

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

House Bill 573 (Delegate Valderrama, *et al.*)
Commerce and Government Matters

Law Enforcement Officers - Racial Profiling

This bill prohibits a law enforcement officer from engaging in “racial profiling.” For a first or second offense, violators are subject to a maximum civil penalty of \$1,000, suspension without pay for up to three months, or mandatory attendance at an approved community sensitivity training program. For a third or subsequent offense, violators are subject to employment termination. The bill allows a prohibited action under these provisions to be the basis for a cause of action by an injured person against a law enforcement officer as well as the officer’s employer for compensatory and punitive damages.

Fiscal Summary

State Effect: The civil penalty provisions of this bill are not expected to significantly affect State finances or operations. It is assumed that the imposition of sanctions against officers for violations under this bill could be handled with the existing budgeted resources of any State police entity. Any potential cost to the State resulting from compensatory and punitive damage awards in successful civil actions brought under this bill cannot be reliably predicted. Such costs, as well as the costs associated with defending such suits, could be substantial.

Local Effect: It is assumed that the imposition of sanctions against officers for violations under this bill could be handled with the existing budgeted resources of any local police entity. Any potential cost to a political subdivision resulting from compensatory and punitive damage awards in successful civil actions brought under this bill cannot be reliably predicted. Such costs, as well as the costs associated with defending such suits, could be substantial.

Small Business Effect: None.

Analysis

Bill Summary: The bill defines the term “racial profiling” to mean the use of an individual’s racial or ethnic status as the sole factor in detaining, interdicting, or giving other disparate treatment to the individual, including: (1) determining the existence of probable cause to place the individual in custody or under arrest; and (2) constituting reasonable and articulable suspicion of the commission of an offense so as to justify detention of the individual or an investigatory stop of the motor vehicle.

Current Law: None applicable.

Background: Racial profiling refers to police officers stopping motorists of color simply because they fit the “profile” of people who might carry contraband, drugs, or other illegal items. How widespread this technique is has been a topic of debate among minority groups, law enforcement personnel, civil libertarians, and academicians.

Last April, U.S. Attorney General Janet Reno called for collection of more hard data by police departments to see whether and where racial profiles might be in use as a basis for traffic stops and other police questioning of citizens. She praised a program instituted by San Diego police that requires traffic officers to record the race of people they stop, and enables them to enter the information quickly and unobtrusively on a handheld computer.

Legislation is before Congress to require study of data from state and local law enforcement agencies with regard to race and traffic stops. The issue was formally discussed in at least 20 state legislatures in 1999 where measures were introduced to stop the practice and/or study the extent of its use. Of those states, however, only North Carolina and Connecticut passed comprehensive anti-profiling bills in 1999. Virginia created a special legislative panel to study police agencies and their use of profiling to stop motorists.

North Carolina’s statute requires collection of information on each traffic stop, including the race and gender of the drivers. It also requires documenting whether a search was performed, if consent was given for the search, whether contraband was found, if physical force was used, and whether the stop resulted in a ticket or arrest. The information will help determine whether certain racial groups are being unfairly profiled in North Carolina, which contains part of the I-95 corridor thought to serve as a major route for drug couriers.

The Connecticut law is similar, requiring law enforcement agencies to collect information on race, gender, ethnicity and age of the drivers, the nature of the alleged violations, and circumstances surrounding the stops. Municipal police departments and the state Department of Public Safety must adopt a written policy that prohibits stopping, detaining, or searching a person when the action is motivated by race, gender, ethnicity, or sexual orientation.

The issue returned to other states last year after New Jersey's well-publicized admission that its state police had used race as a factor in stopping and searching motorists. A report by the New Jersey attorney general provided statistical evidence that police have been singling out blacks for extra scrutiny for years. The report found that from 1994 to 1999, in central and southern New Jersey, 77% of drivers asked to agree to a search were black or Hispanic. Nineteen percent of those stops ended in an arrest.

On February 2, 2001, New Jersey was reported to have settled a lawsuit with four victims of a 1998 shooting on the New Jersey Turnpike. Lawyers for the four filed suit in April 1999, accusing the state police and two specific troopers of violating their constitutional rights by shooting them without provocation. The lawsuit further alleged that the incident began because the troopers pulled the van over solely on the basis of the occupants' race. The Star-Ledger of Newark reported that the state offered a settlement of \$12.9 million. Hearings by a state senate committee investigating racial profiling in the New Jersey are expected to begin in March to investigate why the state has dismissed criminal charges against some motorists and why the state settled the turnpike incident lawsuit.

The Frederick (MD) News-Post has reported that an analysis of traffic stop reports collected by the Frederick Police Department for the last five months of 1999 found that there seems to be a racial disparity in the number of stops that resulted in searches and police dog scans.

The use of racial profiling by the Maryland Department of State Police has been extensively documented. In 1995, the State settled a lawsuit alleging profiling by promising to cease using race as a factor in traffic stops and to keep records of searches and arrests. However, two years later, a federal judge ruled that evidence showed a "pattern and practice of discrimination" in traffic stops along Interstate 95 in northeastern Maryland. The State Police make approximately 758,000 traffic stops annually, including about 523,000 covered under this bill.

The second case, the *Maryland State Conference of NAACP Branches v. Maryland State Police*, was brought in 1998 as a class action law suit. Currently, discovery is underway to determine if the case meets the criteria for a class-action case. No trial date has been

set. While the State Police do routinely collect some traffic stop data, it is believed to be limited in scope and usage.

Allegations of racial profiling have also been an issue in Montgomery County, Maryland. On January 14, 2000, a memorandum of agreement between the U.S. Department of Justice, Montgomery County, the Montgomery County Department of Police (MCPD), and the Fraternal Order of Police, Montgomery County Lodge 35, Inc. was released in an effort to institute management practices by the MCPD that will promote nondiscriminatory law enforcement and community support for the MCPD and its officers.

As part of the agreement, the MCPD will collect information on each traffic stop including: (1) the MCPD subgroup to which the officer is assigned; (2) date, time (within six hours), and location of the stop and its approximate duration; (3) the race/ethnicity and gender of the driver; (4) whether the stop was based on the use of radar; (5) whether the driver was issued a summons or warning; (6) whether consent to search the vehicle was requested and, if so, if it was given; (7) whether a nonconsensual search was conducted; (8) whether any contraband was seized; and (9) whether the driver or a passenger was arrested. The MCPD will design and implement a computerized system for maintaining and retrieving the traffic stop information, and the information will be used to identify methods for assuring nondiscriminatory law enforcement in connection with traffic stops. The agreement follows a three-year investigation by the U. S. Department of Justice to discourage racial discrimination in traffic stops, an investigation that started with a 1996 complaint by the Montgomery County Chapter of the NAACP alleging that the Montgomery County Police used excessive force against minorities, harassed them, and used racial profiling in traffic stops.

Additional Information

Prior Introductions: In the 2000 session, HB 226 was introduced which would have created a similar prohibition with a civil penalty of \$1,000. After a hearing in the House Judiciary Committee, no further action was taken on that bill.

Cross File: None.

Information Source(s): Department of Legislative Services

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