

HOUSE BILL REPORT

HB 2018

As Reported by House Committee On:

Criminal Justice & Corrections

Title: An act relating to reporting on issues pertaining to racial profiling.

Brief Description: Reporting on issues pertaining to racial profiling.

Sponsors: Representatives O'Brien (co-prime sponsor), Ballasiotes (co-prime sponsor), Veloria, Kenney, Lovick, Cooper, Reardon, Van Luven, Conway, Murray, Santos, Schual-Berke, Tokuda, McDermott and McIntire.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/19/01, 2/26/01 [DPS].

Brief Summary of Substitute Bill

- Requires all local law enforcement agencies to initiate policies to reduce racial profiling.
- Requires the Washington Association of Sheriffs and Police Chiefs (WASPC) to coordinate with the Criminal Justice Training Commission (CJTC) to ensure that issues related to racial profiling are addressed in basic law enforcement training.
- Requires every local law enforcement agency in Washington to collect and provide specific information relating to traffic stops to the CJTC.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Ahern, Republican Vice Chair; Lovick, Democratic Vice Chair; Cairnes, Kagi, Kirby and Morell.

Staff: Yvonne Walker (786-7841).

Background:

Racial profiling occurs when police officers stop motorists of certain racial or ethnic groups because the officers believe that these groups are more likely than others to commit certain crimes. Stopping a motorist solely because of the motorist's race or ethnicity is unconstitutional under both the federal and state constitution.

However, the United States Supreme Court has held that under the federal constitution a court will not examine the officer's subjective intent in making a traffic stop. Accordingly, under federal law an officer may stop a motorist for any violation of the traffic code, even when the officer's true reason for making the traffic stop was the driver's race or ethnicity. This practice is known as a pre-textual traffic stop. Pre-textual traffic stops are one of the primary ways by which officers racially profile.

On the other hand, in 1999 the Supreme Court of Washington chose not to follow the United States Supreme Court and expressly prohibited pre-textual traffic stops under the state constitution. In Washington a court will examine the totality of the circumstances which includes the officer's subjective intent and the objective reasonableness of the traffic stop.

In the year 2000 the Washington State Patrol (WSP) collected data over a six month period on routine traffic stops. An analysis of the data appears to indicate that the WSP does not engage in racial profiling. However, the data also showed that minorities were arrested or issued citations and searched at higher rates than whites. According to the WSP the differences in enforcement actions and related searches between white persons and non-white persons will require more a thorough analysis by WSP to account for the differences.

While some local law enforcement agencies have collected data on traffic stops, there has not been a comprehensive study by local law enforcement agencies to determine if racial profiling is occurring in some cities or counties.

Summary of Substitute Bill:

Beginning July 1, 2002, every traffic enforcement agency in Washington is required to collect and provide specific information relating to traffic stops to the CJTC. In particular, every traffic enforcement agency shall provide the following information:

- The number of individuals stopped and whether an arrest was made or a citation or warning was issued;
- The individual's race or ethnicity, approximate age, and gender;
- The nature of the alleged traffic violation; and
- Whether or not the individual was searched, and the legal basis for the search, and whether or not a canine unit was alerted.

The information must be submitted annually and on forms provided by the CJTC. The

information must not reveal the identity of the individual stopped. Further, the information must be reported with codes used to identify the areas of patrol, and the coding system will only be known to the traffic enforcement agency. The CJTC is to compile the information in a manner that assists criminal justice agencies and the Legislature in making policy to combat racial profiling. The CJTC is to use statistics that are comparable with national uniform criminal statistics published by federal agencies.

In addition, the WASPC must work with all local law enforcement agencies and the CJTC to help reduce the issues surrounding racial profiling within the state. As part of this effort, all local law enforcement agencies must comply with recommendations set by the WASPC. The recommendations, aimed at reducing racial profiling, require that all local law enforcement agencies initiate the following policies and report on their progress to the WASPC:

- Adopt a written policy designed to condemn and prevent racial profiling;
- Review their existing procedures, practices, and training to ensure that they do not enable or foster the practice of racial profiling;
- Provide continued training to address racial profiling and how to better interact with persons they stop, so that legitimate police actions are not perceived as racial profiling;
- Ensure that they have in place a citizen complaint review process that can adequately address instances of racial profiling. The process must be accessible to citizens and must be fair. Officers found to be engaged in racial profiling must be held accountable through the appropriate disciplinary procedures within each department;
- Work with community minority groups to appropriately address the issue of racial profiling; and
- If fiscally able to do so, collect demographic data on traffic stops and analyze that data to ensure that racial profiling is not occurring.

In addition, the WASPC must coordinate with the CJTC to ensure that issues related to racial profiling are addressed in basic law enforcement training and offered in regional training for in-service law enforcement officers at all levels.

The WASPC, in cooperation with the CJTC, must report to the Legislature by December 31, 2001, and annually thereafter, on the progress and accomplishments of each local law enforcement agency in the state in meeting the requirements and goals aimed at reducing racial profiling.

Substitute Bill Compared to Original Bill:

The two racial profiling bills, HB 2017 and HB 2018, are merged together in one bill. As a result, beginning on July 1, 2002, every local law enforcement agency in Washington must collect and provide specific information relating to traffic stops to the CJTC.

The terms traffic enforcement agencies– is changed to local law enforcement agencies– throughout the bill.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: There have been complaints of racial profiling all across the state and there is very little protection against this act especially in rural areas. A part of the problem is that police officers and even citizens in the community have different perceptions about racial profiling. This bill will direct agencies to conduct studies and develop policies that will help reduce racial profiling and ensure that the rights of all people are respected. In addition, the bill will also help to inspire confidence and trust in law enforcement.

The data collected under this bill needs to be gathered over a long period of time on a statewide basis in order to be statistically significant. This gathering of data required by this bill adds about only 10 seconds to the average traffic stop; however the analysis of the data will take a significant amount of time and effort. Lastly, the Legislature should ensure that there is a means for uniform data collection of information on racial profiling.

(In support with concerns) The CJTC as well as other sheriffs and heads of other law enforcement agencies should get the information required by this bill. In addition, the community and media should also know the data on the geographic area of where stops are made and not just the reporting agency. It is important to identify the officers who are racially profiling so that the officers may be trained or fired if un-trainable.

Furthermore, there needs to be a citizen complaint system for racial profiling. The bill should make clear the intent of the Legislature to end racial profiling.

This bill is an unfunded local mandate. However some jurisdictions are already collecting the data. Also the analysis of the data collected needs to be objective, using a constant model.

Implementation of this bill should begin immediately not in two years.

Testimony Against: None.

Testified: (In support of HB 2017 and HB 2018) Representative Lovick, co-prime

sponsor of HB 2017; Michael Parsons, Criminal Justice Training Commission; Bruce Bjork, Chief of Department of Fish and Wildlife Enforcement Program and Washington Association of Sheriffs and Police Chiefs Racial Profiling Committee; James Kelly, Urban League of Metropolitan Seattle; Thomas Dixon, Pierce County Block Collective; Nieves Negrete, Washington Alliance for Immigrant and Refugee Justice; Onofre Contreras, Washington State Commission on Hispanic Affairs; and Tony Orange, Community on African American Affairs.

(In support with concerns) Larry Erickson, Washington Association of Sheriffs and Police Chiefs; and Sherry Appleton, Washington Defender Association and Washington Association of Criminal Defense Lawyers.