

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 84

SPONSOR: Criminal Justice Committee and Senator Meek

SUBJECT: Law Enforcement/Motorist Profiling

DATE: April 16, 2001

REVISED: 4/18/01

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| 1. | <u>Erickson</u> | <u>Cannon</u> | <u>CJ</u> | <u>Favorable/CS</u> |
| 2. | <u>White</u> | <u>Wilson</u> | <u>GO</u> | <u>Fav/1 amendment</u> |
| 3. | <u>Pingree</u> | <u>Beck</u> | <u>APJ</u> | <u>Fav/1 amendment</u> |
| 4. | <u> </u> | <u> </u> | <u>AP</u> | <u> </u> |
| 5. | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| 6. | <u> </u> | <u> </u> | <u> </u> | <u> </u> |

I. Summary:

CS/SB 84 creates a Florida Motorist Profiling Evaluation Task Force, consisting of 12 members who serve until the task force is abolished on April 1, 2002. The task force is required to: identify best practices currently used by state and local law enforcement agencies of this state in making motor vehicle traffic stops; identify and recommend changes to address deficiencies, if any, in current practices; and recommend best practices and policies and procedures that may be adopted by state or local law enforcement agencies of this state to prevent bias profiling and discriminatory practices from serving as a primary factor in determining whether the driver of a motor vehicle should be stopped for a routine traffic violation. The task force must report its findings and recommendations to the Governor and Legislature by January 1, 2002.

The CS creates section 943.1759 of the Florida Statutes.

II. Present Situation:

Racial Profiling

“One definition of racial profiling is ‘using race as a key factor in deciding whether to make a traffic stop.’ Another definition is ‘using race as a key factor in deciding whether, during a traffic stop, to search the vehicle or the driver.’”¹

It has been recently noted “in the late 1990s the American news media exploded with coverage of the problem of racial profiling. There has been considerable attention to this issue by state and local governments and law enforcement agencies nationwide.” (See “Related Issues”)²

¹*Contacts between Police and the Public/Findings from the 1990 National Survey*, Bureau of Justice, U.S. Department of Justice, March 2001, NCJ 184957.

Summit on Racial Profiling

On November 18, 1999, Senator Kendrick Meek and former Representative Anthony Hill convened a meeting of state law enforcement officials and civil rights and civil liberties leaders to discuss the issue of motorist profiling.³

Actions Taken by Florida Highway Patrol to Address Racial Profiling

The Florida Highway Patrol (FHP) collects traffic stop data, compiled from forms filled out by troopers stopping vehicles. The forms include such data as race, sex, age, ethnicity, reason to stop, and rationale for consent search. Troopers are instructed to record their perception of race, ethnicity, and age unless information is available from a source such as a driver's license. According to FHP, "[t]he intent is to avoid having troopers question drivers about race or age. Since racial profiling is based on the officer's perception of race before making the stop, this perception is the appropriate entry for the data (even if it may be wrong)."⁴

On April 26, 1999, Colonel Charles C. Hall, the FHP Director, issued a memorandum to all sworn FHP employees that racial profiling would not be condoned and members found to be conducting profile stops would be subject to disciplinary action. Colonel Hall stated that he expected that "all traffic stops made by FHP officers to be based solely on the violation observed." He also stated that he expected that "the race, ethnicity, gender, or economic status of the vehicle occupants will not be considered in deciding whether to search the vehicle." Such decisions, he indicated, "are to be based on evidence and the occupant's behavior patterns."

On June 24, 1999, in a memorandum to all troop commanders, Colonel Hall directed each troop commander to form, within his or her troop, a Troop Diversity Advisory Committee "to consist of at least six prominent leaders within the various minority communities who would be willing to assist you in gauging the FHP's effectiveness in enforcement, education, and information within their respective communities."

