

Free2Move Policy Platform: Addressing Racially Discriminatory Police Stops

Whether in a car, on a bike, or on the sidewalk, Black and Latine people in Chicago are stopped by police for traffic offenses at higher rates than their white neighbors. Stops are used as a primary public safety strategy despite a lack of evidence to show that these stops decrease traffic violence or violent crime. Widespread stops concentrated in communities of color can lead to distrust of police, and we have seen time and again how stops can escalate, leading to harm and in some cases, death. For people who are Deaf or Hard of Hearing or who have other auditory processing or communication disorders, the interaction can become even more stressful once stopped if police interpret the communication difference as a threat.

To reduce racially discriminatory and ineffective policing, we must make changes to the way police conduct vehicle, bike, and jaywalking stops. Limiting these arbitrary and intrusive behaviors would be a significant step toward increasing trust between the police and the community and improving public safety and police efficiency by compelling law enforcement to focus their efforts on investigating truly suspicious behavior. To learn more about the impact of these stops visit: www.Free2MoveChi.org.



WHO WE ARE
The Free2Move Coalition is an alliance of community and advocacy organizations working to create a safer, more racially equitable system of traffic safety in Chicago. To learn more about the work and values of the Coalition visit www.Free2MoveChi.org.



THE FREE2MOVE COALITION RECOMMENDS THREE KEY POLICY CHANGES TO REDUCE RACIALLY DISCRIMINATORY AND INEFFECTIVE POLICING BY MAKING CHANGES TO THE WAY POLICE CONDUCT STOPS:

- 1 END PRETEXTUAL STOPS**
- 2 LIMIT STOPS FOR LOW-LEVEL OFFENSES**
- 3 END SUSPICIONLESS CONSENT SEARCHES**

1 END PRETEXTUAL STOPS

Prohibit law enforcement from stopping a motorist, bicyclist, or pedestrian for a traffic code violation when their primary intention is to conduct a suspicionless investigation for unrelated criminal activity for which they lack reasonable suspicion.

What are pretextual stops? Law enforcement can follow any motorist, bicyclist, or pedestrian until they violate a traffic law, no matter how small, and use that traffic infraction as a pretext to stop the person and “fish” for violations of criminal laws.

Why are they a problem? Pretextual stops do not keep our communities or our roads safer, and they have resulted in racial profiling and over-policing in communities of color. Data and police statements from Chicago show that the number of traffic stops in recent years have skyrocketed because police have increasingly focused on pretextual traffic stops as a tool to investigate crime; yet, the stops result in strikingly low levels of citation, contraband recovery, and arrest, indicating they are not an effective tool for finding violations of criminal laws.¹ Black and Latine Chicagoans face the brunt of this practice, with vehicle, bike, and jaywalking stops being concentrated in predominantly Black and Latine communities on Chicago’s South and West Sides.²

What can be done about it? This policy change would restrict the power of law enforcement to stop a vehicle, bicyclist, or pedestrian for a traffic code violation when their primary intention is to conduct a suspicionless investigation for unrelated criminal violations. With this change, officers would still be able to conduct criminal investigations during a traffic code stop if suspicion of criminal activity arises during the stop. This change also would have no effect on officers’ ability to stop someone if their primary reason is reasonable suspicion of criminal activity.

Where has this change been made? The Los Angeles Police Department adopted a policy under which police generally can no longer use minor violations as an excuse to investigate motorists or pedestrians for more serious crimes unrelated to the violation.³

2 LIMIT STOPS FOR LOW-LEVEL OFFENSES

Restrict law enforcement’s ability to stop people solely for low-level, minor traffic code violations like a single broken headlamp and expired registration that do not implicate public or traffic safety.

What are stops for low-level offenses? Law enforcement often use stops for low-level violations that do not present an immediate safety risk, like having one broken headlight or expired registration, as an excuse to stop people.

