

**Statement on behalf of the
American Civil Liberties Union of the District of Columbia
before the D.C. Council Committee on Transportation and the
Environment
Public Hearing Regarding
Bill 25-0421, the License Suspension Reform Amendment Act of 2023
Bill 25-0422, the Automated Traffic Enforcement Effectiveness Amendment
Act of 2023
Bill 25-0425, the Strengthening Traffic Enforcement, Education, and
Responsibility (“STEER”) Amendment Act of 2023
by
Damon King, Policy Director
October 18, 2023**

On behalf of our over 14,000 members in all 8 wards, the ACLU of the District of Columbia submits the following testimony regarding Bill 25-0421, the License Suspension Reform Amendment Act of 2023; Bill 25-0422, the Automated Traffic Enforcement Effectiveness Amendment Act of 2023; and Bill 25-0425, the Strengthening Traffic Enforcement, Education, and Responsibility (“STEER”) Amendment Act of 2023.

We write to share a number of concerns. First, provisions in B25-0421 and B25-0425 that would automatically suspend the licenses of people accused, but not convicted, of certain crimes raise due process concerns. Further, language in B25-0421 allowing the Mayor to charge a reinstatement fee *even if a person is not convicted* is an inappropriate barrier to reinstatement. Second, the reinstatement fees in B25-0421, as well as provisions in B25-0422 related to the waiver of driving record points and the immobilization of vehicles with unpaid tickets is illustrative of a larger problem that the Council should be moving away from: punishing drivers for failure to pay fines and fees even if they are not able to afford them. Not only is this an inequitable practice, but it conflates a driver’s inability to pay fines and fees with whether they are safe drivers. This will not contribute to safer streets in the District of Columbia. In this respect, B25-0425 represents a step in the right direction, as it sets up a parallel regime regarding towing and immobilizing vehicles that penalizes unsafe driving more directly. Finally, the increased reliance on traffic cameras envisioned by B25-0422 highlights the need for appropriate oversight of the use of camera data.

Driver’s License and Registration Suspensions Must Comport With Due Process

B25-0421 seeks to make it easier for drivers to have their licenses and registrations suspended in certain situations. Notably, the legislation amends District statutes so that when a driver is charged with certain crimes,¹ their driver’s license and any registrations are automatically suspended. Not only does the bill provide for the suspension of licenses and registrations based on accusations of criminal activity that have not yet been proven, but even if a driver is ultimately not convicted of the relevant offense, restoration of their license and registrations is subject to the payment of a reinstatement fee set by the Mayor.²

As the Criminal Code Reform Commission notes in its analysis of the legislation, “[i]t is well-established under Supreme Court case law that the government cannot suspend an issued driver’s license without procedural due process required under the Constitution.”³ Procedural due process requires notice and a meaningful opportunity to be heard.⁴ The legislation’s language, which provides for license suspension upon being charged, lacks a mechanism for considering evidence of whether the driver committed the act that would justify the suspension before the

¹ These crimes include: Negligent homicide where death is due to operation of a vehicle, leaving the scene of an accident in which the motor vehicle driven by the person is involved and in which there is personal injury, driving while intoxicated or while under the influence of intoxicating liquor or any drug or any combination, or operating a motor vehicle under the age of 21 when the individual’s blood, breath, or urine contains any measurable amount of alcohol. Bill 25-0421, License Suspension Reform Amendment Act of 2023 (2023), available at:

<https://lims.dccouncil.gov/downloads/LIMS/53577/Introduction/B25-0421-Introduction.pdf?Id=166332>

² *Id.* at Sec. 2-5.

³ D.C. Criminal Code Reform Commission, Testimony of Executive Director Jinwoo Park on B25-0421, the “License Suspension Reform Amendment Act of 2023” and B25-0425, the “Strengthening Traffic Enforcement, Education, and Responsibility (“STEER”) Amendment Act of 2023,” p.1 (October 4, 2023), available at:

<https://lims.dccouncil.gov/Hearings/hearings/108>

⁴ *Id.* at pp. 1-2 (discussion of the elements of procedural due process in the context of driver’s license suspensions).

suspension goes into effect or, in many cases, even promptly thereafter. The CCRC notes that, in addition to revocation upon criminal conviction or for failure to appear at a criminal trial for certain traffic offenses, there is already an existing administrative process that allows for the suspension or revocation of licenses after notice and an opportunity to be heard.⁵ Those procedures allow drivers to contest the accusations against them, reducing the risk that drivers will have their licenses suspended for conduct they didn't commit. B25-0421, by contrast, would allow license suspensions on a prosecutor's say-so, and in many cases fail to provide a prompt, meaningful opportunity for drivers to present their side of the story. For these reasons, the Commission ultimately concluded that B25-0421's automatic suspension language for those who have been charged but not yet convicted likely violates due process.⁶

The practical effect of this constitutional problem is that the legislation fails to adequately protect people from having their driver's licenses and registrations suspended inappropriately, potentially depriving them – as well as their families – of their ability to support themselves or conduct essential daily activities.

