

SUBJECT: Prohibiting racial profiling, requiring data collection about traffic stops

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Hinojosa, Dunnam, Keel, Garcia, Kitchen, Martinez Fischer

1 nay — Talton

2 absent — Green, Shields

SENATE VOTE: On final passage, April 4 — 28-2 (Lindsay, Nelson)

WITNESSES: (*On House companion bill, HB 2458:*)

For — Preston K. Gilstrap, National Black Police Association; Bill Glenn, NAACP; Thomas L. Glover, Texas Peace Officers Association; William Harrell, ACLU, NAACP, MALDEF, NCLR, and LULAC; Vincent Ramos, Texas LULAC; Hannah Riddering, Texas National Organization for Women; Marlin D. Whitley; *Registered but did not testify:* Margo Frasier and Chris Kirk, Sheriff's Association of Texas; Kevin Lawrence, Texas Municipal Police Association; Steve Lyons, City of Houston, Houston Police Department; Rosalind Perry, Dallas Police Department; Dianne Hardy Garcia; Paul Green

Against — Hans Marticheck, Houston Police Officers' Union; James Parnell, Dallas Police Association; *Registered but did not testify:* Jeff Pynes

On — Kevin Begley, Harris County Area Police Chief's Association; Ron DeLord, CLEAT; Michael A. Ikner, Arlington Police Department; Claude Jones, Texas Police Chiefs Association; *Registered but did not testify:* Randy Elliston, Texas Department of Public Safety

BACKGROUND: For more information on racial profiling, including a discussion of ways to define racial profiling, the issues surrounding it, the legal standards for police stops, and other state laws on racial profiling, see House Research Organization Focus Report Number 76-25, *Racial Profiling Charges: How Should Texas Respond?*, October 17, 2000.

DIGEST:

CSSB 1074 would prohibit peace officers from engaging in racial profiling. The bill would define racial profiling as law enforcement-initiated actions based on a person's race, ethnicity, or national origin rather than on a person's behavior or on information identifying the person as having engaged in criminal activity.

The bill also would require data collection about traffic stops by peace officers, annual analysis of the data for evidence on racial profiling, and peace officer training about racial profiling.

CSSB 1074 would take effect September 1, 2001.

Required policy on racial profiling. Each law enforcement agency in Texas would have to adopt a detailed written policy on racial profiling. The policy would have to:

- ! define acts constituting racial profiling;
- ! prohibit the agency's peace officers from engaging in racial profiling;
- ! implement a process for people to file complaints if they believed an officer had engaged in racial profiling;
- ! educate the public about the agency's complaint process;
- ! require corrective action against peace officers who were shown after an investigation to have violated the agency's racial profiling policy;
- ! require the collection of information about traffic stops in which a citation was issued and about arrests resulting from those stops, including the race or ethnicity of the person detained, whether a search was conducted, and whether the person consented to the search; and
- ! require the agency to submit an annual report of the collected information to the agency's governing body, such as a city or county.

Agencies would have to adopt and implement the policy and begin collecting data by January 1, 2002. Information collected about traffic stops would have to be submitted first to cities or counties on March 1, 2003, and the information would have to have information for the period January 1, 2002, to December 31, 2002. This report of collected data could not contain identifying information about peace officers or individuals they stopped. The data would not constitute prima facie evidence of racial profiling.

Law enforcement agencies would have to examine the feasibility of installing video cameras and recording equipment in vehicles used to make traffic stops.

Required reporting and compilation of data. Peace officers who stopped motor vehicles for alleged traffic violations or who stopped pedestrians for any suspected offense would have to report to their law enforcement agency information about the stop, including:

- ! a physical description of persons detained, including their gender and their race or ethnicity, as stated by the person stopped, or if the person did not state his or her race or ethnicity, as determined by the officer;
- ! the alleged violation;
- ! whether a search was conducted, whether there was consent or probable cause for the search, and the results of the search;
- ! whether an arrest was made or whether a warning or citation was issued; and
- ! the location of the stop.

Law enforcement agencies would have to compile and analyze this information and by March 1 of each year report the previous year's information to the governing body of each county or city they serve. The first information would have to be submitted on March 1, 2004, and consist of information from January 1, 2003, to December 31, 2003.

The reports would have to include a comparative analysis of the information to determine the prevalence of racial profiling and to examine the results of traffic stops and information about each complaint alleging racial profiling. This report could not include identifying information about peace officers making stops or persons who were stopped. The data collected for this report would not constitute prima facie evidence of racial profiling.

Peace officers would not be liable for damages from acts relating to the collection or reporting of information under the bill's requirements or under reporting policies adopted by agencies.

