

**Department of Legislative Services**  
Maryland General Assembly  
2002 Session

**FISCAL NOTE**

House Bill 1099 (Delegate Valderrama, *et al.*)  
Judiciary

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**Law Enforcement Officers - Racial Profiling**

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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.

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**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.

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## **Analysis**

**Bill Summary:** The bill defines the term “racial profiling” as 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:** Legislation passed during the 2001 session required law enforcement agencies in the State to adopt policies to prohibit race-based traffic stops. In addition to reporting requirements relating to racial profiling, Chapters 342 and 343 of 2001 require 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 also must be used in the training and counseling of officers. Law enforcement officers are required 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. As defined, 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.

Chapters 342 and 343 phase in the law enforcement agencies covered over a three-year period. Effective January 1, 2002, the acts cover 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.

**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.

*The Frederick News-Post* (MD) 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. 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.

The agreement followed 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.

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### **Additional Information**

**Prior Introductions:** A similar bill, HB 573, was introduced during the 2001 session and received an unfavorable report from the Commerce and Government Matters Committee. 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):** Allegany County, Montgomery County, Prince George's County, Talbot County, Department of State Police, Maryland State Treasurer's Office, Department of Legislative Services

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