

## TESTIMONY TO HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

Stephanie Seguino  
Department of Economics  
University of Vermont  
[stephanie.seguino@uvm.edu](mailto:stephanie.seguino@uvm.edu)

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Good afternoon, Chair Copeland Hanzas and Members of the Committee. Thank you for the invitation to provide testimony on H.635. *An act relating to secondary enforcement of minor traffic violations*. I support this bill due to its potential to reduce racial disparities in Vermont traffic policing and more generally, provide for a more efficient use of policing resources to promote public safety. Below, I provide results from analysis of Vermont traffic stop data from 2014-2020 that lead me to this position.

According to the bill, H.635 would not ban minor traffic violations, but such violations could not be used as the primary justification for a traffic stop. This bill thus would serve to reduce the number of stops for minor traffic violations, alternatively called non-safety related or pretextual stops.

In stops that are pretextual in nature, the officer's primary interest is not the traffic violation. Rather, the intent is to use the pretext of a minor traffic violation as justification for a stop where the officer suspects but does not have evidence of a more serious crime.

A major concern with pretextual stops relates to the fact that officers have discretion on whom they choose to stop. That discretion can be unevenly exercised, based on the driver's race. Officer discretion combines with a long history of negative racial stereotypes in which African American and Latinx people are portrayed as more criminal and dangerous than white Americans. An abundance of social psychology research shows that in a wide variety of contexts, police are more likely to be inaccurately suspicious of black and brown people as compared to similarly situated white people.<sup>1</sup> That means that officers' suspicions of illegal behavior are racialized.

As a result, black and brown drivers are being stopped and searched at higher rates than white drivers in Vermont and nationally. Traffic data indicate that the vast majority of Vermont law enforcement agencies stop black drivers at a rate that is greater than their share of the driving population.<sup>2</sup> The lack of precision with which we can measure disparities in stop rates is well-known. However, more robust evidence of racial disparities in policing is found in post-stop outcomes (tickets or warnings, arrests, searches, and contraband found). Black and Latinx drivers are arrested at almost double the rate of white drivers, subsequent to a traffic stop. Moreover, black and Latinx drivers are 3.5 and 2.2 times more likely to be searched than white drivers, respectively. And yet they are less likely to be found with contraband than white drivers. The latter finding is evidence that

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<sup>1</sup> See, for example, Jennifer Eberhardt (2018), *Biased*, for evidence on numerous experiments showing consistent results of bias, based on negative stereotypes that result in differential suspicion of black and brown subjects.

<sup>2</sup> Seguino, S., N. Brooks, and P. Autilio. 2021. "Trends in Racial Disparities in Vermont Traffic Stops 2014-19." University of Vermont and Cornell University. <https://www.uvm.edu/cas/economics/profiles/stephanie-seguino>

some portion of racial disparities in Vermont traffic stops is due to conscious or unconscious racial bias on the part of officers.

Limiting pretextual traffic stops can reduce unwarranted racial disparities. A study on Washington state traffic stops offers evidence of this.<sup>3</sup> Washington banned pretextual stops in 1999 when the state Supreme Court ruled that such stops violated the state's constitution. The court later changed its mind in a 2012 case (*State v. Arreola*), making pretextual stops legal once again. Stephen Rushin and Griffin Edwards compared the racial composition of stops made by the Washington State Patrol after pretextual stops were banned to the post-2012 period when pretext stops were allowed once again.<sup>4</sup> Racial disparities rose significantly when troopers were again given the legal authority to stop drivers on a pretext basis. It turned out that allowing officers to act on suspicion alone to stop vehicles led to increased expressions of racial bias, conscious or unconscious.

My research with co-authors Nancy Brooks, Cornell University, and Pat Autilio, independent data analyst, using Vermont's traffic stop data also finds evidence that non-safety stops (which are potentially pretextual) are more open to racial bias than safety stops. Law enforcement is not required to publicly share detailed data on violations associated with a stop, so we cannot isolate the exact violation types that H.635 (and State's Attorney George) identify as non-safety related. But we can evaluate the evidence on stops for which the officer's reason for the stop is "vehicle equipment." This category overlaps substantially with H.635's list of non-safety stops, and it is well-known nationally as the type of stop that is most likely to be pretextual.<sup>5</sup>

We found that stops for vehicle equipment reasons are less "productive" than safety stops. Specifically, this type of stop in Vermont is *20 times more* likely than a safety stop to be one in which the officer takes *no action*—that is, no warning, ticket, arrest, or search. This implies that whatever reason the officer had for pulling over the vehicle, it was not serious enough to even issue a warning. Moreover, we found that black drivers are *twice* as likely as white drivers to have no action taken during a vehicle equipment stop. To put this another way, officers' suspicions about criminal activity tend to be wrong substantially more often in these potentially pretext stops when the driver is black rather than white.

