



WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS

Committee on Transportation and the Environment

Committee on Public Works and Operations

B25-422 The “Automated Traffic Enforcement Effectiveness Amendment Act of 2023”

**B25-425 The “Strengthening Traffic Enforcement, Education, and Responsibility
 (“STEER”) Amendment Act of 2023”**

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The District of Columbia needs a broad vision of public safety for this City to be a vibrant and equitable place to live, work, and visit. Reducing traffic deaths to zero is an essential part of true public safety. Vehicle fatalities in Wards 7 and 8, which are primarily Black and Brown Wards, are three to nine times higher than Wards primarily occupied by White residents.¹ Therefore, creating safe roads is a matter of racial justice. At the same time, harsh penalties and enforcement schemes that focus on revenue rather than safety also disproportionately impact the economic security and livelihood of these same communities.² There will not be true public safety if traffic enforcement enhances the devastation of racism and poverty in our City. Changes to the City’s traffic enforcement regimes through a racial justice lens are necessary to reach equity and save lives. The DC Council must do more than ramp up the enforcement of traffic codes in order to eliminate traffic fatalities.

The Washington Lawyers’ Committee for Civil Rights and Urban Affairs³ (the “WLC”) commends the Council’s efforts in promoting a broader view of public safety in the proposed traffic bills because they focus on more equitable and effective solutions. For too long, including just as recently as the Mayor’s most recent budget proposal,⁴ the purpose of ticket enforcement and collection has been revenue generation.⁵ Such enforcement schemes have been shown to

¹ 2022 UPDATE, <https://visionzero.dc.gov/pages2022-update> (last visited Oct. 1, 2023).

² Tzedek DC, DRIVING DC TO OPPORTUNITY, 11-13.

³ The Washington Lawyers’ Committee for Civil Rights and Urban Affairs works to create legal, economic and social equity through litigation, client and public education and public policy advocacy. While we fight discrimination against all people, we recognize the central role that current and historic race discrimination plays in sustaining inequity and recognize the critical importance of identifying, exposing, combating and dismantling the systems that sustain racial oppression. We partner with individuals and communities facing discrimination and with the legal community to achieve justice.

⁴ Jordan Pascale, *Bowser Budget Proposal Calls for Repurposing Camera Ticket Money, New Task Force to Look at Equity in Fines*, DCIST, Apr. 5, 2023, <https://dcist.com/story/23/04/05/traffic-camera-taskforce-2>.

⁵ *Parham v. District of Columbia*, No. 22-2481 (CKK), 2022 U.S. Dist. LEXIS 231979, at *32 (D.D.C. Dec. 27, 2022).

inspire drivers to ignore the law.⁶ This proposed legislation instead focuses on deterring dangerous behavior and not filling budget holes.

Although these pieces of legislation have positive aspects, the WLC stresses that the Council must amend them to start addressing structural realities in Wards Seven and Eight. Specifically, the Council should invest more in safer street design and resources for communities of color such as public transportation, jobs, and grocery options. Further, the Council should include restrictions on the use of photographs taken by Automatic Traffic Enforcement (“ATEs”) cameras.

I. Keeping Clean Hands Reforms in Place Promotes Race Equity

This past May, the WLC offered testimony to the Committee on Transportation and the Environment’s Roundtable on Traffic Enforcement in the District.⁷ During that testimony, we urged the Council to not rollback its reforms to the Clean Hands Law and tie license suspensions to unpaid tickets. The past scheme had a devastating effect on people of color in the District who were more likely to receive traffic tickets but be less likely to be able to pay them.⁸ The loss of a license for lack of payment could only make it harder for poor drivers to pay off their debt if they were unable to get to work.⁹ Increased poverty obviously does not improve public safety. Such a scheme also did not get to the root of the problem of habitually dangerous drivers.

The STEER Amendment Act avoids these pitfalls and the WLC supports its introduction. By targeting the most dangerous drivers, namely those with repeated traffic offenses in a six month period, regardless of whether those drivers have paid their tickets or not, the STEER Act acknowledges the reality that there is no difference in the safety attitudes of a motorist who speeds that frequently and pays their tickets and one who does not.