Actions Taken by Sheriffs and Police Chiefs to Address Racial Profiling

In early 2001, the Presidents of the Florida Sheriffs Association and the Florida Police Chiefs Association signed a joint resolution which stated, in part, that "enforcement decisions based solely on race have no acceptable place in law enforcement operations," and resolved that the associations encourage professional traffic stops, discourage and condemn use of racial profiling or other enforcement decision making based on race, join with other professional law enforcement associations to discourage racial profiling, and provide training and other support to all law enforcement agencies to help them assure that such practices are not utilized.⁵

²*A Resource Guide on Racial Profiling Data Collection Systems/ Promising Practices and Lessons Learned*, U.S. Department of Justice, November 2000, NCJ 184768 (monograph).

³Correspondence to Governor Jeb Bush from Senator Kendrick Meek, dated December 3, 1999.

⁴Correspondence to staff of the Senate Committee on Criminal Justice from Richard Zeller, Office of Program Planning, Florida Highway Patrol, dated January 19, 2001.

⁵Resolution2000-1, Florida Sheriffs Association and Florida Police Chiefs Association.

In a recent letter to staff, the Florida Sheriffs Association provided a non-exhaustive list of sheriff's offices that are currently collecting data on traffic stops. The listed counties include Bay, Columbia, Collier, Leon, Martin, Monroe, Okeechobee, St. Lucie and Taylor.⁶

In a recent letter to staff, the Florida Police Chiefs Association provided a non-exhaustive list of police departments that are collecting information on traffic stops. The listed departments are in Tallahassee and Coral Gables, and it is indicated that the department in Daytona Beach is in the process of implementing mandatory procedures for collecting data, modeled on the FHP and the Tallahassee Police Department.⁷ The Metro-Dade Police Department has also indicated to staff that it began a data collection program on February 12, 2001.⁸

Enforcement of State Traffic Laws

Section 316.640, F.S., pertaining to the enforcement of this state's traffic laws, sets forth a number of state and local law enforcement agencies that have responsibility for enforcing those laws. At the state level there is the Division of the Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles, the Division of Law Enforcement of the Fish and Wildlife Conservation Commission, the Division of Law Enforcement of the Department of Environmental Protection, and law enforcement officers of the Department of Transportation. Each of these agencies has the authority to enforce all of the traffic laws of this state on all of the streets and highways thereof.

University police officers, community college police officers, and school safety officers have authority to enforce traffic laws of this state that occur within their jurisdiction. Similarly, police officers employed by an airport have the authority to enforce traffic laws when such violations occur on their property or facilities.

The Office of Agricultural Law Enforcement of the Department of Agricultural and Consumer Services has the authority to enforce the traffic laws of this state only as authorized under ch. 560, F.S. Section 570.15, F.S., specifies the authority of this department regarding access and inspection of certain vehicles. Section 316.640, F.S., does not expand the authority of the Office of Agricultural Law Enforcement at its agricultural inspection stations to issue any traffic tickets except those traffic tickets for vehicles illegally passing an inspection station.

At the county level, the sheriff's office of each county has the authority to enforce the traffic laws of this state on all the streets and highways throughout the county wherever the public has the right to travel by motor vehicle, and may be required by the county, as statutorily provided, to enforce the traffic laws of this state on any private or limited access road or roads over which the county has jurisdiction. The sheriff's office has the authority, but is not required, to enforce the traffic laws of this state on any way or place used for vehicular traffic on a controlled access basis

⁶Correspondence to staff of the Senate Committee on Criminal Justice from Mr. J.M. "Buddy" Phillips, Executive Director, Florida Sheriffs Association, dated January 31, 2001.

⁷Correspondence to staff of the Senate Committee on Criminal Justice from Mr. Harold M. Robbins, Jr., Executive Director, Florida Police Chiefs Association, dated January 29, 2001.

⁸Correspondence to staff of the Senate Committee on Criminal Justice from Major George Aylesworth, Metro-Dade Police Department dated January 25, 2001.

within a mobile home park recreation district and the recreational facilities of which district are open to the public.