Vermonters might be concerned that road safety will be sacrificed if traffic enforcement is reduced by this bill. We don't have Vermont data to test this hypothesis. But we do have the experience of Burlington which has (by policy) reduced traffic stops by over 60% since 2016 with little if any impact on accident rates. Moreover, Vermont has a substantially higher stop rate than the nation as a whole. Prior to COVID, the national stop rate per year was 81 cars per 1,000 residents. In Vermont, it was more than quadruple the U.S average at 360 cars per 1,000.

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<sup>3</sup> See also Epp, C., S. Maynard-Moody, and D. Haider-Markel (2014). *Pulled Over*.

<sup>4</sup> Rushin, S. and G. Edwards. 2021. "An Empirical Assessment of Pretextual Stops and Racial Profiling." *Stanford Law Review* 73(3). <https://www.stanfordlawreview.org/print/article/an-empirical-assessment-of-pretextual-stops-and-racial-profiling/>

<sup>5</sup> Due to lack of detailed data, we did not include the moving violation stops that may also be considered pretextual, such as the 2018 Burlington case of an officer who stopped a black female UVM graduate student after following her for several blocks, declaring the reason for the stop was her failure to put on a turn signal 100 feet before a stop sign. No warning was issued. No action was taken. There may be more such cases in which, as in this case, the stop was not recorded.

Further, random pretextual stops seldom turn up evidence of serious crime. For Vermont, we found that 1.1% of vehicle equipment stops in which the vehicle was searched led to arrest-worthy contraband being found from 2016-2020. It is reasonable to infer that the effect on crime rates of adopting H.635 would most likely be minimal.

H.635 is in line with steps already taken in several cities and other states—Berkeley, Philadelphia, Virginia, Oregon, and New Mexico. Texas, in response to the death of Sandra Bland, is also moving toward banning pretext stops along with Massachusetts. Most recently, the Los Angeles Police Commission approved a proposal that requires officers to record themselves on their body-worn cameras before or during stops, explaining why they suspect a person of committing a more serious crime. A failure to sufficiently articulate the information which led to the stop (other than the traffic violation) will result in progressive discipline.

There are trade-offs with limiting pretext stops, to be sure, and we must weigh them carefully. As we deliberate, we should remember there are additional benefits to banning or limiting such stops. Research shows that traffic stops are the most common type of officer-initiated contact with the public that results in the fatality of a law enforcement agent.<sup>6</sup> There are thus benefits to law enforcement of limiting pretextual stops. This policy could also permit resources to be reallocated to more effective activities that promote public safety. Limiting pretextual stops would free officers to focus their attention on public safety needs in the community, serious traffic safety violations, and stops based on more than a suspicion that criminal behavior may be taking place.

Further, pretextual stops undermine police legitimacy and cooperation with the police in criminal matters.<sup>7</sup> Limiting pretextual stops could improve trust in the police and improve community-police relations.

What is often lost in discussions of racial disparities in traffic stops is the impact of unjustified stops and searches on the community of color. This bill addresses the lived experience of over 30,000 Vermonters of color who have a greater likelihood of being stopped, arrested, and searched during a traffic stop, and yet who are less likely to be found with contraband. Over the last decade during which I have conducted research on this topic, numerous black and Latinx people have shared their experiences with me. While a traffic stop may be a bothersome, even anxiety-producing event for white drivers, the experience of a traffic stop on drivers of color is often traumatic. Those experiences have caused people of color to experience deepened fear of the police and for their personal safety and security, to lose many nights of sleep, to miss work and schooling, and for some, to go so far as to relocate to another state. For those who are parents of children of color, their constant fear about the well-being of their children on the road is ever present. This bill is a step toward rectifying the negative impact of our traffic policing on Vermont's communities of color.

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<sup>6</sup> Breul, N. and D. Luongo. (2017). *Making it Safer: A Study of Law Enforcement Fatalities Between 2010-2016*. COPS, U.S. Department of Justice. <https://cops.usdoj.gov/RIC/Publications/cops-w0858-pub.pdf>.

<sup>7</sup> Blanks, J. 2016. "Thin Blue Lies: How Pretextual Stops Undermine Police Legitimacy." Case Western School of Law. <https://www.cato.org/sites/cato.org/files/articles/blanks-cwrlr-v66n4.pdf>.