Making matters worse, the legislation compounds this practical problem by how it handles the issue of reinstatement. While the bill acknowledges the need to reinstate suspended licenses and registrations if a person is charged but subsequently not convicted, it makes reinstatement subject to a reinstatement fee. This means that someone could have their license suspended without the adequate consideration of evidence, have the Government fail to prove that they are guilty of the charge that led to the suspension, and ultimately *still* be under a suspension until they pay the Government a fee to get the suspension lifted. When one looks at the automatic suspension provisions and the reinstatement fee provisions in B25-0421 together, it appears that the legislation seeks to conduct an end-run around reasonable (as well as Constitutionally required) protections for drivers accused of wrongdoing, instead relying on a combination of automatic suspensions and reinstatement fees to keep certain drivers with limited incomes off the roads indefinitely. This is not the approach that the Council should be taking. Instead, the Council should ensure that any suspensions of licenses and registrations comport with due process.

⁵ *Id.* at pp. 3-5.

⁶ *Id.* at pp. 5-7.

We must note that, in addition to B25-0421, B25-0425 also provides for the automatic suspension of a driver’s license upon being charged with negligent homicide, with the suspension lasting for the pendency of their criminal case.⁷ While B25-0425’s license suspension language does not apply to the same range of offenses as B25-0421 (and also lacks B25-0421’s reinstatement fee language), we must note that its automatic license suspension language raises similar due process concerns to B25-0421.

The Council Should Not Conflate Unpaid Fines and Fees with Unsafe Driving

B25-0422 seeks to incorporate traffic violations detected by automated traffic enforcement systems (ATEs), (i.e., traffic cameras), into the District’s system for assessing points to an individual driver’s driving record.⁸ Language that the bill incorporates into D.C. regulations regarding the points system provides that the Department of Motor Vehicles (DMV) Director may waive points assessed to a driver’s record for a moving violation if, when contesting a ticket for the violation, the driver requests a waiver following the completion of a DMV-approved traffic safety course.⁹ However, the waiver of points is on condition that the driver *both* complete the course *and* pay the ticket fine for the underlying traffic violation.¹⁰

While this proposal is laudable for its recognition that traffic safety education is an appropriate response to concerns regarding unsafe driving, tying the waiver of points to paying the ticket unnecessarily penalizes drivers who cannot afford to pay. As the ACLU of D.C. has previously highlighted, drivers with lower incomes and

⁷ Bill 25-0425, Strengthening Traffic Enforcement, Education, and Responsibility (“STEER”) Amendment Act of 2023, Sec. 2 (2023), available at: <https://lims.dccouncil.gov/downloads/LIMS/53600/Introduction/B25-0425-Introduction.pdf?Id=166736>

⁸ Bill 25-0422, Automated Traffic Enforcement Effectiveness Amendment Act of 2023 (2023), available at: <https://lims.dccouncil.gov/downloads/LIMS/53583/Introduction/B25-0422-Introduction.pdf?Id=166357>

⁹ *Id.* at Sec. 2.

¹⁰ *Id.*

wealth can be disproportionately harmed by the District’s system of fines and fees.¹¹ Wealthier District residents can more easily afford to pay off these fines and fees, while residents with lower incomes must devote higher proportions of their incomes to make these payments – if they can even afford to make them at all.¹² This creates a system in which drivers can be penalized, not strictly for unsafe driving, but for their relative lack of financial resources. The Council should not undercut the value of offering traffic safety courses as a way to promote safe driving by simultaneously maintaining traffic fines that do not account for drivers’ inability to pay them.

This conflation of unpaid fines with unsafe behavior extends to language in B25-0422 that amends DC Code provisions regarding towing and immobilizing of vehicles. This language continues the existing approach of tying towing and immobilization to unpaid notices of infraction,¹³ once again, failing to take into account that drivers with low incomes may be unable to afford to pay these penalties and be disproportionately punished as a result. This failure perpetuates a system in which drivers with means to pay can spare themselves from the loss of their vehicles while drivers with lower incomes are more likely to suffer harm. Again, this is not a system that truly penalizes unsafe driving – it is a system that penalizes a lack of income and wealth. As our colleagues at Tzedek DC note in their testimony:

A question for the Council to deeply consider is whether the District is justified in *not* immobilizing or towing vehicles that have repeated, but *paid*, violations and infractions versus vehicles that have similar but *unpaid* violations and infractions, when the only difference between them may be that the District recouped revenue from one set of drivers while it did not recoup revenue from another set of drivers. It should not be that drivers with the financial means to pay their tickets can continue to drive, potentially

