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POSITION ON PROPOSED LEGISLATION

BILL: House Bill 635 - Motor Vehicles - Secondary Enforcement and Admissibility of Evidence

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: February 12, 2025 (Judiciary)

The Maryland Office of the Public Defender respectfully requests that this Committee issue a favorable report on House Bill 635. House Bill 635 would permit police officers to enforce certain low-level traffic offenses only as secondary offenses when they pull a driver over for a more serious, primary traffic offense. The bill would also make evidence inadmissible in any trial or other proceeding, if an officer pulls over a driver for a low-level secondary traffic offense and obtains evidence during that traffic stop.

House Bill 635 reclassifies certain low-level traffic offenses to permit police officers to focus on enforcing more serious traffic offenses and investigating criminal activity more efficiently. It does not create a new method of enforcing Maryland's traffic laws nor does it prevent enforcement. Currently, Maryland Vehicle Law limits a police officer's ability to make certain traffic stops by categorizing traffic offenses as either "primary" or "secondary." If an officer observes a primary traffic offense, the officer may stop and cite the driver for that traffic violation. In contrast, an officer may not stop a driver if they observe a secondary traffic offense. Instead, the officer may issue a citation for the secondary offense only after stopping the driver for committing a primary offense. The following list of secondary traffic offenses already exist in Maryland Vehicle Law:

- § 13-411(c)(1)(i) (driving with an object framing or bordering the edges of a registration plate that partially obscures the license plate);
- § 21-1104(c)(3) (driving "with any object, material, or obstruction hanging from the rearview mirror that interferes with the clear view of the driver through the windshield");

- § 21-1123(a)(2) (a holder of a provisional driver's license who is under the age of 18 years driving a motor vehicle with a passenger under the age of 18 years);
- § 22-201.2 (driving a motor vehicle without lighted headlamps while operating the vehicle's windshield wipers for a "continuous period of time because of impaired visibility resulting from unfavorable atmospheric conditions"); and
- § 22-412.3(c)(3) (passenger aged 16 or older in rear seat of motor vehicle without seatbelt).

House Bill 635 seeks to add the following traffic offenses to the existing list of secondary traffic offenses:¹

- driving with expired registration tags for up to 90 days;²
- failing to display two registration plates or obstructing a vehicle registration plate in any manner;³
- displaying improper registration plate;⁴
- driving without a functioning headlight, brake light, or taillight;⁵
- driving without a mirror, or with an obstructed or damaged mirror;⁶
- window tinting;⁷
- failing to illuminate a license plate;⁸
- driving in a dedicated bus-only lane;⁹
- excessive noise;¹⁰

¹ MOPD understands that there are additional amendments being introduced by the sponsor, which we anticipate to align with the intentions of this bill.

² See §§ 13-701(a)-(b), 13-411(d)-(f). The bill adds a three-month grace period to §13-411 for expired registration. Please note that the original draft of House Bill 635 included unregistered vehicles but we have introduced an amendment to clarify that only those with expired registration should be subject to secondary violations.

³ See § 13-411(a).

⁴ See § 13-703(g).

⁵ See §§ 22-101, 22-203, 22-204, 22-206. Please note that the original draft of House Bill 635 incorrectly included vehicles with no functioning headlights, brake lights, or tail lights, we have crafted an amendment to clarify this.

⁶ See §§ 22-101, 22-403, 22-406.

⁷ See § 22-406(i).

⁸ See § 22-204(f).

⁹ See § 21-1133.

¹⁰ See §§ 21-1117, 22-602

- failing to signal a turn, lane change, stop, or start (due to nonfunctional equipment or otherwise),¹¹ and
- littering on a roadway.¹²

House Bill 635 will NOT limit the voluminous other traffic laws and criminal laws that may be enforced as primary offenses. For example, the following laws will continue to be enforceable as primary stops and address the potential safety-components of the above listed rules.