Finally, the police department of each chartered municipality has the authority to enforce the traffic laws of this state on all streets and highways throughout the municipality wherever the public has the right to travel by motor vehicle, and may be required by the municipality, as statutorily provided, to enforce the traffic laws of this state on any private or limited access road or roads over which the county has jurisdiction. The police department has the authority, but is not required, to enforce the traffic laws of this state on any way or place used for vehicular traffic on a controlled access basis within a mobile home park recreation district and the recreational facilities of which district are open to the public.

III. Effect of Proposed Changes:

CS/SB 84 creates s. 943.1759, F.S., which creates a Florida Motorist Profiling Evaluation Task Force, consisting of 12 members who serve until the task force is abolished on April 1, 2002. The task force is required to: identify best practices currently used by state and local law enforcement agencies of this state in making motor vehicle traffic stops; identify and recommend changes to address deficiencies, if any, in current practices; and recommend best practices and policies and procedures that may be adopted by state or local law enforcement agencies of this state to prevent bias profiling and discriminatory practices from serving as a primary factor in determining whether the driver of a motor vehicle should be stopped for a routine traffic violation.

The task force is required to report its findings and recommendations to the Governor and Legislature by January 1, 2002. The recommendations must specifically include recommendations, including proposed legislation, for assuring that law enforcement agencies' policies for motor vehicle traffic stops are free of bias profiling.

The membership of the task force includes:

- The Attorney General
- The president of the Florida Sheriffs Association
- The president of the Florida Police Chiefs Association
- One member of the Florida Highway Patrol, to be appointed by the Governor
- One member of the Florida Commission on Human Relations, to be appointed by the Governor
- One member of the Florida Department of Law Enforcement, to be appointed by the Governor
- The executive director of the American Civil Liberties Union of Florida
- The state president of the National Association for the Advancement of Colored People
- One member of the House of Representatives, to be appointed by the speaker and one member appointed by the minority leader of the House
- One member of the Senate to be appointed by the Senate President and one member appointed by the minority leader of the Senate

The task force members may not delegate their duties to attend meetings of the task force and to vote on any matter before the task force to any other person.

The task force is to be chaired by the Attorney General. Appointments are to be made within 30 days of this act and the first meeting of the task force is to be held within 60 days after the effective date of this act. In the event of a vacancy, the person who made the original appointment must appoint a new member to fill the vacancy.

Staffing of the task force is provided by the Department of Legal Affairs. Technical assistance may be provided by the Department of Law Enforcement, the Department of Highway Safety and Motor Vehicles, and the Division of the Florida Highway Patrol.

Members of the task force serve without compensation but are entitled to per diem and travel expenses as provided in s. 112.061, F.S. Members of the task force who are representatives of state agencies, law enforcement associations, or members of the Legislature receive per diem from their budgets, but representatives from the ACLU and NAACP receive per diem and travel expenses from the budget of the Office of the Attorney General to the extent that resources will permit.

The task force may appoint subcommittees that include persons who are knowledgeable in a subject area pertinent to the task force's duties but these persons are not members of the task force and may not vote as such.

The task force may seek support in the form of grants and technical assistance from the U.S. Department of Justice and other applicable federal agencies in furtherance of its statutory duties.

The CS takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Attorney General's Office indicates that while the creation of the task force has a fiscal impact to that office, they have determined that the costs associated with staff support and travel can be covered within the agency's existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:**Actions by Other States to Address Racial Profiling**

At least four states -- Connecticut, Kansas, Missouri, and Washington -- have passed state legislation requiring state police and/or local police agencies to record and make public the racial and ethnic pattern of their traffic stop. In California, approximately 75 agencies, including the California Highway Patrol, have begun to implement data collection systems.⁹

Federal Data on Traffic Stops

In a Bureau of Justice Statistics report of the findings of a 1999 national survey on contacts between the police and the public, which was issued this month, it was reported that, in 1999, an estimated 10.3 percent of licensed drivers were pulled over by police at least one time in a traffic stop.¹⁰ This percentage represents 19.3 million stopped drivers, and includes the 4 million drivers pulled over more than once per year. Of the 19.3 million drivers, "an estimated 77 percent (14.9 million) were white, 11.6 percent (2.2 million) were black, 8.4 percent (1.6 million) were Hispanic, and 3 percent (.6 million) were drivers of other races."

