

AN ACT TO CURTAIL PRETEXTUAL TRAFFIC STOPS

One of the longstanding problems in policing has been the pretextual use of low-level traffic and pedestrian stops as a strategy to address more serious crime. Although there may be some limited role for pretextual enforcement to investigate specific serious crimes, there is a fair bit of evidence to suggest that its over-use has exacerbated racial disparities in policing, unnecessarily pulled individuals into the criminal justice system for very minor misconduct, generated a great deal of distrust between police and communities, and done very little to actually address serious violent crime.

This statute is designed to curtail the use of pretextual traffic stops—focusing in particular on low-level stops that do not otherwise have a close nexus to public safety. The statute takes a four-pronged approach: (1) It prohibits officers from making stops for certain low-level offenses (thereby relegating them to “secondary offense” status); (2) Limits fishing expeditions during lawful stops; (3) Reduces reliance on outstanding warrants for low-level offenses and first-time failures to appear, thereby ensuring that lawful stops do not lead to disproportionately harmful custodial arrests and the associated potential for physical altercation; and (4) Requires agencies to collect demographic stop and arrest data to facilitate public oversight of agency enforcement practices. The statute importantly does not restrict officers’ authority to stop an individual for reckless driving or other traffic offenses that pose a clear public safety issue.

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SECTION I: CERTAIN TRAFFIC STOPS PROHIBITED

- (1) Except as provided in subsection (2), an officer may not stop, arrest, or detain the operator of a motor vehicle for any of the following offenses:

Note: We include below low-level traffic offenses commonly found in state and local law. Each jurisdiction should compare the below list to the list of traffic offenses applicable in

the particular jurisdiction and consider adding to the list any other low-level offenses that are not included below that are unlikely to pose a public safety issue.

Equipment violations:

- (a) Failure to display registration tags, or driving with expired registration tags;
- (b) Failure to illuminate license plate;
- (c) Driving without a functioning headlight, or failure to turn on headlights, unless the sun has set and both headlights are out;
- (d) Driving without functioning brake lights, unless both brake lights are out;
- (e) Driving without functioning taillights, unless the sun has set and both taillights are out;
- (f) Driving without a rearview mirror, or with the rearview mirror obstructed, unless one or both of the sideview mirrors are missing or damaged as well;
- (g) Affixing an object or material that obstructs the driver's view through the windshield, rear window, or side windows, unless the driver's view is so obstructed as to create a condition that substantially increases the likelihood of injury or death;
- (h) Cracked windshield unless the driver's view is so obstructed so as to create a condition that substantially increases the likelihood of injury or death;
- (i) Window tint does not comply with [insert cite to applicable state laws];
- (j) *[Optional: Any other equipment violation listed in sections [x.xxx to x.xxx] unless it creates a condition that makes it reasonably likely that injury or death would result.]*

Note: Obstruction of the lettering or decal on the license plate is a common basis for traffic stops. States that have vehicle codes that are unclear on whether de minimis "obstruction" that does not obscure the license plate lettering or issuing jurisdiction constitutes a vehicle code violation should consider amending their laws defining the license plate "obstruction" traffic offense to clarify that such de minimis obstruction is lawful. For example, Pennsylvania law provides that there is no unlawful "obstruction" when "a registration [i.e., license] plate frame ... minimally outlines the registration plate in such a manner that the registration plate's number and issuing jurisdiction is identifiable" by automated enforcement systems such as red light cameras and electronic toll systems. 75 Pa. Comp. Stat. § 1332(b.1).

Low-level traffic violations:

- (k) Exceeding the speed limit by less than 5MPH on any roadway where the speed limit is under 40MPH, or by less than 10MPH on any roadway where the speed limit 40MPH or greater;
- (l) Making an illegal U-turn from the far-left lane, unless the U-turn was executed in a manner that creates a condition that substantially increases the likelihood of injury or death;
- (m) Failure to have a seatbelt fastened, other than an improperly restrained minor under the age of 14;
- (n) Failing to signal while turning or switching lanes;
- (o) Failure to dim headlights;
- (p) Excessive noise;
- (q) Littering, unless an object is thrown from a vehicle in a manner that creates a condition that substantially increases the likelihood of injury or death;
- (r) Any parking infraction. Nothing in this provision shall prevent an officer from asking a driver unlawfully parked, or unlawfully obstructing traffic or a fire hydrant, to move their car.

