

Department of Legislative Services
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FISCAL NOTE
Revised

Senate Bill 208 (The President, *et al.*)
(Administration)

Judicial Proceedings

Commerce and Government Matters

Law Enforcement Officers - Vehicle Laws - Race-Based Traffic Stops

This Administration bill requires each law enforcement agency in the State to adopt a policy against race-based “traffic stops.” The bill also establishes a reporting program on specified traffic stops.

Fiscal Summary

State Effect: The FY 2002 budget contains a general fund appropriation of \$598,170 and a special fund appropriation of \$87,696 for the State Police, including funds for a one-time equipment expenditure of \$604,950, contingent on enactment of these provisions. In addition, the FY 2002 budget includes a general fund appropriation of \$80,000 for the Police Training Commission also contingent on enactment. Additional indeterminate expenditures would be incurred for the work of the Maryland Justice Analysis Center and to assist local law enforcement agencies with data collection and reporting.

Local Effect: Varying expenditure increases depending on the need for additional personnel or one-time equipment purchases. Revenues would not be affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: A small business impact statement was not provided by the Administration in time for inclusion in this fiscal note. A revised fiscal note will be issued when the Administration’s assessment becomes available.

Analysis

Bill Summary: This bill requires the State's law enforcement agencies to adopt a policy against race-based traffic stops that is to be used as a management tool to promote nondiscriminatory law enforcement. The policy must also be used in the training and counseling of officers. The bill requires law enforcement officers to record specified information in connection with each traffic stop, including the driver's race and ethnicity, to evaluate the manner in which the vehicle laws are being enforced. A "traffic stop" does not include: (1) a checkpoint or roadblock stop; (2) a stop for public safety purposes arising from a traffic accident or emergency situation; or (3) a stop based on the use of radar, laser, or vascar technology.

The bill requires the Police Training Commission, in consultation with the Maryland Justice Analysis Center (MJAC) at the University of Maryland at College Park, to develop a model format for the efficient recording of the traffic stop data on an electronic device, or by any other means, for use by a law enforcement agency and guidelines that each law enforcement agency may use in data evaluation. Each law enforcement agency must compile the data collected by its officers and submit an annual report to MJAC by March 1 of each year reflecting the prior calendar year. MJAC is charged with analyzing the data based on a methodology developed in consultation with the Police Training Commission. By September 1 of each year, MJAC is required to issue a report to the Governor and the General Assembly as well as to each law enforcement agency.

The bill phases in the law enforcement agencies covered by the bill over a three-year period. Effective January 1, 2002, the bill covers each agency with 100 or more officers. Effective January 2003, agencies with 50 or more officers are covered and, effective January 2004, every agency is covered. Data collection is required to continue for a five-year period (until December 31, 2006) and a final report is required before September 1, 2007. The bill requires any law enforcement agency that, on or before July 1, 2001, has entered into an agreement with the U.S. Department of Justice (DOJ) requiring similar data collections to provide copies of the report made to DOJ in lieu of the bill's reporting requirements.

The bill requires the Governor to assist local law enforcement agencies to implement the required data collection and reporting obligations by: (1) providing for a deficiency appropriation in the State budget for fiscal 2002; and (2) appropriating monies in the State budget for fiscal 2003 through 2006.

The bill provides for reports of noncompliance by law enforcement agencies to be made by the training commission and MJAC to the Governor and the Legislative Policy Committee.

The bill's provisions are terminated after August 31, 2007.

Current Law: There are no statutory provisions governing the use or study of racial profiling in connection with any police practices, including traffic stops, in the State.

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 lawsuit. 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.

State Expenditures: There are approximately 180 law enforcement agencies in the State that would be subject to the reporting requirements of this bill.

General fund expenditures in fiscal 2002 for the Police Training Commission are estimated to be \$80,064. This estimate reflects the cost of contractually hiring one program coordinator and one clerical support staff person to liaison with law enforcement agencies; assist in developing necessary forms, policies, guidelines, and reporting formats; and monitor compliance. Future year costs (estimated to be \$70,177 for fiscal 2003; \$71,700 for fiscal 2004; \$73,437 for fiscal 2005, and \$74,850 for fiscal 2006) reflect annualization and inflation.

MJAC did not provide information regarding its estimated charges for performing work pursuant to the bill.

It is estimated that costs to initiate a contract with MJAC for its role under the bill will range from \$200,000 to \$250,000 in fiscal 2002. This estimate is based on the level of supplemental funding offered by the Governor for the same bill in the 2000 session. The responsibilities for MJAC under the bill include developing forms and formats, doing the actual analysis from data submitted by law enforcement agencies, and preparing the annual reports to those agencies, the General Assembly, and the Governor. The fiscal 2002 budget does not contain funds for the State to contract with MJAC for this analysis.

