

LAWRENCE J. HOGAN, Jr.
GOVERNOR
**OFFICE OF THE PUBLIC DEFENDER
06 DISTRICT – MONTGOMERY COUNTY**

 191 East Jefferson Street
Rockville, Maryland 20850

Phone (301) 563-8900 Fax (301) 424-4126

Toll free number (877) 430-5187

awolf@opd.state.md.us

 PAUL B. DEWOLFE
PUBLIC DEFENDER

 BECKY KLING FELDMAN
DEPUTY PUBLIC DEFENDER

 ALLEN WOLF
ACTING DISTRICT PUBLIC DEFENDER

 THERESA M. CHERNOSKY
DEPUTY DISTRICT PUBLIC DEFENDER

7 July 2020

My name is Allen Wolf. I am the Chief Attorney for the Montgomery County Office of the Public Defender. While the introduction of this legislation is a first step, I want to focus my comments on two police tactics not addressed in this legislation which are far more widespread, unfortunately legally accepted, and ultimately destructive of our communities: searches based on the smell of marijuana, and stops based on pretextual grounds.

As Public Defenders, my staff of thirty-five attorneys are in a unique position to learn about the detrimental effects on minority communities of certain common police tactics and techniques. We see our clients, hear their emotionally painful descriptions of their arrests, and listen to their families describe their deeply-felt sense of harassment by authority. Additionally, we view thousands of hours of body worn camera footage of the interactions between our clients and law enforcement officers.

In reviewing all of this information, I have learned that the most invidious form of discrimination is not the single, terrible act that enrages us all but the daily, disrespectful interactions that are rarely publicly considered and discussed. The courts have given law enforcement far too much power to stop individuals based on hunches.

For example, the Supreme Court has upheld the constitutionality of law enforcement officers using a minor traffic infraction to stop and investigate a driver even though the officer's actual motive is unrelated to traffic enforcement. This allows an officer to pick out the car driving 58 miles an hour in a 55 mile an hour speed limit zone, while ignoring the car in the next lane driving 75 miles an hour. Once the car is stopped, the police use a wide variety of techniques to either obtain consent for a search, or to detain the driver while looking for evidence of crimes. While some may applaud this technique when it leads to the discovery of criminal activity, in the longer view it creates the destructive practice of stopping motorists for "driving while black".

Similarly, even though Maryland has decriminalized the use of marijuana, the courts still approve detentions and searches based on an officer smelling marijuana. Again, this means that officers have the nearly unfettered ability to choose to detain, question, and search based on hunches unrelated to the consumption or possession of marijuana. Given the much greater police presence in minority neighborhoods, this practice again corrosively affects the relationship between minority communities and the police, as well as between minority residents and the rest of our communities.

These tactics are used by the police multiple times every day. In each individual case, they create a sense of unfairness and injustice. Collectively, they create a separation within our diverse community with a clear underclass subject to police tactics unseen in our more affluent communities, and unknown to our non-minority population.

I support the legislation proposed by the County Council and discussed this evening. At the same time I must protest that after we all watched the killing of George Floyd, learned the circumstances of the killing of Breanna Taylor in her own home, and bitterly recited the names of others killed by police in just the last few years, this legislation is a too-mild plucking of low hanging fruit. To build a stronger, more just community, the Council must legislatively ban law enforcement practices that divide and oppress our minority communities. Declaring ourselves against lethal law enforcement tactics used in response to non-lethal circumstances addresses the tip of the iceberg of deeply entrenched racially discriminatory law enforcement tactics. To take a true step toward a more just community, we must address everyday tactics that do not make the nightly news even though they divide our community on a daily basis.

Allen Wolf
District Public Defender
Allen.wolf@maryland.gov
(301) 563-8948 (office)
(443) 492-9837 (Google Voice)