Low-Level Warrants:

- (s) Based on reasonable suspicion or probable cause to believe that the driver or any passenger in the vehicle has an outstanding warrant for any of the following:
 - i. Failure to pay an outstanding fine or fee;
 - ii. Failure to appear in court for [insert here the applicable state classifications for violations, infractions, and misdemeanors, other than assaultive offenses or crimes of violence].
- (2) An officer may stop or detain the operator of a motor vehicle, or issue a citation for an offense enumerated in section (1) if:
 - (a) the officer lawfully stopped or detained the operator of the motor vehicle for an offense not enumerated in section (1); or
 - (b) the operator is driving a commercial vehicle; or
 - (c) the motor vehicle is unoccupied; or

- (d) the motor vehicle matches the description of a motor vehicle suspected of having been involved in homicide, kidnapping, sex trafficking or forced labor as defined in 22 U.S.C. § 7102(11), 11(A), or any other crime for which failure to immediately apprehend the suspect is reasonably likely to result in death or serious bodily injury to a person other than the suspect.

Note: This last provision is designed to address the (very) rare case where traffic stops may be used to investigate very serious offenses that involve an immediate threat to public safety. A classic example would be a kidnapping case where the police have a general description of a vehicle (“white van”) that may not be enough to justify stopping any particular vehicle—but whether the risk of harm is sufficiently grave as to justify the use of any constitutional means to apprehend the suspect. Of course, if an officer knows sufficient particular facts about the vehicle or occupant to give the officer reasonable suspicion that the occupant committed a crime, the officer may lawfully stop the vehicle.

Note: If your state wishes to authorize officers to mail citations or warning letters to motor vehicle operators who solely commit one of the infractions identified in subsection (1) above, Appendix A of this statute includes a set of optional provisions to establish that process. Appendix A also contains data collection provisions to ensure officers are issuing citations in an equitable manner.

SECTION II: LIMITING SEARCHES

- (1) No officer conducting a traffic stop of a motor vehicle may ask an occupant or operator of the motor vehicle for consent to conduct a search of the motor vehicle, the contents of the motor vehicle, or an occupant’s or operator’s person unless:
 - (a) the officer stopped the operator for a non-motor vehicle offense; or
 - (b) the officer has [probable cause / reasonable suspicion] to believe that the motor vehicle, the contents of the motor vehicle, the operator’s person, or a passenger’s person contain evidence of a non-motor vehicle offense;
- (2) An officer’s perception of the odor of marijuana shall not serve as a basis to search a motor vehicle, or to search the driver, occupants, or any of the contents of a motor vehicle.
- (3) An officer may not use a drug-detection canine on a stopped motor vehicle unless the officer has reasonable suspicion to believe either that the motor vehicle contains illegal narcotics [other than marijuana], or that a driver or an occupant of the motor vehicle possesses illegal narcotics [other than marijuana].

SECTION III: WARRANT REFORM

Another way to reduce the potential harms from traffic stops—for drivers and officers alike—is to reduce reliance on bench warrants to compel appearance in court, particularly for low-level offenses. For a full list of warrant reforms, please see the Policing Project’s warrant reform statute. Here, we include limited provisions designed to reduce reliance on outstanding warrants, including: (1) prohibiting the issuance of warrants for failure to pay fines and fees, as well as certain low-level offenses; and (2) limiting substantially the use of warrants to compel appearance in court after an initial failure to appear.

(1) Definitions:

- (a) ISSUING ENTITY—The term “Issuing Entity” means any local or state court, agency or other entity with the authority to issue warrants.
- (b) LOW-LEVEL OFFENSE—The term “Low-Level Offense” refers to any non-violent misdemeanor, technical violation of parole or probation, and status offense by juveniles, for which incarceration is an authorized punishment. Low-Level Offenses are punishable by less than a year of incarceration. Low-Level Offenses do not include any crime of violence, including a sexual offense, or an offense involving domestic violence.
- (c) INFRACTION—The term “Infraction” refers to offenses punishable by fines or subject to the imposition of Court Costs, where incarceration is not authorized. Infractions include the violation of an administrative regulation, an ordinance, a municipal code, and a state or local traffic rule. *[Depending on the jurisdiction, they may sometimes be called a petty offense.]*
- (d) FAILURE TO APPEAR—The term “Failure to Appear” is a criminal charge for missing a court date that is separate from the underlying offense. [reference specific state statute for failure to appear, also called bail jumping in some states]
- (e) WARRANT—The term “warrant” in this statute refers to a written order from a court directing a peace officer to arrest a person.

(2) For a Low-Level Offense or Infraction, or a Failure to Appear on a Low-Level Offense, an Issuing Entity may not issue a warrant after one missed court appearance. If the defendant fails to appear in Court, the Issuing Entity will automatically issue a new hearing date no sooner than 30 business days thereafter, and no later than 60 business days thereafter, with notice provided to the defendant.