¹¹ American Civil Liberties Union of the District of Columbia, Statement on behalf of the American Civil Liberties Union of the District of Columbia before the D.C. Council Committee on Business and Economic Development Hearing on Bill 24-0237 – “Clean Hands Certification Equity Amendment Act of 2021” by Ahoefa Ananouko (April 18, 2022), available at: <https://www.acludc.org/en/legislation/aclu-dc-testifies-dc-council-bill-24-237-clean-hands-law>

¹² *Id.*

¹³ Bill 25-0422, Sec. 2.

unsafely, while drivers of less means may see additional consequences based solely on their financial situation.¹⁴

In contrast to B25-0422, B25-0425 takes a different approach to these issues. Notably, with respect to towing and immobilization of vehicles, it creates a parallel set of criteria under which a vehicle can be towed or immobilized for committing an “immobilization-eligible defense,” which is defined based on sustained infractions or findings of guilt or liability in a six-month period.¹⁵ B25-0425 also establishes safe driving courses, but conceives of how they are used differently. Participation in such a course would be mandatory for recovering a vehicle that has been towed or immobilized,¹⁶ but also, could be used to have a booting fee waived or to reduce outstanding fines.¹⁷ Overall, B25-0425’s approach appears geared toward creating an alternative to the current traffic safety regime’s inequitable approach to addressing unsafe driving. While it does not eliminate towing and immobilization for unpaid violations,¹⁸ the bill appears to be trying to move the District away from a system in which drivers with a greater ability to pay fines face lower levels of accountability than those of more limited means.

The Council Must Ensure Proper Oversight of the Use of Information Captured by ATEs

By incorporating ATE violations into the District’s points system, B25-0422 acknowledges a trend that is already underway: an increased reliance on traffic cameras to enforce traffic safety. As the D.C. Government continues to place traffic

¹⁴ Tzedek DC, Testimony of Tzedek DC, Joint Public Hearing on Bill 25-421, the “License Suspension Reform Amendment Act of 2023,” Bill 25-422, the “Automated Traffic Enforcement Effectiveness Amendment Act of 2023,” Bill 25-425, the “Strengthening Traffic Enforcement, Education, and Responsibility (“STEER”) Amendment Act of 2023”, and Bill 25-435, the “Fraudulent Vehicle Tag Enforcement Amendment Act of 2023” Before the Committee on Transportation & the Environment and Committee on Public Works and Operations, p. 5 (October 4, 2023), available at: <https://lims.dccouncil.gov/Hearings/hearings/108>

¹⁵ Bill 25-0425, Sec. 3

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

cameras throughout the District, the Council must grapple with the implications of the growing web of technology capable of gathering information about District residents.

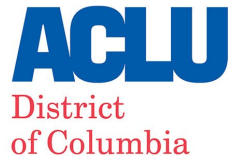
As the ACLU of D.C. has previously highlighted in other contexts, the expansion of the use of surveillance technologies to capture individuals' locations and activities means that the government has ever-growing access to information on the day-to-day activities of District residents.¹⁹ Others have highlighted both the extensive nature of the District's known surveillance resources and troubling gaps in our knowledge of how information is being shared and used.²⁰ These gaps make it more difficult to put appropriate safeguards in place regarding the use of these technologies and address abuse of them. The proliferation of traffic cameras across the District is but one example of the local growth of government surveillance, and the Council must ensure that there are appropriate limits on the use of these technologies and the information gathered by them.

Our colleagues at Washington Lawyers' Committee for Civil Rights and Urban Affairs are correct in noting that the Council should prohibit the use of facial-recognition software on photographs that ATEs take of drivers.²¹ The Council should carefully think about other ways in which traffic camera data could be used, take steps to prevent inappropriate use or abuse of such data, and ensure that there is adequate oversight of the ATE program.

¹⁹ American Civil Liberties Union of the District of Columbia, Community Oversight of Surveillance DC, COS-DC: Fighting Government Surveillance, available at: <https://www.acludc.org/en/campaigns/cos-dc-fighting-government-surveillance>

²⁰ Christ Gelardi, Inside D.C. Police's Sprawling Network of Surveillance, the Intercept (June 18, 2022), available at: <https://theintercept.com/2022/06/18/dc-police-surveillance-network-protests/>

²¹ Washington Lawyers' Committee for Civil Rights and Urban Affairs, Testimony of Dennis A. Corkery, Interim Supervising Counsel, Washington Lawyers Committee for Civil Rights and Urban Affairs, 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" p. 4 (October 4, 2023), available at: <https://lims.dccouncil.gov/Hearings/hearings/108>



915 15th St. NW, 2nd Floor
Washington, D.C. 20005
202-457-0800
acludc.org

Conclusion

The ACLU of the District of Columbia thanks the Committee for the opportunity to submit this testimony. We hope that the Committee will address our concerns as it considers its next steps regarding this package of bills.