"Blacks (12.3 percent) were more likely than whites (10.4 percent) to be stopped at least once, and blacks (3.0 percent) were more likely than whites (2.1 percent) to be stopped more than once."

Two-thirds of the 1.3 million drivers searched were without the driver's expressed consent, and in nearly 90 percent of the 1.3 million searches performed, no evidence of criminal wrongdoing was uncovered.

Eighty-four percent of drivers stopped by police said they had been stopped for legitimate reasons, and 90 percent felt that police had behaved properly during the traffic stop.

⁹A *Resource Guide on Racial Profiling Data Collection Systems/Promising Practices and Lessons Learned*, U.S. Department of Justice, November 2000, NCJ 184768 (monograph).

¹⁰*Contacts between Police and the Public/Findings from the 1990 National Survey*, Bureau of Justice, U.S. Department of Justice, March 2001, NCJ 184957 (All data noted in this section is from this report.)

The following data was also reported:

The survey uncovered evidence of black drivers having worse outcomes than whites. The question arises whether blacks having worse outcomes was true regardless of the officer's race. To answer it, black and white drivers stopped by white officers were compared, and black and white drivers stopped by black officers were compared. Results suggest that the various racial disparities had nothing to do with the officer's race. In other words, blacks generally had the worse outcome whether they were stopped by a white officer or a black officer.

A black driver (60.4 percent) was more likely than a white (51.8 percent) to be ticketed. Among drivers stopped by white officers, blacks (60.6 percent) were more likely than whites (52.1 percent) to be ticketed. Though the racial disparity was about as great among drivers stopped by black officers (65.9 percent of blacks, 58.3 percent of whites), the disparity was not statistically significant, presumably because of the small sample.

A black driver (5.2 percent) was more likely than a white (2.6 percent) to be arrested. Among drivers stopped by white officers, blacks (5.3 percent) were more likely than whites (2.6 percent) to be arrested. Though the racial disparity was about as great among drivers stopped by black officers (4.6 percent of blacks, 1.3 percent of whites), the disparity was not statistically significant, presumably because of the small sample.

A police officer was more likely to search a vehicle driven by a black (8.5 percent) than a white (4.3 percent), and that was true regardless of the officer's race.

A black driver (8.0 percent) was more likely than a white (3.5 percent) to be physically searched. Among drivers stopped by white officers, blacks (8.6 percent) were more likely than whites (3.3 percent) to be searched. Though the racial disparity was nearly as great among drivers stopped by black officers (5.7 percent of blacks, 1.8 percent of whites), the disparity was not statistically significant, presumably because of the small sample.

Black drivers stopped by police (74.0 percent) were less likely than whites (86.0 percent) to have the opinion they had been stopped for a legitimate reason. Among drivers stopped by white officers, blacks (72.7 percent) were less likely than whites (86.2 percent) to feel the stop had a legitimate basis. There was also some indication that, among drivers stopped by black officers, black drivers (75.2 percent) were less likely than whites (84.8 percent) to say the stop was for a legitimate reason.

The following data was specifically reported with regard to race and searches of vehicles:

Survey findings reported [in the report] indicated the following about the likelihood of searches and the race or ethnicity of the driver:

1. Black (11.0 percent) and Hispanic (11.3 percent) motorists stopped by police were more likely than whites (5.4 percent) to be physically searched or to have their vehicle searched.