The STEER Amendment Act also properly balances deterrence through financial penalties with the objective of not exacerbating poverty and racial disparities of people of color. Black and Brown people are more likely to receive traffic tickets than their white counterparts.¹⁰ However, these same individuals are less likely to have the means to pay off traffic tickets.¹¹ The STEER Amendment Act’s inclusion of the safe driving course as an alternative to payment avoids further impoverishing poor motorists in the name of traffic enforcement and is better targeted at safe driving than a fine ever could be because it directly connects the goal of safe driving with the penalty. Similarly, the Automated Traffic Enforcement Effectiveness Amendment Act’s provision to waive a point on a driving record after the completion of a traffic course is a way to cut back on the punitive effect of a onetime infraction. However, that the

⁶ Caitlin Rogger, *Traffic cameras, Circulator & K Street: Where are we on DC’s transportation budget?*, GREATER GREATER WASHINGTON, May 3, 2023, <https://ggwash.org/view/89493/ate-circulator-and-k-street-what-the-mayor-did-and-what-the-te-committees-done>.

⁷ Dennis A. Corkery, *Testimony to Committee on Transportation and the Environment Roundtable on Traffic Enforcement*, WASHINGTON LAWYERS’ COMMITTEE FOR CIVIL RIGHTS AND URBAN AFFAIRS, May 23, 2023, <https://www.washlaw.org/wp-content/uploads/2023/06/WLC-Testimony-for-Traffic-Enforcement-Roundtable.pdf>.

⁸ DRIVING DC TO OPPORTUNITY at 11-12.

⁹ *Id.* at 3-4.

¹⁰ *Id.* at 11-12.

¹¹ *Id.*

waiver is only available upon the payment of the ticket means that that option will not be as readily available for individuals with low incomes. If the purposes of the bill are truly deterrence and safe driving, the safe driving class for one infraction would be a better a remedy than just paying the ticket.

The STEER Act's provisions for enforcement against non-DC residents also promote fairness and target the most dangerous drivers. We all know that the majority of ticket scofflaws in the District are those who do not live here.¹² The financial burdens of traffic enforcement should not sit on the back of vulnerable DC residents who are put at risk by out of state commuters. The authority for the Attorney General to initiate civil suits can provide more equity to the current system. The Council should also consider providing more resources to the District Department of Transportation to boot out-of-state cars with repeated traffic violations.

II. Increased Use of Traffic Cameras Can Promote Race Equity Only if Other Major Changes Are Made

The Automated Traffic Enforcement Effectiveness Amendments Act takes important steps towards promoting race equity in traffic safety, but more needs to be done to ensure that the law does not make racial disparities worse.

In a vacuum, ATEs are race neutral¹³ and can create public safety for Black and Brown drivers by eliminating interactions between armed law enforcement and motorists. DC's Metropolitan Police Department (MPD) pulls over more Black motorists than white ones.¹⁴ NEAR Act data reveals that from July 2019 to December 2022, ninety percent of MPD's traffic stops were of Black motorists.¹⁵ At May's roundtable, the WLC urged the council to remove MPD from traffic enforcement as a way to create better public safety.¹⁶ MPD is empowered to use traffic stops as pretext to search for evidence of other crimes,¹⁷ which can be intrusive and humiliating for the motorist, and have limited impact on uncovering contraband or criminal activity.¹⁸ Interactions with the police and people of color can also turn deadly.¹⁹ Further, the

¹² Luz Lazo & Emily Davies, *D.C. struggles to rein in risky drivers. One car has \$186,000 in tickets*, WASHINGTON POST, May 3, 2023, <https://www.washingtonpost.com/transportation/2023/05/02/dc-traffic-tickets-driving-penalties/>.

¹³ Emily Hopkins & Melissa Sanchez, *Chicago's "Race Neutral Traffic Cameras Ticket Black and Latino Drivers the Most*, PROPUBLICA, Jan 11, 2022, <https://www.propublica.org/article/chicagos-race-neutral-traffic-cameras-ticket-black-and-latino-drivers-the-most>.

¹⁴ STOP INCIDENTS DISTRICT OF COLUMBIA, opendata.dc.gov/datasets/stop-data/about (last visited Oct. 1, 2023).

