A Guide for Drafting a Policy or Law Limiting Non-Safety-Related Traffic Stops

When considering a policy to limit non-safety-related traffic stops, careful drafting is crucial. A well-written policy will

- frame the need for action and the particular policy as a solution;
- avoid potential confusion around the application of the policy; and
- ensure that the policy achieves the intended effect without any exploitable loopholes.

This drafting guide walks through a well-written policy step-by-step, homing in on principles for clarity and effectiveness at each stage.

Step 1: Introduce the policy by justifying it.

Start by developing a public rationale that explains the reasoning behind the policy, including a discussion of how it will build local safety. For example, Ann Arbor's ordinance begins with a 17 point "Findings" section, one of which reads:

> Reducing the number of traffic stops made for secondary offenses will allow the City of Ann Arbor to redirect resources and time to more effective public safety strategies, including prioritizing traffic safety to reduce injuries and fatalities, while also helping to fulfill its obligation to afford every person equal treatment under the law. This is in keeping with the City of Ann Arbor's Vision Zero goal to eliminate fatalities and serious injuries resulting from traffic crashes by 2025.

These often take the form of "whereas" clauses, for example in Chapel Hill, North Carolina's policy:

> WHEREAS, the Town Council recognizes that investments in public safety and in programs and services that keep communities healthy and safe must advance racial equity, must be grounded in community needs, and must be led and informed by those most affected and most knowledgeable through authentic engagement with grassroots and community organizations and community members.

While many justifications, such as findings from national research, may be relevant anywhere, each jurisdiction will also have rationales specific to local data on who is being stopped and the experiences of community members during these stops.

In addition, the justification may explain that ending police stops for non-safety-related matters falls within a jurisdiction's power to deploy public resources in a way that builds road safety and public safety. There is ample evidence to support this justification. This rationale will help frame the policy as a legitimate use of a local jurisdiction's ability to enforce state traffic laws in a manner that most effectively builds local safety.

Step 2: Decide whether the policy will be an administrative policy put in place by the police, mayor, or other executive body, or a statute passed by the local legislative body.

Each of these approaches is valid, but comes with its own pros and cons. Advantages of an administrative policy include:

- **Speed.** An administrative policy can usually—but not always—be implemented faster because it does not need to go through the legislative process (although there may be internal or public review and comment processes).
- **Law enforcement buy-in.** If a policy for limiting non-safety-related stops is seen as coming from the police department (whether on its own or in tandem with another executive like the mayor or district attorney),

it may be easier to get more immediate buy-in the from police officers charged with enforcing the policy. (This is not to say that law enforcement will not follow statutory requirements, but the implementation process may be more challenging.) Members of the community may also see a policy coming from law enforcement as inherently building public safety, which may not be the way people see legislation.

Advantages of a legislative policy include:

- **Durability.** A police or mayoral policy can be taken down as swiftly as it was put into place. For example, consider two policies instrumental in revealing the safety benefits of eliminating non-safety-related traffic stops: Fayetteville, North Carolina, and Nashville, Tennessee. Fayetteville's policy ended when the police leader retired, and Nashville's—a police training policy—is no longer a formal policy. An enacted piece of legislation, however, goes on the books and has the force of law. It remains in place unless it is repealed or replaced with a new piece of legislation.
- **Participation.** Legislation passes through a public process that includes constituent participation. Members of the community can shape the bill through their voices and advocacy, as well as show public support.

Shifting traffic enforcement can, of course, start as an administrative policy, gather evidence and support, and then eventually get formalized into law through the legislative process.

Step 3: Select which non-safety-related stops to restrict.

Broadly speaking, non-safety-related traffic infractions fall into two categories:

1. equipment issues that do not create an immediate safety risk to people inside and outside the vehicle. Examples include a single broken headlight, taillight, or brakelight; cracked or tinted windshield; windshield obstruction (such as a dangling air freshener); and a missing bumper; and
2. vehicle registration and administrative issues. Examples include expired registration, expired inspection, and license plate placement.

A possible third category includes moving violations that do not present an immediate safety risk, such as driving five to10 miles per hour over or under the speed limit, or making a rolling stop at a stop sign. Most jurisdictions draw a bright line against all moving infractions. But because there is room for debate about whether all minor moving violations create safety risk, a jurisdiction may wish to consider how to draw the line regarding low-risk moving violations.

When selecting stops to eliminate, a jurisdiction should look at local traffic stop data, if it is available. Data will show which stops are most common, which are associated with the greatest racial disparities, and which are most often accompanied by vehicular searches. Data may also reveal how much time police spend on certain stops, helping to determine if their time would be better spent on other tasks, like enforcing laws around dangerous driving. In addition to looking at quantitative data, a jurisdiction should solicit input from local drivers: what non-safety-related infractions are they being stopped for, how did those stops transpire, and how were they impacted? Their answers may help inform whether certain infractions are being overused and harming the community.

Step 4: Determine how to identify these stops in statutory or policy language.