(3) Grace Periods: When a defendant charged with a Low-Level Offense or Infraction fails to appear at a second scheduled appearance before an Issuing Entity, the Issuing Entity may not issue a warrant until the passage of at least 72 hours after the missed court appearance.

- (a) The 72-hour period does not include any day on which the Issuing Entity is not in session. The defendant can appear in person or through counsel, via telephone, or via other means to contact the court and reschedule the appearance date.
 - (b) If the defendant appears within the 72-hour period, the Issuing Entity may not issue a warrant and must reschedule the court appearance, if the underlying case is not resolved by that appearance.
- (4) For [Infractions/failure to pay fines and fees], the Issuing Entity may never issue an arrest warrant. The separate offense of “Failure to Appear” will not be charged where the only charged offense(s) are Infractions. The Issuing Entity may only issue a warrant authorizing arrest for incarcerable offenses.

Note: The following provisions ensure that individuals are no longer arrested for existing warrants for infractions. Option 1 is an optimal solution, and should be used for jurisdictions that are able to identify and purge these warrants. For jurisdictions in which identifying these warrants is more difficult (e.g., those that use a paper-based system) OR as a stopgap until all such warrants are identified and purged, we offer option 2.

- (5) *Option 1:* Issuing Entities shall identify and purge any warrant authorizing arrest for an Infraction or for a Failure to Appear offense for an Infraction from existing warrant databases [within – months of enactment].
- (6) *Option 2:* A peace officer shall not arrest any individual with a warrant for an Infraction or for a Failure to Appear offense for an Infraction.

SECTION IV: DATA COLLECTION

- (1) No later than [insert date], each law enforcement agency shall collect incident-level data on all traffic stops conducted by officers employed by the agency.

Note: States may wish to stagger the rollout, requiring larger agencies to report first, in order to work out potential wrinkles before expanding to smaller agencies.

- (2) No later than [insert date], each law enforcement agency shall furnish annually to the [State Reporting Agency], in a manner defined and prescribed by the [State Reporting Agency], a report of all stops conducted in the prior year by officers employed by the agency.
- (3) Each report required under paragraph (2) shall include, at a minimum, the following information for each stop:

- (a) The time, date, duration, and location of the stop;

- (b) The reason for the stop;
- (c) The result of the stop, such as no action, warning, citation, search, or arrest;
- (d) The perceived race or ethnicity, gender, and age of the driver. This information need only be provided for the driver, unless a passenger is searched, cited, arrested, or has physical force used against them;
- (e) Whether the person stopped appeared to be experiencing a mental or other behavioral crisis;
- (f) Actions taken by the officer during the stop, including, but not limited to, the following:
 - i. Whether the officer searched the person, vehicle, or any property, and, if so, the type of search (e.g., pat-down), the basis for the search, and the type of contraband or evidence discovered, if any;
 - ii. Whether the officer asked for consent to search the person or any property, and, if so, whether consent was provided;
 - iii. Whether the officer seized any property and, if so, the type and amount of property that was seized and the basis for the seizure;
 - iv. Whether the officer used physical force against any person, and if so, the type of force used;
 - v. Whether the officer pointed a firearm or a conducted energy device at any person;
 - vi. Whether a police dog performed a sniff; and if so, whether or not the dog alerted to the presence of contraband;
 - vii. *Optional: If the police dog was alerted to the presence of contraband, whether the police found contraband, and, if so, whether the particular contraband was that which the dog was trained to detect.*
 - viii. *Optional: Whether the officer ordered any person to exit the vehicle;*
 - ix. *Optional: Whether the officer handcuffed or otherwise physically restrained any person during the stop, such as by placing a person in a police vehicle;*
 - x. *Optional: Whether the officer checked, or asked dispatch to check, for any outstanding warrants for the person.*
- (g) If a citation was issued, the violation(s) cited;

- (h) If an arrest was made, the offense charged;
 - (i) The following information about the officer conducting the stop: (1) Officer's unique identification number, (2) type of assignment, (3) *Optional: years of experience*, (4) *Optional: Officer's race*.
- (4) The [State Reporting Agency] shall make the information obtained from law enforcement agencies publicly available on the State Reporting Agency website, classified by law enforcement agency, in a manner that is clear, understandable, analyzable, and accessible to the public.
- (5) State and local agencies subject to this section shall not report or make publicly available the name, address, social security number, or other unique personal identifying information of the persons stopped, searched, or subjected to a property seizure. Law enforcement agencies are solely responsible for ensuring that personally identifying information of the individual stopped is not transmitted to the [state agency] or otherwise released to the public.
- (6) Each agency covered by this section shall develop and make publicly available a policy governing review and auditing of stop data collected to ensure officer compliance with the requirements of this statute.

