



P.O. Box 28004 • Raleigh, North Carolina 27611-8004
Phone (919) 834-3390 • Fax (866) 511-1344

January 8, 2018

By Email

Torre Jessup
Commissioner
Department of Motor Vehicles
1501 Mail Service Center
Raleigh, NC 27699-1501

Dear Commissioner Jessup,

I am writing on behalf of the American Civil Liberties Union of North Carolina (“ACLU of NC”) regarding the policies and procedures being developed in response to Session Law 2017-95—Driver Instruction on Law Enforcement Procedure During Traffic Stops. It is our understanding that pursuant to Session Law 2017-95, a draft of suggested safety procedures for motorists when stopped by law enforcement has been completed and is currently under review by the Governor’s staff.

The ACLU of NC is dedicated to defending and preserving the individual rights and liberties guaranteed by the U.S. and North Carolina Constitutions. We believe that any driver instruction regarding traffic stops should provide comprehensive information about the constitutional rights of drivers during such stops, in addition to standard law enforcement procedures. At the very least, the information should be consistent with the constitutional rights afforded to North Carolinians. To that end, we recommend that the current draft be amended to exclude particular phrases, such as:

- The officer will usually explain why they stopped you and may ask you questions about your trip.
- Listen carefully to the officer and follow his or her instructions.
- Your cooperation with law enforcement is the best way to ensure that your safety, and that of others, is not compromised during the stop.

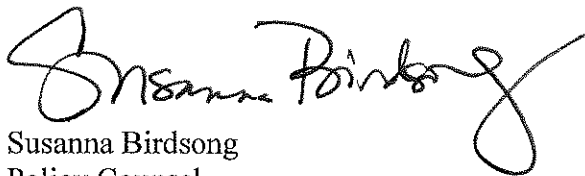
As I’m sure you are aware, beyond identifying oneself and providing a driver’s license and registration, North Carolina law does not require a motorist to answer a law enforcement officer’s questions during a traffic stop. N.C.G.S. § 20-29. In fact, drivers have a constitutional right to remain silent. *See Berkemer v. McCarty*, 468 U.S. 420, 439 (1984). And if an officer’s

questioning prolongs a stop, is not supported by reasonable suspicion of a crime, or is unrelated to the purpose of the stop, such questioning may violate the 4th amendment. *See Rodriguez v. United States*, 135 S. Ct. 1609 (2015); *see also U.S. v. Guijon-Ortiz*, 660 F.3d 757 (4th Cir. 2010) (police questioning may exceed the permissible scope of the stop where officer abandons prosecution of traffic stop and embarks on another course of investigation). Because these particular instructions, especially when read together, suggest that drivers *are* required to answer an officer's questions during a traffic stop—in contravention of the law—we ask that you remove them. In the alternative, you could provide explicit notification to motorists that they have the right to remain silent, after identifying themselves and providing their driver's license and registration.

Given the Governor's commitment to restoring and building trust between law enforcement officers and the communities they serve, it is disappointing that there has thus far been no opportunity for community input or feedback during the development of this policy. Driver education about driver responsibilities during a traffic stop—without increased law enforcement officer education about implicit bias, de-escalation techniques, and the constitutional rights of drivers themselves—will not solve the problems that this law and resulting policy are attempting to address.

Please don't hesitate to reach out to discuss this further.

Sincerely,

A handwritten signature in black ink, appearing to read "Susanna Birdsong". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Susanna Birdsong
Policy Counsel

cc: Chris Brooks, Special Deputy Attorney General, Motor Vehicles Section