- Negligent driving defined in Trans. Art. § 21-901.1(b), which permits enforcement for any *negligent driving* meaning an individual *is driving a motor vehicle in a **careless or imprudent manner** that endangers any property or the life or person of any individual.*
- Disturbing the peace, loud noise, or disorderly conduct defined in Crim. Law § 10-201(c)(5) and provides that “[a] person from any location may not, by making an unreasonably loud noise, willfully disturb the peace of another: (i) on the other’s land or premises; (ii) in a public place; or (iii) on a public conveyance.” And, a public place specifically includes a “public parking lot, a public street, sidewalk, or right-of-way.”
- Littering in public places. Crim. Law § 10-110 provides that “[a] person may not: dispose or cause or allow the disposal of litter on public or private property, which includes the right-of-way of a road or highway”, and “litter” means “all rubbish, waste matter, refuse, garbage, trash, debris, dead animals, or other discarded materials of every kind and description.”

Further, attached with this testimony is the Vehicle in Motion Checklist issued by the National Highway Traffic Safety Administration (NHTSA). Anything on the attached list that constitutes a moving violation will continue to be a “clue” for DUI/DWI cases regardless of its categorization as a secondary violation.

The reason that MOPD highlights the laws that are not impacted by House Bill 635 is to reinforce the true purpose of the bill: to reduce non-safety-related traffic stops. By limiting these traffic stops, House Bill 635 addresses a problem that has needed a solution for at least the past three decades. History has shown us that when it comes to traffic enforcement, Maryland, like many other states, has a problem. For example, Maryland’s history reveals a pattern and practice of

¹¹ See §§ 21-604, 21-605.

¹² See § 21-1111. This is distinct from Maryland Criminal Law violations addressing similar conduct.

discrimination in traffic enforcement along Interstate 95,¹³ which spurred a class-action lawsuit against the Maryland State Police, and a three-year Department of Justice investigation of the Montgomery County Police Department due to an NAACP complaint alleging racial profiling in traffic stops.¹⁴

In response to these controversies, in 2001, this Legislature required the State's law enforcement agencies to adopt a policy against race-based traffic stops as a management tool to promote nondiscriminatory law enforcement practices. That law also requires law enforcement agencies to compile data collected by each officer following each traffic stop and report the data to the Maryland Statistical Analysis Center (MSAC) annually. In turn, the MSAC must make those statistics available to the public. That statistical data tells us that Black drivers continue to be stopped more often and are four times more likely to be subjected to a warrantless vehicle search than drivers classified as white.¹⁵

This is not new. Since the early 1980s, traffic enforcement has been engrained in the so-called War on Drugs as a drug interdiction tactic. This practice began as part of the Drug Enforcement Administration's "Operation Pipeline" program. Operation Pipeline was established as a highway drug interdiction program that focuses on private vehicles traveling on highways and interstates that are believed to be commonly used to transport drugs.¹⁶ The program taught state and local officers how to use minor traffic infractions as a reason to stop drivers, how to lengthen traffic stops and leverage them into searches for drugs, how to obtain consent to search, and how to use drug-sniffing dogs to generate probable cause.¹⁷ By 2000, the DEA had trained more than 25,000 officers in forty-eight states on those tactics.¹⁸

¹³ ACLU.org, Court Cases: "Driving While Black" in Maryland, www.aclu.org/cases/driving-while-black-maryland <https://clearinghouse.net/case/5538/> (Updated Feb. 2, 2010).

¹⁴ Civil Rights Litigation Clearinghouse, Case: DOJ Investigation of the Montgomery County Department of Police, clearinghouse.net/case/5538/ (Updated Aug. 30, 2023).

¹⁵ See Dept. of Leg. Svcs., Racial Equity Impact Note, Senate Bill 396 (2024), mgaleg.maryland.gov/Pubs/BudgetFiscal/2024RS-SB0396-REIN.pdf; see also Maryland Governor's Office of Crime Prevention and Policy, Race-Based Traffic Stop Data Dashboard, goccp.maryland.gov/data-dashboards/traffic-stop-data-dashboard/.

¹⁶ See DEA, *History: 1980-1985* at 54, https://www.dea.gov/sites/default/files/2021-04/1980-1985_p_49-58.pdf.

¹⁷ Michelle Alexander, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 89-90 (2012) [hereinafter "Jim Crow"].

