



Testimony for the Senate Judicial Proceedings Committee

SB 854: Public Safety - Law Enforcement Officers - Restrictions

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FAVORABLE

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The ACLU of Maryland urges a favorable report on SB 854, which seeks to codify existing constitutional protections against racial profiling through language explicitly forbidding racial profiling by law enforcement. The bill also seeks to clarify that federal agents seeking to rely on Maryland law as a basis for their activities are subject to the same Maryland standards as state and local law enforcement. And the bill makes clear that when state or local law enforcement officers are participating in federal task forces, they remain bound by the limits on their authority in state law. Overall, SB 854 is seeking to ensure that Maryland keeps existing constitutional protections and limits federal abuses to the maximum extent allowable by law.

Racial profiling refers a discriminatory practice by law enforcement officials in which an individual or individuals are targeted for suspicion of crime based on the individual's race, ethnicity, religion or national origin.¹ This practice stems from a form of racial bias where people of color are associated with crime, thereby fueling the racial inequalities present in many areas of the criminal legal system.

Landmark cases examining law enforcement and the use of race in policing practices include *Terry v. Ohio* where the supreme court ruled that officers could stop and search individuals only when they had "specific and articulable facts" pointing to possible criminal activity and *Brignoni-Ponce* where the supreme court held that Border Patrol agents could not stop

¹ See <https://www.aclu.org/documents/racial-profiling-definition>

vehicles simply because the passengers appeared to be of Mexican ancestry.² In *Brignoni-Ponce* the court specifically clarified that ethnicity could not stand alone as a basis for suspicion, and doing so is violation of the 4th amendment. When police target someone in any way based on that person's perceived or actual race, ethnicity, or nationality, rather than evidence of criminal activity or illegality, they are engaging in racial profiling.

Dangerous Developments at the Federal Level Necessitate State Action

For more than a year, we have seen federal agents acting lawlessly as they flood American cities across the country. We have witnessed them abusing their authority as they have engaged in blatant racial profiling, illegal and baseless arrests, and excessive force against people trying to live their lives. These brutal tactics have made 2025 ICE's deadliest year in two decades.³ The Department of Homeland Security (DHS) and Immigration Agents are routinely defying court orders and engaging in mass civil rights violations – as seen recently in Minnesota, where agents killed two legal observers.⁴ There have been 16 shootings by DHS officers since July, including one in Glen Burnie. No officers have faced charges for these shootings. ICE's operation in Los Angeles showed agents sweeping up, brutalizing, and detaining anyone who looked Latino at Home Depots, farms, and car washes. Similar abuses have been documented around the country. Alarming, a recent memo to ICE agents directs them to enter homes and private spaces without a judicial warrant.⁵

² *Terry v. Ohio*, 392 U.S. 1 (1968); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975)

³ <https://www.npr.org/2025/10/23/nx-s1-5538090/ice-detention-custody-immigration-arrest-enforcement-dhs-trump>

⁴ <https://abcnews.go.com/Politics/minute-minute-timeline-fatal-shooting-alex-pretti-federal/story?id=129547199>

⁵ <https://www.documentcloud.org/documents/26499371-dhs-ice-memo-1-21-26/>

These abuses have only escalated and are emboldened by the U.S. Supreme Court's (SCOTUS) continued dismantling of bedrock constitutional rights and refusal to check federal abuses. Last summer, in *Vasquez Perdomo v. Noem*, SCOTUS telegraphed a troubling acceptance of explicit racial profiling by ICE. In a ruling issued through the Court's infamous "shadow docket," the Court suspended implementation of two lower court orders that had prohibited ICE from making investigative stops based in part on apparent race or ethnicity. The effect of the SCOTUS ruling was to allow this racial profiling to continue. In a shocking concurring opinion, Justice Kavanaugh justified and defended the practice, downplaying the individual and social harms of actions long considered blatant violations of the Fourth and Fourteenth Amendments of the U.S. Constitution, and all but inviting law enforcement to profile based on perceived race or ethnicity.⁶

These erosions at the federal level threaten our rights under Maryland's state constitution. Maryland courts almost always interpret provisions of the state Constitution to mean the same thing as the federal Constitution, relying heavily on federal court decisions to inform state law. Without clear state-level protections, federal rulings can weaken how our rights are protected in Maryland. There are 11 other states that have already adopted legislation banning racial profiling.