Why are they a problem? Stops for these violations are not made to make our roads safer but instead are made as a pretext to investigate, particularly Black and Latine people, for violations of criminal laws. The vast majority of traffic stops made by Chicago police officers are for minor violations of the traffic code. From 2019-2021, over 50% of the traffic stops CPD made were for two types of violations—having an unlit or broken headlight or taillight or improperly displayed or expired registration plates or tags.⁴

What can be done about it? This policy change would prevent officers from stopping a person solely for a set of low-level violations that have little to no impact on roadway safety. Examples of these traffic code violations would include having one broken headlight or taillight when the other is still lit, failure to have a license plate light, having expired registration if it expired within a certain number of months, or municipal jaywalking offenses. This measure would curb the police’s ability to make minor traffic stops that are not related to traffic safety and that result in racially disparate enforcement.

Where has this change been made? Other jurisdictions across the country have pursued a version of this reform, including Virginia,⁵ California,⁶ Philadelphia,⁷ Pittsburgh,⁸ Memphis,⁹ San Francisco,¹⁰ Kansas City,¹¹ and Denver.¹² Illinois recently passed a law prohibiting vehicle stops based solely on a violation of the law barring objects hanging from the front windshield.¹³

3 END SUSPICIONLESS CONSENT SEARCHES

Require law enforcement to have some level of suspicion to search motorists, bicyclists, pedestrians, and their belongings by ending the use of suspicionless consent searches.

What are consent searches? During a traffic, bike, or jaywalking stop, officers are permitted to ask for a person's consent to search them, their belongings, or their vehicle, even when they have no suspicion of criminal activity. Consent searches, like pretextual stops, are suspicionless and intrusive investigatory tactics that disproportionately affect Black and Latine drivers.

Why are they a problem? Consent searches are problematic, because not only do they allow police to embark on a suspicionless "fishing expedition" of a person and their belongings, but the coercive nature of a police encounter means any consent given may not truly be voluntary. This is particularly true for Black and Latine people whose individual and group experiences with police authority can lead to apprehension, fear, and distrust. In Chicago, from 2015 to 2021, the share of stopped Black drivers who were asked for consent to search their car was over 4 times the percentage of stopped white drivers; the percentage of stopped Latine drivers asked for consent to search their vehicle was over 3 times the percentage of stopped white drivers.¹⁴

What can be done about it? This policy change would require law enforcement to have an independent legal basis to search before asking consent to search a person, their vehicle, or their belongings during a stop for a traffic code violation. A policy like this could help curb ineffective and racially discriminatory stops and searches by disincentivizing stops and requiring police to focus their investigatory efforts where there are actual signs of criminal activity.

Where has this change been made? Places including Connecticut,¹⁵ San Francisco,¹⁶ and Kalamazoo, Michigan,¹⁷ have made changes like this.

Combining these changes together, this three-pronged policy would make significant progress toward a more racially equitable traffic system. By targeting the purpose of the stops (pretext), the most common minor justifications for these stops (low-level offenses with no impact on traffic safety), and one of the driving incentives to conduct stops without criminal suspicion (fishing for criminal activity through consent searches), this approach ensures that both the ability to and the incentive to conduct racially discriminatory and unnecessary pretextual stops will be diminished. Expert groups like the Center for Policing Equity, the Policing Project, and Vera Institute of Justice recommend some or all of these approaches as important tools to reduce pretext stops.¹⁸

More broadly, the Free2Move Coalition stands on a ten-point platform that spans multiple types of transportation and enforcement in pursuit of a racially equitable traffic safety system where everyone, regardless of what you look like, where you live, or how you travel, is free to move. To learn more, visit www.Free2MoveChi.org.