¹⁸ *Id.*

“The program’s efficacy requires stopping “staggering” numbers of people, particularly [B]lacks and Hispanics, in shotgun fashion. A huge number of innocent people fitting the profile must be stopped and searched for every cache of drugs or money that is discovered.”¹⁹ In Charles Remsberg’s book, *TACTICS FOR CRIMINAL PATROL: VEHICLE STOPS, DRUG DISCOVERY & OFFICER SURVIVAL*—a leading authority on policing—he recommends that officers “seek [] to maximize the number of citizen contacts in vehicle stops during each shift and, through specific investigative tactics, to explore the full arrest potential of each.”²⁰ Another police training book suggests that certain drivers should be stopped, while others are ignored to increase the odds of discovering a crime.²¹

To be sure, traffic stops are one of the most common ways that people interact with police officers. It also has become commonly known that traffic stops are one of the most dangerous encounters that police officers have with the public, and far too often unnecessary stops become fatal. The low-level traffic stops that led to the deaths of Philando Castile (broken taillight), Sandra Bland (failure to use a turn signal), and Walter Scott (faulty brake light) taught us that. Demonte Ward-Blake’s brutal police encounter after being stopped for driving with expired tags in Prince George’s County brought the issue home. Given these facts and circumstances, this Legislature must provide solutions that will minimize the risks posed by these traffic encounters. House Bill 635 seeks to accomplish this.

There are hundreds of traffic offenses that a Maryland police officer may enforce. And it is a common refrain that, if an officer follows a vehicle long enough, they will inevitably observe that vehicles commit one of the many traffic offenses that are available to choose from. But Maryland data demonstrates that the two most common reasons for all traffic stops in Maryland are

¹⁹ Ricardo J. Bascuas, *Fourth Amendment Lessons from the Highway and the Subway: A Principled Approach to Suspicionless Searches*, 38 Rutgers L.J. 719, 763 (2007) [hereinafter “Lessons from the Highway”]; see also Alexander, Jim Crow at 90 (“This ‘volume’ approach to drug enforcement sweeps up extraordinary numbers of innocent people. As one California Highway Patrol Officer said, ‘It’s sheer numbers.... You’ve got to kiss a lot of frogs before you find a prince.’”).

²⁰ Charles R. Epp, Steven Maynard-Moody, & Donald P. Haider-Markel, *PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP* 36 (2014).

²¹ Steven Varnell, *CRIMINAL INTERDICTION* 42 (2013).

registration- and equipment-related, comprising 23.47 percent and 20.3 percent respectively.²² **Traffic stops for reckless, negligent, aggressive, or impaired driving are among the lowest at 1.14 percent of all traffic stops.** Meanwhile, negligent, aggressive, dangerous, and impaired driving remain the leading obstacles to road safety, according to NHTSA.

Further, there is no positive correlation between the volume of traffic stops and improvements in public safety. Just recently, the Maryland State Police (MSP) provided a Letter of Information during the hearing on the companion bill to House Bill 635 (Senate Bill 292). In that letter, the MSP stated:

The Maryland State Police (MSP) has been directly involved in a number of traffic initiatives for the purpose of safer highways and neighborhoods. Our agency has partnered with the Randallstown NAACP at their request for greater visibility and enforcement as well as the Lt Governor's work zone safety committee. *In 2024 the work zone safety enforcement initiative resulted in over **12,000 traffic stops**. Of these stops, 53 warrants were served, 15 criminal arrests were made along with 5 CDS arrests. One firearm was seized. Since June, 2024 MSPs other highway safety initiatives have resulted in over **8,000 traffic stops**. Of these stops, 33 arrests were made for open warrants, 4 criminal arrests, 7 CDS arrests and 1 firearm was seized.*

Another of the MSP's ongoing traffic safety initiatives includes a partnership between state and local law enforcement to patrol the feeder routes into Baltimore City. The NAACP wanted to see a greater law enforcement presence on MD. Rt 140 from I-695 to the Baltimore City line. Since the start of the program in the fall of 2022, together, law enforcement partners have made over 3,000 traffic stops resulting in 24 open warrant arrests, 15 criminal arrests, and 7 firearms seized.

While the MSP's initiatives and partnerships are laudable, they demonstrate that the use of traffic stops for criminal interdiction does not have a significant impact on public safety. Police officers can use their resources more effectively in other ways while still establishing a law enforcement presence in communities of need.