¹⁵ *Id.*

¹⁶ Dennis A. Corkery, *Testimony to Committee on Transportation and the Environment Roundtable on Traffic Enforcement*, WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND URBAN AFFAIRS, May 23, 2023, <https://www.washlaw.org/wp-content/uploads/2023/06/WLC-Testimony-for-Traffic-Enforcement-Roundtable.pdf>.

¹⁷ *Whren v. United States*, 517 U.S. 806, 813-15 (1996).

¹⁸ District of Columbia Police Reform Commission, *DECENTERING POLICE TO IMPROVE PUBLIC SAFETY: A REPORT OF THE DC POLICE REFORM COMMISSION*, April 1, 2021, 100-01.

¹⁹ Vera Institute of Justice, *INVESTING IN EVIDENCE-BASED ALTERNATIVES TO POLICING: NON-POLICE RESPONSES TO TRAFFIC SAFETY*, Aug. 2021, <https://www.vera.org/downloads/publications/alternatives-to-policing-traffic-enforcement-fact-sheet.pdf> (last visited June 3, 2023).

proposed legislation would treat ATE violations the same as those captured by MPD and add points to a motorists' license. Such a points system focuses on bad behavior and not monetary collection, and therefore is a more effective and equitable way for ATEs to operate. By relying on a bad-behavior-focused approach built on reduced interactions with the police, the District can promote traffic safety and spare Black and Brown residents from unnecessary anxiety,²⁰ humiliation, harassment, and physical harm.

However, ATEs must be used intentionally with race equity and trust-building in mind. To that end, the Council should amend the proposed ATE legislation to provide more privacy protections and increase community trust. The ability of cameras to capture an image of the driver is a more fair method of traffic enforcement than simply noting the license plate. For families that share cars, photographing the driver creates more due process to puts the burden of the unsafe behavior on the unsafe driver and not just the owner of the car. However, such surveillance needs safeguards to make sure that it maintains community trust. Specifically, the District should be prohibited from using facial recognition software as part of these photographs. Such software has been shown to have to frequently be mistaken, especially for people of color.²¹ The District should use this ATE technology for due process and traffic safety – not for anything else.

Additionally, the proposed legislation does contain some elements that further community trust but on their own are still problematic. The Automated Traffic Enforcement Effectiveness Amendment Act mandates transparency and public reporting for the mechanism for ATE's placement and deployment to the areas and intersections that are the most problematic. Yet facially race-neutral policies can have a disparately adverse impact on people of color, and the increased use of ATEs will have that effect. Wards Seven and Eight are the most dangerous parts of our city for motorists and pedestrians.²² They are also where a higher proportion of ATEs are already located.²³ The concentration of ATEs in these areas already means that more people of color are being ticketed from those cameras than whites.²⁴ Further deployment of ATEs to the most dangerous spots in the District will mean more ATEs in these areas and inevitably more fines and debt for residents there who are more likely to be poor and people of color. The use of ATEs to add points to a driver's license will mean that more people of color will be at risk of losing their license. The Council needs to be mindful of the impact that additional enforcement will have and take steps such as those outlined below to mitigate them.

²⁰ Kristin N. Henning, *The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment*, 67 AM. U. L. REV. 1513, 1556 (2018).

²¹ Nicol Turner Lee & Caitlin Chin-Rothmann, *Police Surveillance and Facial Recognition: Why Data Privacy is Imperative for Communities of Color*, BROOKINGS, Apr. 12, 2022. <https://www.brookings.edu/articles/police-surveillance-and-facial-recognition-why-data-privacy-is-an-imperative-for-communities-of-color/>

²² 2022 UPDATE, <https://visionzero.dc.gov/pages/2022-update> (last visited Oct. 1, 2023).

²³ ATE Active Locations May 2023, <https://ddot.dc.gov/sites/default/files/dc/sites/ddot/publication/attachments/ATE%20Active%20Locations%20May%202023.pdf> (last visited Oct. 1, 2023).