2. Black (8 percent) and Hispanic motorists (7 percent) were more likely than white motorists (3.5 percent) to be subjected to a physical search of the driver.
3. Police were more likely to search a vehicle driven by a black (8.5 percent) or Hispanic (9.7 percent) than by a white (4.3 percent).

However, while the survey data can reveal these various racial disparities they cannot answer the question of whether the driver's race, rather than the driver's conduct at the time or any other specific circumstances surrounding the stop, is the reason the search was conducted. That is because the survey did not include questions about circumstances or driver conduct. For example, having drugs in plain view of police is a circumstance that would normally warrant a legal search of the vehicle. But since the survey did not ask drivers whether any drugs within plain view were in the vehicle, the analysis is necessarily limited.

Incidents of Racial Profiling in New Jersey

One of the highest profile cases involving racial profiling and a case that is generally considered to be a watershed event in turning national attention to the issue of racial profiling was a 1998 incident in New Jersey involving three black men and one Hispanic man who were traveling on the New Jersey turnpike to a college basketball tryout.¹¹ The men were stopped for allegedly speeding and were fired upon by two white New Jersey troopers when the van the men were in went into reverse. One of the troopers has been charged with attempted murder and aggravated assault, and the other trooper has been charged with aggravated assault.¹²

In 1999, the U.S. Department of Justice filed a complaint in federal court against the State of New Jersey and the Division of State Police of the New Jersey Department of Law and Public Safety. On December 30, 1999, the U.S. Department of Justice and the State of New Jersey agreed to enter into a consent decree in which the State of New Jersey would address policy requirements and limitations on the use of race in law enforcement activities and the procedures used to conduct motor vehicle searches, document traffic stops including post-stop procedures and enforcement actions, and numerous other matters.¹³

On February 2, 2001, the State of New Jersey agreed to pay \$12.9 million to the four men involved in the 1998 incident on the New Jersey turnpike.¹⁴ On that same date, the New Jersey Attorney General, John J. Farmer Jr., publicly indicated that he would dismiss drug and contraband charges against 128 minority motorists. Attorney General Farmer indicated that "[i]n each case, the defendants alleged that they were stopped and their automobiles illegally searched

¹¹"N.J. to Pay \$12.9 M in Profile Case," *Associated Press* (February 2, 2001).

¹²*Id.*

¹³"Joint Application for Entry of Consent Decree," *United States v. State of New Jersey and the Division of State Police of the New Jersey Department of Law and Public Safety*, Civil No. 99-5970 (MLC), U.S. District Court for the District of New Jersey (December 30, 1999).

¹⁴Release, "State Settles with Four Men Involved in Turnpike Incident," Office of the Attorney General, New Jersey (February 2, 2001).

because they were minorities.”¹⁵ Release, “State Moving to Dismiss Charges in Cases Alleging Racial Profiling; Prosecutions to Proceed in 17 Cases,” Office of the Attorney General, New Jersey (February 2, 2001).

Whren v. United States

In *Whren v. United States*, 116 S.Ct. 1769 (1996), the United States Supreme Court, stated: “As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.” The Supreme Court noted it has not applied a balancing analysis when probable cause is present, except in extraordinary circumstances.¹⁶ The Supreme Court held “the ‘multitude of applicable traffic and equipment regulations’” do not provide an exception “to the traditional common-law rule that probable cause justifies a search and seizure.”¹⁷

VIII. Amendments:

#1 by Governmental Oversight and Productivity:

Corrects a technical error in a cross-reference contained in the CS.

#1 by Appropriations Subcommittee on Public Safety and Judiciary

Deletes the language specifically appropriating \$100,000 to the Department of Legal Affairs to implement the provisions of the bill.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

¹⁵Release, “State Moving to Dismiss Charges in Cases Alleging Racial Profiling; Prosecutions to Proceed in 17 Cases,” Office of the Attorney General, New Jersey (February 2, 2001).

¹⁶*Id.*, at 1776.

¹⁷*Id.*, at 1777.