House Bill 635 seeks to prioritize traffic stops in a manner that will allow police officers to use their resources more effectively and improve public safety. With less focus on low-level traffic violations, police resources can be dedicated to investigating serious crimes and enforcing more serious traffic offenses such as reckless driving, speeding, and impaired driving. This would have a

²² According to the Race-Based Traffic Stop Data Dashboard, police officers cited Title 13 (registration or title issues) and Title 22 (equipment) traffic offenses as the top two reasons for their traffic stops in 2023. The third highest cited reason for traffic stops is "Title 21.8," which includes Sections 21-801 through 21-806 (moving violations for speed restrictions).

positive impact on public safety especially since data demonstrates that enforcing low-level traffic stops does not make us any safer. So, while it may be suggested that conducting thousands of traffic stops only to recover one firearm and a handful of controlled dangerous substances is good police work, it certainly cannot be suggested that those traffic stops were the best use of police resources.

Over a dozen states and cities have adopted policies that restrict police enforcement of certain low-level, non-safety-related traffic offenses. The Vera Institute of Justice surveyed states and local jurisdictions and found that the following jurisdictions have adopted a similar policy.

- At least 12 state or local governments have passed policies to limit non-safety-related stops: California; Illinois; New York; Oregon; Virginia; Ann Arbor, Michigan; Chapel Hill, North Carolina; Memphis, Tennessee; Philadelphia; Pittsburgh; Shaker Heights, Ohio; and West Hollywood, California.
- At least 18 jurisdictions have limited these stops by police order: Alliance, Nebraska; Berkeley, California; Culver City, California; Duluth, MN; Fayetteville, North Carolina; Hamden, Connecticut; Lansing, Michigan; Los Angeles, California; Mecklenburg County, North Carolina; Minneapolis, Minnesota; Nashville, Tennessee; New Haven, Connecticut; Newington, Connecticut; Oakland, California; Portland, Oregon; Ramsey County, Minnesota (Maplewood, New Brighton, Roseville, Saint Anthony Village, and Saint Paul); San Francisco; and Seattle, Washington.
- At least six jurisdictions have limited these stops by prosecutorial policy: Chittenden County, Vermont; Ingham County, Michigan; Ramsey County, Minnesota; San Francisco County, California; Suffolk County, Massachusetts; and Washtenaw County, Michigan.

The violations covered in these policies typically fall into eight categories of equipment- and registration-paperwork-related issues, like those covered by House Bill 635.

There are quantifiable benefits to limiting traffic stops. For example, when police officers in Fayetteville, North Carolina, stopped making traffic stops for certain low-level traffic stops, car accidents went down, and non-traffic-related crime was unaffected.²³ Limiting traffic stops can also

²³ Mike Dolan Fliss, Frank Baumgartner, Paul Delamater, Steve Marshall, Charles Poole, & Whitney Robinson, *Re-prioritizing traffic stops to reduce motor vehicle crash outcomes and racial disparities*. Inj. Epidemiol, Vol. 7, Article 3 (2020), injepijournal.biomedcentral.com/articles/10.1186/s40621-019-0227-6.

reduce overall racial disparities in traffic stops. In Connecticut, when an anti-drunk driving policing unit shifted from using minor lighting infractions to violations to find intoxicated drivers, they achieved a 250-percent increase in DUI arrests and a significant decrease in racial disparities.²⁴ Research demonstrates that when police are permitted to use traffic stops for criminal investigations, drivers of color are stopped at higher rates than when they are not permitted to do so.²⁵ In Philadelphia, for instance, traffic stops for the low-level infractions included in the Driving Equality Act dropped by 54 percent for Black drivers.²⁶ And, because police officers were able to shift their focus to investigating more serious offenses, Philadelphia **police actually recovered guns during more traffic stops than they did previously, despite making 70-percent fewer stops.**²⁷

The changes that these other jurisdictions have made to traffic enforcement demonstrates that the use of armed police officers is not the only or even the best method for low-level traffic enforcement. For example, Ramsey County, Minnesota, sought out and found alternatives following the murder of Philando Castile. The Ramsey County Attorney and the Roseville Police Department implemented policies to decrease “non-public-safety traffic stops” “to improve the quality of justice and safety by focusing resources on situations that are most likely to present a public safety threat, improving community trust, and reducing racial inequities.”²⁸ In 2023, Ramsey County piloted a

²⁴ Tom Condon, *After a poor start, CT’s anti-racial profiling effort is making progress: New legislation could significantly change how police conduct traffic stops*, CTMirror (Jan. 30, 2022), perma.cc/5JKB-HF2Z.

