivers.⁷

An analysis of traffic stops across the United States found that among state patrol stops, “the annual per-capita stop rate for [B]lack drivers was 0.10 compared to 0.07 for [W]hite drivers; and among

⁴ Seth W. Stoughton, *Law Enforcement’s “Warrior” Problem*, 128 HARV. L. REV. F. 225, 229 (2014-2015).

⁵ Seth W. Stoughton, *Terry v. Ohio and the (Un)Forgettable Frisk*, 15 OHIO ST. J. CRIM L. 19, 22 (2017).

⁶ Magnus Lofstrom, Daniel Morales Campos & Brandon Martin, *African Americans are Notably Overrepresented in Police Stops*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (Aug. 13, 2020), <https://www.ppic.org/blog/african-americans-are-notably-overrepresented-in-police-stops/>.

⁷ Chris Horn, *Racial Disparities Revealed in Massive Traffic Stop Dataset*, UOFSC NEWS & EVENTS, UNIV. S.C. (June 12, 2020), https://www.sc.edu/uofsc/posts/2020/06/racial_disparities_traffic_stops.php (quoting KELSEY SHOUB, co-author of *SUSPECT CITIZENS: WHAT 20 MILLION TRAFFIC STOPS TELL US ABOUT POLICING AND RACE* (Cambridge University Press, 2018)).

municipal police stops, the annual per-capita stop rate for [B]lack drivers was 0.20 compared to 0.14 for [W]hite drivers.”⁸

SB 589 will bring clarity to police stops. At the commencement of a police stop, absent exigent circumstances, an officer must identify him or herself and must inform the stopped person of their rights. The officer’s self-identification includes: (1) proper identification; and (2) information to the stopped individual including the officer’s name, badge number, the name of the agency the officer represents, and the reason for the stop. The officer must inform the stopped individual of their rights as follows: (1) their right to refuse to speak or provide information; (2) their right to be informed of the reason for the stop; and (3) their right to terminate the interaction.

An officer will also be required to inform vehicle passengers of their right to refuse to provide identification to the officer. Furthermore, an officer may not seize a personal item such as a cell phone or other recording device from an individual without a warrant. Finally, an officer is prohibited from using coercive tactics or deliberately misrepresenting facts to obtain information. SB 589 will ensure that at every stop, where individuals need their civil rights the most, police officers will proactively tell them their rights. SB 589 will eliminate the blurred lines that obscure individual rights, and ensure that people can confidently assert their rights under the Fourth Amendment.

At the end of 2020, the Police Executive Research Forum (PERF) surveyed police officers around the country, asking PERF members to identify the top three issues in policing they considered most important for 2021 and beyond. Of 378 respondents, an overwhelming majority, 288 (76%) responded that their top priority was increasing public trust in the police.⁹ SB589 will help achieve this goal. Police in Maryland will tell Marylanders their rights, and as a result, I believe that trust in law enforcement will increase. For these reasons, I urge you to vote favorably for SB 589.

⁸ Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, NATURE HUMAN BEHAVIOR, at 737 (July 2020), <https://doi.org/10.1038/s41562-020-0858-1>.

⁹ See POLICE EXECUTIVE RESEARCH FORUM, *Critical Issues Dec. 34* (last visited Feb. 15, 2021), <https://www.policeforum.org/criticalissuesdec34>.