

# HOUSE BILL REPORT

## ESB 5852

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**As Passed House:**

March 5, 2002

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

**Brief Description:** Reporting on issues pertaining to racial profiling.

**Sponsors:** By Senators Franklin, Kline, Costa and Kohl-Welles.

**Brief History:**

**Committee Activity:**

Criminal Justice & Corrections: 2/20/02 [DP].

**Floor Activity:**

Passed House: 3/5/02, 80-17.

**Brief Summary of Engrossed 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 law enforcement training.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass. Signed by 6 members: Representatives O'Brien, Chair; Lovick, Vice Chair; Ballasiotes, Ranking Minority Member; Ahern, Kagi and Kirby.

**Minority Report:** Do not pass. Signed by 1 member: Representative 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 in regards to his or her 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 had been 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 thorough analysis by the 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.

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### **Summary of Engrossed Bill:**

The WASPC must work with all local law enforcement agencies and the CJTC to help reduce the issues surrounding racial profiling within the state.

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 an accessible and fair citizen complaint review process that can adequately address instances of racial profiling;

- Hold officers, found to be engaged in racial profiling, accountable through 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, 2002, 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.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** Law enforcement is a major factor in our community and this bill will reinforce the fact that the Legislature does not condone racial profiling in this state. The passage of this bill will send a clear message to the community that racial profiling is wrong.

The Washington State Patrol began collecting data on traffic stops back in October 1999 and at this point they are still collecting and analyzing that data. The state patrol is committed to ensuring unbiased enforcement within this state.

Furthermore, the WASPC has already instituted a written policy and training within the CJTC for all new recruits to help reduce racial profiling. The WASPC is still trying to determine how to provide regional training to in-service law enforcement officers.

This bill is from the 2001 legislative session.

**Testimony Against:** None.

**Testified:** Senator Franklin, prime sponsor; Lowell Porter, Deputy Chief, Washington State Patrol; Larry Erickson, Washington Association of Sheriffs and Police Chiefs; Alton McDonald, Citizen's Against Police Racial Profiling; Tony Orange, Executive Director, Commission on African-American Affairs; and Brendan von Briesen,

Commission on Hispanic Affairs.