This bill requires State and local police departments to collect and compile specific data relating to traffic stops. Actual reporting costs, if any, for affected law enforcement agencies cannot be specifically enumerated until the reporting forms and formats are developed and put into place. In any case, the Department of Natural Resources reports that this bill would not affect its finances. The University System of Maryland and the Mass Transit Administration report that the requirements of the bill would require some minimal additional expenditures, but could be handled with existing budgeted resources. The Maryland Transportation Authority Police advise that the bill would result in the need to hire an additional clerical person, but that such an action would be accommodated with the use of nonbudgeted funds.

MJAC advises that forms and formats used for data reporting under this bill (developed in consultation with the Police Training Commission) are required to be “efficient” and it is expected that they could be used by any police agency with minimal cost or operational disruption.

Approximately two-thirds of uniformed personnel of the State Police are generally engaged in full-time law enforcement activities, including enforcement of the State’s vehicle laws. There are currently 1,622 active uniformed State Police personnel. Accordingly, under this bill, approximately 1,080 troopers would need the ability to collect, store, and retrieve traffic stop data.

The fiscal 2002 budget includes \$685,866 for the Department of State Police to comply with the provisions of this bill. Specifically, the fiscal 2002 budget provides \$598,170 in general funds and \$87,696 in Transportation Trust Fund monies dedicated to this purpose. This includes funds to hire one data base specialist and one computer network specialist, as well as funds for the purchase of computer hardware (such as handheld data collection units) and software for use by troopers engaged in enforcement of the State’s vehicle laws plus some additional costs for computer reprogramming and training costs for officers. It includes salaries, fringe benefits, one-time equipment and start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$71,876
Additional Equipment	604,950
Other Operating Expenses	<u>9,040</u>
Total FY 2002 State Police Expenditures	\$685,866

Future year expenditures are estimated at \$105,300 for fiscal 2003; \$110,800 for fiscal 2004; \$116,700 for fiscal 2005; and \$123,100 for fiscal 2006. Future year expenditures reflect: (1) full salaries with a 6.5% increase in fiscal 2003 and a 4.5% increase each year thereafter, with 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

The Department of State Police notes that the collection of this data would mean some lost efficiencies and revenue from tickets, because any additional time spent by troopers inputting such data would translate to less time on actual patrol and fewer tickets issued. Although the amount of time needed to enter such information with handheld computers is estimated to be from two minutes to seven minutes, it is not possible to reliably translate such lost efficiencies into actual revenue lost. In any event, these losses are assumed to be small for any police agency.

Excluding costs for contracting with MJAC for data analysis, the total State expenditures for all impacted agencies cited above is \$765,866. Out-year estimates include the costs associated with contractual salary costs for the Police Training Commission (including annualization and inflation) and costs for MJAC's work through the final reporting deadline of September 1, 2007.

Any general funds appropriated by the Governor to assist local law enforcement agencies in fiscal 2002 through 2006 cannot be reliably estimated.

Local Fiscal Effect: A brief survey of local jurisdictions by DLS elicited the following information:

- Montgomery County is already under a U.S. Department of Justice settlement to collect similar data and, under this bill, would only be required to provide MJAC with copies of its federal reporting documentation.
- Washington County reports that this bill would require the hiring of one full-time additional staff person costing, including fringe benefits, approximately \$30,900 in fiscal 2002, with out-year costs growing at 4%.
- Prince George's County reports that this bill would require the hiring of one full-time additional staff person costing, including fringe benefits, approximately \$39,000 in fiscal 2002. The additional time required to report the data on each traffic stop is not expected to significantly affect the operations of officers on patrol.

- Anne Arundel County reports that this bill would have minimal effect on the operations or finances of the county police department.
- Baltimore City advises that this bill would result in some additional expenditures for overtime for data entry (\$70,000 annually), but these costs could be absorbed with existing budget resources. Baltimore City police stop an average of 1,400 vehicles per month (16,800 annually).

DLS advises that actual costs for any local police agency would depend upon the development of reporting formats, plus any one-time expenditures for equipment including electronic data collection devices. As is noted above, it is expected that the use of uniform and efficient reporting tools would tend to minimize any such costs.

Additional Information

Prior Introductions: A similar bill (HB 225) was introduced during the 2000 session and passed the House, but received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: HB 303 (Delegate Gladden, *et al.* and the Speaker) – Commerce and Government Matters.

Information Source(s): Department of State Police, Maryland Department of Transportation (Motor Vehicle Administration, Mass Transit Administration), University System of Maryland, Office of the Attorney General, Anne Arundel County, Baltimore City, Montgomery County, Prince George's County, Washington County, San Diego Police Department, North Carolina General Assembly (Fiscal Research Division), Connecticut General Assembly (Office of Fiscal Analysis), Congressional Budget Office, Department of Legislative Services

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