⁶ There has been a significant amount of criticism of the Kavanaugh concurrence from the legal community and other stakeholders. For example, one magazine article discussed how the concurrence expands the "prerogative state" -a legal regime targeting vulnerable communities-that will sweep millions of lawful residents into the immigration enforcement system. *The Little Discussed Reason Brett Kavanaugh Is Comfortable Greenlighting Racial Profiling*, <https://slate.com/news-and-politics/2025/09/supreme-court-news-brett-kavanaugh-racial-profiling.html> Another article discusses backlash on Kavanaugh's description of interactions between ICE and people who lawfully reside in the U.S.. Kavanaugh stated that suspected persons found to lawfully reside in the U.S. are "promptly let go" though many people attest to the contrary. *We Found That More Than 170 U.S. Citizens Have Been Held By Immigration Agents. They've Been Kicked Dragged And detained For Days* <https://www.propublica.org/article/immigration-dhs-american-citizens-arrested-detained-against-will>

Given the very real risk of federal court retreat from this core constitutional principle of equal treatment and protection against racial profiling, we must make it clear that in Maryland, law enforcement is prohibited from engaging in the practice.

Limits on Federal Reliance on State Law & State and Local Law Enforcement Officers Participating in Federal Task Forces

Maryland, like many other states, defines in state law when federal law enforcement officers may rely on state law to make arrests. Provisions like this are necessary, because federal officers do not have any authority granted by federal statutes to enforce state laws (other than on federal property). SB 854 makes clear that whenever federal officers rely on this state granted authority, they must also be acting in accord with state law, including the ban on racial profiling. The bill also makes clear that to the extent federal officials want to rely on the provision in existing law allowing arrests when there is an emergency, that authority exists only when the emergency is declared pursuant to existing state law.

The final provision in SB 854 makes clear that when state or local law enforcement officers participate in federal task forces and are thereby granted authority to act pursuant to federal law, they must still adhere to the state laws governing their actions. This provision is necessary to ensure that federal agreements deputizing state or local police do not become an end run around the limits that Maryland has enacted into law.

History of ACLU fight against Racial Profiling in Maryland

The ACLU has worked to eliminate the racial profiling practices of the Maryland law enforcement since the early 1990s. In 1993, the ACLU brought a class-action lawsuit against the Maryland state police (MSP) on behalf of Robert L. Wilkins, a Black lawyer (and currently a federal appellate judge) who was stopped, detained, and searched for no apparent

reason. The case revealed that MSP illegally targeted Black motorists for stops and searches along Maryland's highways. In 1995, the parties entered into a settlement requiring MSP to collect data on traffic stops and searches and take measures to prevent racial profiling. Two years later, the federal court overseeing the case ruled that MSP was continuing to target non-white motorists for traffic stops and searches, in violation of the Wilkins agreement.

In 1998, based on accumulated evidence showing a continuing pattern and practice of discrimination by MSP troopers, the ACLU, on behalf of the Maryland NAACP and several individual plaintiffs, filed another lawsuit against MSP for continuing to engage in racial profiling. This lawsuit was finally settled in April 2008 with MSP agreeing to provide the Maryland NAACP with quarterly reports containing detailed information on the number, nature, location and disposition of racial profiling complaints. In a related, but separate action, in February 2007, the Maryland NAACP submitted a request designed to determine whether MSP had complied, and was continuing to comply, with its obligations under the consent decree. MSP was ordered to release records of investigations into racial profiling complaints against police personnel.

The ACLU of Maryland, along with our partners have worked over the last three decades to not only address harmful racial profiling practices in Maryland but work to prevent future harmful practices through transparency and accountability. SB 854 ensures that Maryland residents will be protected from racial profiling even if the Supreme Court undermines the current constitutional protections barring that practice.

Racial Profiling's Devastating Impacts on Public Safety

Racial profiling alienates people from law enforcement, undermines community-policing efforts, and erodes trust. As a result, law-enforcement officers and agencies lose credibility with the very communities they are

sworn to protect and serve. Because racial profiling means basing decisions on racial bias or false assumptions, rather than reasonable suspicion or evidence, it violates the Fourth Amendment guarantee to be free of unreasonable searches and seizures. It invites police to focus on the wrong people—time that could be spent instead on high-quality investigating and enforcement.

Every time someone is stopped, questioned, searched, or otherwise targeted by law enforcement based on their actual or perceived identity, it violates the constitutional requirement under the 14th Amendment that police and other government officials accord all people equal protection under the law. It also causes real harm that persists beyond that encounter. The person stopped is affected by being singled out based on who they are, rather than their conduct, and this impact ripples through their loved ones and broader community. It's not about whether an officer was abusive – it's the fact that it happened at all. Research shows that these experiences often lead people to believe the law is not meant to protect them, and that belief spreads and is reinforced by seeing others with similar experiences. Further, these harms are not shared equally. Communities of color bear them most heavily.⁷

Maryland must take affirmative steps to ensure existing protections against racial profiling are not eroded here, and to protect Marylanders from racial profiling and by federal agents to the maximum extent allowable by law. For the foregoing reasons, the ACLU of Maryland urges a favorable report on SB 854.

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<https://www.hks.harvard.edu/centers/wiener/programs/criminaljustice/research-publications/dispatches/bpd-racial-bias#takeaway2>

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