

Department of Legislative Services
 Maryland General Assembly
 2011 Session

FISCAL AND POLICY NOTE

House Bill 1236
 Judiciary

(Delegate Gutierrez, *et al.*)

Law Enforcement Officers - Racial Profiling - Prohibited

This bill prohibits a “law enforcement officer” from engaging in “racial profiling.”

Fiscal Summary

State Effect: General fund expenditures increase by \$114,300 in FY 2012 for the Consumer Protection Division. Minimal increase in general fund revenues from the bill’s civil penalty provision. It is assumed that violations of the bill’s prohibitions would be few. Any future compensatory and punitive damages levied against a State law enforcement agency as a result of a successful tort claim under the bill cannot be reliably predicted or quantified.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	114,300	137,700	144,600	151,800	159,300
Net Effect	(\$114,300)	(\$137,700)	(\$144,600)	(\$151,800)	(\$159,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Minimal. Any future compensatory and punitive damages levied against a local law enforcement agency as a result of a successful tort claim under the bill cannot be reliably predicted or quantified. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: Under the bill, a law enforcement officer who engages in racial profiling is subject to the following penalties:

- for a first or second offense: (1) a maximum civil penalty of \$1,000; (2) suspension without pay for up to three months; or (3) mandatory attendance at a community sensitivity training program approved by the Division of Parole and Probation (DPP); and
- for a third or subsequent offense, termination of employment.

Racial profiling means the use of an individual's race or ethnicity as a factor in detaining, interdicting, or giving other disparate treatment to the individual, including: (1) determining the existence of probable cause to place in custody or arrest the individual; and (2) constituting reasonable and articulable suspicion that an offense has been or is being committed to justify the detention of the individual or the investigatory stop of a motor vehicle.

Each law enforcement agency must establish administrative complaint procedures to address complaints of racial profiling, including:

- providing appropriate forms for submitting a complaint against a law enforcement officer;
- investigating a complaint alleging a violation by a law enforcement officer; and
- taking the appropriate measures to discipline a law enforcement officer in violation.

The Division of Consumer Protection of the Office of the Attorney General: (1) must establish procedures for receiving and maintaining a record of complaints against law enforcement officers; and (2) may institute a proceeding under the Consumer Protection Act if the division has reason to believe a law enforcement officer has violated these provisions.

Notwithstanding any other law, including the Maryland Tort Claims Act (MTCA) and the Local Government Tort Claims Act, an individual who has sustained damages resulting from an action prohibited under the bill may bring an action against a law enforcement officer and the law enforcement officer's employer for compensatory and punitive damages.

Current Law: There are no statutory provisions governing the use or study of racial profiling in connection with any law enforcement practices in Maryland. Provisions established in 2001 by Chapter 343 required the State's law enforcement agencies to collect data on traffic stops and adopt a policy against race-based traffic stops to be used

as a management tool to promote nondiscriminatory law enforcement practices. Chapter 343 abrogated in 2010.

The Division of Consumer Protection is responsible for enforcing the Maryland Consumer Protection Act (MCPA) and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, hold a public hearing, seek an injunction, or bring an action for damages. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Disciplinary actions against law enforcement officers are handled under the Law Enforcement Officers' Bill of Rights (LEOBOR), which was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could lead to disciplinary action.

When a LEOBOR investigation or interrogation results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive, the law enforcement officer is entitled to a hearing on the issues prior to the imposition of the disciplinary action. The hearing board process is bifurcated. First, the board meets to determine guilt and if the officer is found guilty of the charges. A second hearing is held to determine the level of discipline.

Under MTCA, State personnel are immune from liability for acts or omissions performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. Under MTCA, the State essentially waives its own common law immunity. However, MTCA limits State liability to \$200,000 to a single claimant for injuries arising from a single incident. MTCA covers a multitude of personnel, including some local officials and nonprofit organizations. In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State's color of authority or sovereign immunity and may be held personally liable.

Background: In June 2003, the U.S. Department of Justice issued its *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies* forbidding racial profiling by federal law enforcement officials.

State Fiscal Effect: General fund expenditures increase by \$114,310 in fiscal 2012, which accounts for the bill's October 1, 2011 effective date. This estimate reflects the cost of hiring one part-time assistant Attorney General, one part-time administrative officer, and one part-time legal secretary in the Consumer Protection Division to receive and maintain a record of complaints against law enforcement officers and to institute

proceedings under MCPA. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions (part-time)	3
Salaries and Fringe Benefits	\$100,613
Additional Equipment	11,340
Other Operating Expenses	<u>2,357</u>
Total FY 2012 State Expenditures	\$114,310

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover as well as 1% annual increases in ongoing operating expenses.

The bill's requirement for State law enforcement agencies to establish administrative complaint procedures to address complaints of racial profiling can be handled with existing resources.

DPP does not currently approve programs in community sensitivity training and does not maintain a training program of its own in such training. Although DPP agents receive certification training, and annual in-service training, from the Maryland Police and Correctional Training Commissions, the commissions do not provide community sensitivity training as a part of its training regimen. Accordingly, it is unclear how community sensitivity training programs required under the bill would be identified and approved by DPP. Legislative Services assumes that, given the bill's language, DPP would be capable of granting approval of any identified programs with existing budgeted resources.

According to the Tort Claims Unit of the Office of the Attorney General, the State has not waived its sovereign immunity with respect to punitive damages. Accordingly, the bill's elimination of sovereign immunity in an assumed small number of cases covered under the bill may be problematic. The extent to which successful tort claims brought under the bill would be successful cannot be readily predicted or quantified. The Department of Budget and Management advises that any fiscal impact to the State, as an employer, or for defending against any legal actions brought by individuals, would depend on the number and nature of the actions.

Local Fiscal Effect: The bill's requirement for local law enforcement agencies to establish administrative complaint procedures to address complaints of racial profiling can be handled with existing resources. Some local governments have reported that similar policies are already in place.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Kent County, Montgomery County, Town of Bel Air, Town of Leonardtown, Baltimore City, Office of the Attorney General (Consumer Protection Division), Department of Budget and Management, Department of Natural Resources, Department of General Services, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Public Safety and Correctional Services, Maryland Department of Transportation, Department of Legislative Services

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