- 1 See *A New Vehicle for "Stop and Frisk": the Scope, Impact, and Inequities of Traffic Stops in Chicago* (March 2023) <https://www.impactforequity.org/wp-content/uploads/2023/04/A-New-Vehicle-for-Stop-and-Frisk-Report.pdf>; *A New Vehicle for "Stop and Frisk: Update* (May 2023) https://www.impactforequity.org/wp-content/uploads/2023/05/IFE_Traffic-Stop-Report-Update_F.pdf.
- 2 *Id*; Jesus M. Barajas, *Biking where Black: Connecting transportation planning and infrastructure to disproportionate policing*, *Transportation Research Part D: Transport and Environment*, Volume 99 (2021) 103027, ISSN 1361-9209, <https://doi.org/10.1016/j.trd.2021.103027>.
- 3 Los Angeles Police Department Manual, Section 1/240.06, Policy – Limitation on Use of Pretextual Stops, last updated Jan. 26, 2023, <https://www.lapdonline.org/lapd-manual/>.
- 4 See *A New Vehicle for "Stop and Frisk"* and *A New Vehicle for "Stop and Frisk": Update*, *supra* note 1.
- 5 Virginia General Assembly, HB 5058 (2020 Special Session) <https://lis.virginia.gov/cgi-bin/legp604.exe?202+ful+CHAP0045>.
- 6 Colleen Shalby, *Jaywalking is decriminalized in California under new law*, L.A. Times (Oct. 1, 2022) <https://www.latimes.com/california/story/2022-10-01/jaywalking-decriminalized-in-california-under-new-law>.
- 7 Driving Equality Act, Philadelphia City Council (2021) <https://phila.legistar.com/LegislationDetail.aspx?ID=5007830&GUID=065348E0-F4F6-4B6A-A088-DFF5358E73CD&Options=ID|Text|&Search=210636>.
- 8 Pittsburgh City Council, Ordinance 2021-2174 <https://pittsburgh.legistar.com/LegislationDetail.aspx?ID=5208670&GUID=B5AEC7AF-6845-4012-8B7D-3462C66597FA&Options=&FullText=1>.
- 9 Katherine Burgess and Lucas Finton, *Memphis passes 'Achieving Driving Equality' ordinance after Tyre Nichols' death*, Commercial Appeal (April 11, 2023 6:07 PM) <https://www.commercialappeal.com/story/news/politics/2023/04/11/memphis-passes-achieving-driving-equality-after-tyre-nichols-death/70099925007/>.
- 10 San Francisco Police Department, General Order 9.07: Restricting the Use of Pretext Stops, https://sf.gov/sites/default/files/2023-03/DGO%209.07_03.15.23.pdf.
- 11 Lynn Horsley, *Kansas City Is Dumping Jaywalking Tickets Because They Mostly Go To Men And African Americans*, KCUR (May 6, 2021) <https://www.kcur.org/news/2021-05-06/kansas-city-is-dumping-jaywalking-tickets-because-they-mostly-go-to-men-and-african-americans>.
- 12 Joe Rubino, *Denver City Council votes to decriminalize jaywalking – but it's still illegal under state law*, The Denver Post (Jan. 30, 2023) <https://www.denverpost.com/2023/01/30/denver-city-council-decriminalize-jaywalking-vote/>.
- 13 Act of June 9, 2023, Pub. Act 103-0032, 2023 Ill. Laws, <https://www.ilga.gov/legislation/billstatus.asp?DocNum=2389&GAID=17&GA=103&DocTypeID=HB&LegID=147466&SessionID=112>.
- 14 See *A New Vehicle for "Stop and Frisk"* and *A New Vehicle for "Stop and Frisk": Update*, *supra* note 1.
- 15 Connecticut General Assembly, Public Act No. 20-1, An Act Concerning Police Accountability, July 2020 Special Session, <https://www.cga.ct.gov/2020/ACT/PA/pdf/2020PA-00001-R00HB-06004SS1-PA.pdf>.
- 16 San Francisco Police Department, General Order 9.07, *supra* note 10.
- 17 Aaron Mueller, *Traffic stops by Kalamazoo police down by nearly half in 6 months since racial profiling study*, MLive (Mar. 3, 2014) https://www.mlive.com/news/kalamazoo/2014/03/racial_profiling_study_prompts.html.
- 18 Hilary Rau, Scarlet Neith, Maya McDoom, and Charlotte Resing, *Redesigning Public Safety: Traffic Safety*, Center for Policing Equity (Sept. 2022) <https://policingequity.org/traffic-safety/60-cpe-white-paper-traffic-safety/file>; Policing Project at NYU School of Law, *Addressing Pretext: Potential Legislative Approaches*, <https://www.policingproject.org/pretext-legislation> (last visited June 26, 2023); Seleeke Flingai, Mona Sahaf, Nicole Battle, and Savannah Castaneda, *An Analysis of Racial Disparities in Police Traffic Stops in Suffolk County, Massachusetts, from 2010 to 2019*, Vera Institute of Justice (June 2022) <https://www.vera.org/downloads/publications/analysis-of-racial-disparities-police-traffic-stops-suffolk-county-ma.pdf>.