Any policy will need to stipulate which infractions are no longer to be enforced by police stops. Jurisdictions have identified which stops to limit in a variety of ways, including:

1. a list of infractions, not cross-referenced against a state vehicle code (for example, as in Ann Arbor, Michigan, and Memphis, Tennessee—the latter of which specified a violation of the Memphis vehicle code, not the state code);

2. a list cross-referenced with a state vehicle code (as in West Hollywood, California);
3. a list given a new name such as "secondary violations" (as in Philadelphia); and
4. a listing of state vehicle code chapters by category, without a list, for example, "Under Title 13, 16 and 17 of the Maryland Vehicle Code including certificates of title, vehicle licensing, insurance and registration" (as in Montgomery County, Maryland's proposed policy).

Cross-referencing to state law is generally not recommended, as it serves little purpose for the average reader and may be interpreted as a local jurisdiction potentially interfering with state law.

Advantages of a pure list, without characterization such as "secondary stops" (such as options one and two above) include:

- **Clarity.** A list tells the police and the public exactly what behavior/occurrences cannot be the sole basis for a police stop, without requiring them to cross reference state law code references or infer what is meant by "non-safety-related infractions."
- **Preemption.** Creating a categorization like "secondary offenses," with or without a list (as in option three above), could be seen as an attempt to rewrite or reclassify state law, which local jurisdictions may not do (this is called "state law preemption," see Step 7 for a fuller discussion). Instead of inviting such a debate, a list of circumstances under which police won't stop drivers can be defended as a city's allocation of police resources based on its assessment of what is the best use of local police resources to build safety.

Disadvantages of a pure list include:

- **Incompleteness.** The list may not encompass all non-safety-related stops, and thus may need to be revised, particularly if police shift enforcement from the listed offenses to others. Describing the attributes of these stops by function may avoid this. A good example comes from the Chapel Hill Police Department's policy, which covers "any non-moving, non-safety-related violation (example, expired registration, cracked windshield, broken taillight, broken license plate light and other laws not connected to safe operation of a motor vehicle)."
- **Length.** The length of a list may draw attention to the comprehensiveness of the change and garner opposition.

Step 5: Provide instructions on how the police will react to non-safety-related infractions.

If police are to no longer continue making non-safety-related stops as in the past, explicit instructions must be given for their conduct moving forward. Some options include:

1. instructing police not to stop a vehicle solely for a non-safety-related infraction, as in the following examples:
    a. A law enforcement officer "may not stop, or otherwise detain, an operator of a vehicle to enforce one or more of the following violations as a primary offense" (Washington State's proposed policy).
    b. "A law enforcement officer employed by the Ann Arbor Police Department shall not stop or detain the operator or occupant of a motor vehicle based solely on one of the following offenses" (Ann Arbor).

c. "A police officer must not conduct a stop or detain a person operating a motor vehicle, solely for a suspected violation of the following provisions of the Maryland Vehicle Law" (Montgomery County);[1]

2. allowing police to make stops for listed non-safety-related infractions when they observe a simultaneously occurring violation that is not on the list. For example, "A police officer or other law enforcement officer may initiate a motor vehicle stop for a secondary violation observed within the City of Philadelphia only where there is a simultaneously-observed primary violation for which an officer, at their discretion, could issue a citation" (Philadelphia); and

3. deprioritizing stops without more concrete guidance. For example, "The following minor, low level traffic offenses committed within the City of West Hollywood are of low priority for enforcement" (West Hollywood).

Of these three constructions, the first is the most direct and effective. The second is less clear, but provides some political cover, as the language asserts that officers may still make stops for secondary violations, but only when accompanied by a primary violation. The third, deprioritization, does not offer clear guidance on when a stop is permissible for a deprioritized infraction and thus may not result in a significant decrease in such stops, given how much room is left for interpretation.

Step 6: Consider what exceptions to the policy might be necessary for sake of safety.

Existing bills deal with exceptions in one of two ways:

1. creating an exception to the stops prohibition if the infraction creates an immediate safety risk based on reasonably articulable facts (Ann Arbor), or "when the primary reason for the stop is an equipment failure violation when necessary to protect against an immediate, serious threat to the safety of the operator or others on the roadway" (Washington State); or

2. allowing no exceptions (the rest).

The disadvantage of a safety exception is that, however narrow, it will be open to interpretation. Some officers may find an immediate safety threat wherever they look for it.

There are, however, advantages to a safety exception. There may be instances, however unlikely, in which extreme versions of cracked windows or windshield obstructions (covered top to bottom in stickers, for instance) could cause a serious safety risk. Opponents of traffic stop restrictions tend to raise these rare instances often as anecdotal evidence against the policy. A narrow and precisely tailored safety exception meets these objections and reinforces the policy's overall goal of building road safety.

---

[1] These three listed policies all allow an officer to issue a citation for a secondary violation during a stop for a primary violation. However, they differ from option 2 in that Philadelphia allows a stop where the primary and secondary violations are observed simultaneously, whereas those in option 1 do not permit a non-safety-related infraction to be a reason for a stop, but rather only something noticed and handled after the vehicle is already stopped for the primary violation. The proposed Montgomery County law stipulates that if a non-safety-related infraction is observed during a safety-related stop, a warning must be issued by the first offense, and then a citation for a second or subsequent offenses.