²⁴ William Farrell, *Predominately Black Neighborhoods in D.C. Bear the Brunt of Automated Traffic Enforcement*, D.C. POLICY CENTER, June 28, 2018, <https://www.dcpolicycenter.org/publications/predominately-black-neighborhoods-in-d-c-bear-the-brunt-of-automated-traffic-enforcement>.

The Council should take a cautionary look at the City of Chicago, whose massive deployment of ATEs has had a devastating impact on poor communities there.²⁵ The heavy burden of these fines can create a spiral for those with limited ability to pay.²⁶ Without a sliding scale for the amount of fine based on income, these ATEs could make poor communities even poorer. Such sliding scale could be based on tax filings that are already in the District's possession. They would make it more expensive for wealthy residents and not impoverish those with less resources.²⁷ A more fair system of fines would help ameliorate the disparities that will inevitably exist from ATEs while more effectively promoting safe driving.

III. The District Needs to Make Significant Investments to the Infrastructure and Resources in Wards Seven and Eight in Order to Equitably Achieve Vision Zero

Additionally, that Wards Seven and Eight have the most dangerous roadways in the District is not an inherent fact. Instead, it is the legacy of intentional choices of traffic design and underinvestment in communities of color.²⁸ Wards Seven and Eight have a higher proportion of arterial roads that are faster and harder to cross.²⁹ People in Wards Seven and Eight have to travel further to get groceries and to get to work, making it more likely that they will need a car for daily activities that those in other parts of the District can have the privilege of walking to.³⁰ Therefore putting a race neutral solution of targeted ATEs into a situation of racist urban planning will have the effect of hurting people of color. Indeed, it is cruelly ironic that people of color already experience the ill effects of the poor design of their communities, and then because of that callous design and racist underinvestment, they will bear the brunt of traffic enforcement.

These pieces of legislation are commendable starts but until there are safer street designs, better public transportation options, and the end of food deserts, people will continue to die in traffic fatalities. Enforcement as a means of deterrence cannot be the only tool in the District's tool belt, and by the time enforcement is used it could be too late. Just as the District cannot arrest and incarcerate its way out of the current spike in violence, it cannot ticket and boot its way to Vision Zero.

As a first step, the Council should ensure that revenue from ATEs and traffic enforcement should only be used for traffic safety initiatives especially in the areas most heavily impacted. The Council will need to commit funding for new street design and more support for equitable and affordable public transportation options like the free bus service that the Council

²⁵ Emily Hopkins & Melissa Sanchez, *Chicago's "Race Neutral Traffic Cameras Ticket Black and Latino Drivers the Most*, PROPUBLICA, Jan 11, 2022, <https://www.propublica.org/article/chicagos-race-neutral-traffic-cameras-ticket-black-and-latino-drivers-the-most>.

²⁶ Tzedek DC, DRIVING DC TO OPPORTUNITY, 11-13.

²⁷ Joe Pinsker, *Finland, Home of the \$103,00 Speeding Ticket*, THE ATLANTIC, Mar. 12, 2015, <https://www.theatlantic.com/business/archive/2015/03/finland-home-of-the-103000-speeding-ticket/387484/>.

²⁸ Luz Lazo, Sahana Jayaraman, & Dylan Moriarty, *D.C. Traffic Deaths at 14-Year High With Low Income Areas Hardest Hit*, WASHINGTON POST, Feb. 23, 2023, <https://www.washingtonpost.com/transportation/2022/02/23/dc-traffic-deaths-highest-record>.

²⁹ *Id.*

³⁰ *Id.*

had previously proposed. Long-term investments into safer street designs can have a bigger effect on safe driving than enforcement ever will.³¹

The WLC commends the Council for taking moves towards Vision Zero and for considering race equity as it crafts this legislation. However, the WLC urges the Council to do more to create better equity in the District and in turn safer streets. Greater investments into the communities that most need them and in public transportation will keep our roads safe. It is the only avenue to true public safety.

³¹ Nic Sementelli & Conor Shaw, How DC Can Reduce Traffic Deaths and Make Real Progress on Vision Zero, GREATER GREATER WASHINGTON, Apr. 22, 2021, <https://ggwash.org/view/81097/how-dc-can-reduce-traffic-deaths-and-make-real-progress-on-vision-zero>.