²⁵ See generally Stephen Rushin & Griffin Edwards, *An Empirical Assessment of Pretextual Stops and Racial Profiling*, 73 Stan. L.Rev. 637 (2021), <https://review.law.stanford.edu/wp-content/uploads/sites/3/2021/03/Rushin-Edwards-73-Stan.-L.-Rev.-637.pdf>.

²⁶ Sammy Caiola, *Data shows Philly traffic stops involving Black men are down 54%: A Philadelphia law intended to reduce the number of traffic stops for minor vehicle violations appears to be working, according to a new analysis of Philadelphia Police Dept.*, WHYY (Mar. 6, 2023), [whyy.org/articles/philadelphiadriving-equality-act-data-traffic-stops-black-men-reduction/](https://www.whyy.org/articles/philadelphiadriving-equality-act-data-traffic-stops-black-men-reduction/).

²⁷ Howard Monroe, *New Philly law takes weapons off the streets, data shows*, CBSNews.com (Mar. 3, 2023), www.cbsnews.com/philadelphia/news/new-philly-law-takes-weapons-off-the-streets-data-shows/.

²⁸ Ramsey County, *Decreasing Non-Public-Safety Traffic Stops*, June 7, 2023, www.ramseycounty.us/content/decreasing-non-public-safety-traffic-stops.

mail-in voucher program.²⁹ That program allows each participating law enforcement agency in the county to mail vouchers to owners of vehicles in need of repairs for broken headlights, taillights, and turn signals without conducting a traffic stop. Police officers log the information on their on-board computers and the driver is notified via mail of any issues without ever being stopped.³⁰ This is an enforcement alternative that could and should be implemented in Maryland to build community trust and reduce racial inequities here.

In sum, House Bill 635 will shift important resources for road safety enforcement while also demonstrating a commitment to ending racially disparate policing in Maryland. Police officers will still have the authority to police in a manner that complies with the United States Constitution and the Maryland Declaration of Rights, and Marylanders can develop trust in local law enforcement that a traffic stop is for a valid, safety-related concern, rather than a non-safety-related one. What Marylanders, and particularly drivers of color, need is a solution to the racially disparate traffic enforcement problem and relief from the dangers that flow from these unnecessary (and potentially dangerous) police-citizen encounters. House Bill 635 meets that concern while allowing police to continue to focus on road safety.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a FAVORABLE report on House Bill 635.

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²⁹ The program is part of the Lights On! initiative, which began in Minnesota following Philando Castile's death. Lights On! is a creation of Minnesota-based nonprofit MicroGrants that allows police to distribute vouchers at traffic stops to replace broken car lights (headlights, tail lights, or turn signals) instead of issuing a citation. Drivers can redeem their vouchers for up to \$250 in repairs at local automotive repair shops that have partnered with Lights On! Three jurisdictions in Maryland currently participate in the Lights On! program: Cheverly Police Department, Takoma Park Police Department, and University of Maryland Police Department.

³⁰ See MicroGrants 2023 Annual Report, Ramsey County Program, <https://microgrants.net/wp-content/uploads/2024/07/MicroGrants-2023AR-REFERENCE.pdf>.

PHASE ONE: VEHICLE IN MOTION CHECKLIST

1. Problems Maintaining Proper Lane Position

- Weaving
- Weaving across lane line
- Drifting
- Straddling a lane line
- Swerving
- Almost striking object or vehicle
- Turning with a wide radius

2. Speed and Breaking Problems

- Stopping problems
- Unnecessary acceleration or deceleration
- Varying speed
- 10 mph or more under the speed limit

3. Vigilance Problems

- Driving without headlights at night
- Failure to Signal
- Driving wrong way
- Slow response to traffic/officer's signals
- Stopping in lane for no apparent reason

4. Judgment Problems

- Following too closely
- Improper lane change/turn
- Driving on other than designated roadway
- Stopping inappropriately in response to officer
- Inappropriate or unusual behavior
- Appearing to be impaired

5. Stopping the Vehicle

- Tries to flee
- No/slow response
- Abrupt weave
- Sudden stop
- Strikes the curb
- New violations