SECTION V: REMEDIES FOR VIOLATIONS OF THIS ACT

- (1) Any evidence recovered during a stop, arrest, detention, or search made in violation of this Act, or recovered as a result of such a stop, arrest, or detention, shall be inadmissible in any criminal proceeding.
- (2) Nothing in this section shall be construed to preempt or limit existing remedies or causes of action that may be triggered by violations this Act.
- (3) *Optional: An officer's mistake of fact, whether or not it is reasonable or in good faith, that a stop of a motor vehicle is permissible under Section I shall have no bearing on whether evidence recovered during the stop is admissible in a subsequent criminal proceeding.*

SECTION VI: DEGREE OF PREEMPTION OF LOCAL LAW

- (1) It is the intent of the Legislature to preempt any local law that would:
 - (a) authorize an officer to engage in a stop, search, citation, detention, arrest, or questioning that is prohibited in Sections I and II of this Act; or
 - (b) otherwise conflict with or frustrate the purpose of any provision of this Act.

The above language may need to be amended in light of the particulars of each State's preemption doctrine.

- (2) Neither this Act nor any other provision in [*cite state traffic code and any related state statutory provisions with language that could be read to preempt local traffic law reform*] shall be construed to preempt any local law that would restrict further the role of law enforcement officers in traffic enforcement, including by (1) assigning certain traffic enforcement functions to local officials or personnel who are authorized to conduct such functions instead of sworn law enforcement officers; or (2) placing additional limits on officer conduct or questioning during traffic stops.

Note: The above anti-preemption language is intended to clarify that state law does not preempt localities from experimenting further by, for example, having non-sworn officers respond to traffic accidents, or issue citations, so long as state law permits them to do so. To the extent your state traffic code has language that could be read to preempt the sort of local experimentation described in the statutory language above, you should consider repealing or modifying that statutory language.

With respect to (1) above, additional legislation likely would be necessary to authorize alternative responders to make traffic stops. A traffic stop constitutes a seizure under the Fourth Amendment. State laws authorize sworn law enforcement offices to effect seizures, but may not authorize alternative (non-law-enforcement) responders to do so. Consequently, your state should consider whether existing state law should be amended to permit carefully-trained alternative responders to conduct at least a subset of traffic stops.

APPENDIX A (Optional Citation/Warning Letter By Mail Provisions)

- (1) *If an officer does not have grounds to stop a vehicle or detain the operator of a motor vehicle under this statute, and the officer can identify the owner of the vehicle, the officer's agency may mail a citation to the owner of the vehicle, or send a warning letter identifying the violation and instructing the owner to correct the defect or otherwise remedy the violation.*

Note: If your state decides to adopt the above optional provision, your state should be sure to also address—either in the statute itself or in a regulation—how a vehicle owner can establish that they were not operating the vehicle at the time of the violation. Of course, it is not uncommon for the driver of the vehicle and the owner of the vehicle to be two different people. Given that fact, the state should ensure there is a convenient process in place for a vehicle owner to rebut that they were driving the vehicle at the time of the citation; the statute or regulation might also specify what evidence suffices to make such a showing (e.g., pay stub, witness statement, letter from employer).

- (2) *No later than [insert date], each law enforcement agency shall collect and furnish annually to the [State Reporting Agency], in a manner defined and prescribed by the [State Reporting Agency] incident-level data on all citations or warning letters mailed by officers employed by the agency pursuant to Appendix A(1) of this ordinance by officers employed by the agency.*
- (3) *Each report required under paragraph (2) shall include, at a minimum, the following information for each citation or warning letter mailed:*
 - (a) *The time and date of the infraction;*
 - (b) *The race or ethnicity, gender, and age of the driver, if perceived by the officer or otherwise known;*
 - (c) *If a citation was issued, the violation(s) cited;*
 - (d) *If a warning letter was mailed, the violation(s) cited; and*
 - (e) *The following information about the officer conducting the stop: (1) Officer's unique identification number, (2) type of assignment, (3) Optional: years of experience, (4) Optional: Officer's race.*
- (4) *The [State Reporting Agency] shall make the information obtained from law enforcement agencies publicly available on the State Reporting Agency website, classified by law enforcement agency, in a manner that is clear, understandable, analyzable, and accessible to the public.*
- (5) *State and local agencies subject to this section shall not report or make publicly available the name, address, social security number, or other unique personal identifying information*

of the persons stopped, searched, or subjected to a property seizure. Law enforcement agencies are solely responsible for ensuring that personally identifying information of the individual stopped is not transmitted to the [state agency] or otherwise released to the public.