Step 7: To mitigate state law preemption issues, the policy should leave open other means of enforcing non-safety-related infractions.

Generally, jurisdictions can mitigate state preemption challenges by legislating not *whether* they will enforce state vehicle laws, but *how* they will enforce them. A local jurisdiction generally has wide discretion in how it chooses to deploy its police resources to build safety. As such, it may decide not to deploy armed police officers to make traffic stops solely for non-safety-related infractions. Instead, police (or, if applicable, other enforcement staff) may choose to issue citations for non-safety-related infractions through any one or combination of these methods:

1. alongside a stop for a safety-related violation (all jurisdictions);
2. alongside another legal stop, including stops based on probable cause for other criminal activity (Ann Arbor, San Francisco);
3. on a parked or standing car (Ann Arbor);
4. through the mail (Connecticut's proposed policy, Ann Arbor); and/or
5. automatic enforcement (Connecticut).

> ### What is State Law Preemption?
>
> When legislating, a local jurisdiction must consider the doctrine of state law preemption, which means that a local jurisdiction may not pass laws that conflict with or interfere with a state law, unless the state has expressly given the locality the ability to legislate in that area. Determining whether a local law is preempted by state law requires looking closely at relevant state law, in this instance the state vehicle law as well as state laws granting local governments authority over deployment of the police and public safety. It also requires looking closely at local charters' and local laws' own pronouncements regarding a jurisdiction's ability to direct police enforcement and traffic enforcement. Because each state and locality has different laws, this document can only offer general guidance on how localities can address state law preemption issues.

Step 8: Consider adding a provision regarding consent searches.

Many non-safety-related stops are pretextual, meaning the stop is an excuse for police to search the car for crimes for which they have no evidence or probable cause. Often, an officer may have a stereotype-based suspicion, which is not legal probable cause; other times they may just be on a fishing expedition. In such cases, police must ask for consent to search the car. Drivers do not have to give consent to search, but most people do not know this, and even if they do, they may be afraid to say no when confronted by an armed officer and fearing for their safety.

One way to undermine this spurious impetus for non-safety-related stops, as well as to cut through the confusion around giving consent, is to simply forbid searches based on consent alone. This means that officers would need probable cause to search: reasonable, articulable facts leading them to believe that there are guns or drugs or other contraband in the car. These facts have no connection with a broken taillight or an expired registration.

Some traffic stop policies include restrictions on consent searches (including San Francisco and proposed policies in Montgomery County and Washington State). Consent searches are sometimes also addressed separately in stand-alone ordinances or policies, as in Connecticut.

Ordinances differ in how much they restrict police requests for consent to search. Some ordinances forbid police from asking for consent to search in all traffic stops (or all non-safety-related traffic stops). Others forbid officers from asking questions or seeking consent unrelated to the infraction for which the stop was conducted—for example, asking to search the trunk during a stop for speeding.

Advantages to a adding a consent search ban: As long as the motivation for many non-safety-related stops—consent searches—remains legal, seeking to ban specific non-safety-related stops may resemble a game of whack-a-mole: a ban on stops for some non-safety-related infractions goes into effect, then police find other infractions to target (and this cycle may repeat). A consent search ban removes the impetus for vehicle stops other than for immediate road safety or probable cause.

Disadvantages to adding a consent search ban: Consent searches are a heavily used policing technique, which many police departments consider an essential part of their investigatory tool kit. Police may strongly oppose banning their use, and thus if a consent search ban is attached to a bill that also ends stops for specified non-safety-related stops, the opposition to the consent search ban may bring down the entire bill. Building road safety while reducing harm from traffic stops can be accomplished at least in part by ending non-safety-related stops as comprehensively as possible while leaving the issue of consent stops for separate legislation.

Step 9: Consider adding a provision ending stops for outstanding warrants for misdemeanors, other than misdemeanors that present a driving risk (for example, misdemeanor level DUI).

A person driving with an open warrant does not present a risk to road safety; there is nothing inherently dangerous about driving with an open warrant. Therefore, stops for open warrants can be a form of non-safety-related stops, and the same road safety rationale for not devoting police resources to non-safety-related stops holds true for these stops as well.

However, bringing in a suspect on an outstanding *felony* warrant may serve enough of a public safety function to justify a stop, even if the driver is driving safely, should that warrant be for a serious charge like murder or kidnapping. Similarly, an outstanding misdemeanor warrant for driving dangerously, such as a DUI, may also justify a stop to remove a driver with a credible previous accusation of dangerous driving from the road. It is worth being careful and precise around warrants, as some may be for reasons as minor as failing to pay the final dollar of a court fine or not answering a ticket for having an open beer at a baseball game. In such minor cases, a traffic stop might be considered an unwarranted use of police force.

Washington State Bill HB1513 contains a warrant provision along these lines, prohibiting stops for "any warrant for a misdemeanor, other than a misdemeanor warrant for driving under the influence under RCW 46.61.502 or a domestic violence violation, or a civil court order."

As with consent stops, while a warrant provision would significantly reduce non-safety-related stops and redirect traffic resources towards dangerous driving, it may also be contentious enough to create or enable opposition to derail a bill ending non-safety-related stops.