The state-required court record of cases in which persons are charged with motor-vehicle violations on highways would have to include the race or

ethnicity of the person charged, whether a vehicle was searched, and whether there was consent for the search. Race or ethnicity would be defined as a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

Reporting exemptions if using recording equipment. Peace officers would be exempt from reporting information about each stop and law enforcement agencies would be exempt from compiling and analyzing the information if, during the previous year, each motor vehicle used to make traffic and pedestrian stops was equipped with a video camera and other recording equipment and each motorcycle used for stops had recording equipment, each vehicle was equipped with the recording equipment, and each stop was recorded.

Law enforcement agencies would have to retain the video and audio tapes of stops for at least 90 days, unless a complaint alleging racial profiling by an officer had been filed, in which case the tape of the stop would have to be retained until the complaint was resolved.

State-required training for police chiefs and peace officers. The state-required initial and continuing education training program for police chiefs would have to include a program on racial profiling. The program would have to include an examination of best practices for monitoring peace officers' compliance with racial profiling laws and policies, implementing laws and policies to prevent racial profiling, and analyzing and reporting information. The program would have to be established by January 1, 2002, and police chiefs appointed or elected before the bill's effective date would have to complete it by September 1, 2003.

The Texas Commission on Law Enforcement Officer Standards and Education would have to establish education and training programs on racial profiling as part of the state-required minimum curriculum requirements for peace officers. Officers would have to complete the program within two years of being licensed or of the date they applied for an intermediate proficiency certificate, whichever was earlier. The programs would have to be established by January 1, 2002. Peace officers who held an intermediate proficiency certificate and people who had held peace officer licenses for at

least two years as of September 1, 2001, would have to complete the programs by September 1, 2003.

SUPPORTERS
SAY:

CSSB 1074 would help combat the abhorrent practice of racial profiling by specifically prohibiting it, requiring the collection of data about traffic stops, and requiring training for peace officers. An explicit ban on racial profiling is needed so that the state's policy is clear to law enforcement officers and other Texans. Also, courts have expanded the authority of police and have broadened definitions of reasonable suspicion, making it important for state policy on profiling to be clear.

The experiences of minority motorists prove the existence of racial profiling, hence the coinage of the phrase "DWB" — "driving while black or brown." While anecdotal stories of racial profiling abound, evidence also proves its existence. Data collected by other states and analysis of Texas Department of Public Safety (DPS) statistics show that minority drivers are more likely to be searched than non-minorities if they are stopped and, in some areas, are more likely to be stopped.

Racial profiling is a negative police practice, no matter what the circumstances. Claims that racial profiling is justified because of a relationship between certain races or ethnic groups and crime rates are based on flawed logic. To argue that race or ethnicity can be used as an accurate predictor of crime because minorities comprise a disproportionate percentage of drug offenders ignores the fact that law enforcement officers often look for drugs mainly among minorities. Police may be scrutinizing non-minorities less closely and letting their crimes go undetected.

While a stop by police may be perfectly legal because the officer has seen a violation occur, the issue is whether officers are letting others go free and using traffic or other violations as a pretext to stop only minorities to search them for drugs or to harass them.

While racial profiling may allow police to arrest some motorists who are guilty of crimes, it does so at the unacceptable cost of persecuting too many innocent people. This can erode the trust between police and citizens, lead to questions about the legitimacy of police actions, deter witnesses and others from cooperating with police, and make jurors doubt the testimony of police.

People should be judged solely on their own conduct and not on racial generalizations.

It can be too difficult for a person to challenge a single traffic stop on the basis of the equal-protection clause or other constitutional grounds, because the standards for proving a case generally focus on institutions and policies rather than on individual officers, and because of the time and expense required to bring a case. It is not realistic to expect victims of racial profiling to go through the expense and hassle of using the courts to challenge every ticket or police stop, even though civil rights legal groups have filed suits in a number of jurisdictions.

Required policy on racial profiling. CSSB 1074 would require law enforcement agencies to adopt policies prohibiting racial profiling to ensure a uniform policy throughout the state and because some law enforcement agencies seem to be reluctant to enact racial profiling bans. The bill would not micromanage law enforcement agencies, because under the broad requirements in the bill, they would be free to establish policies and procedures that fit their jurisdictions.

By requiring agencies to adopt policies for people to file complaints about racial profiling, to educate the public about the complaint process, and to take corrective action against officers who engage in racial profiling, CSSB 1074 would ensure that if racial profiling occurs, something could be done about it.

Required reporting and compilation of data. By requiring the collection of data, CSSB 1704 would help prove or disprove the existence of racial profiling. While many anecdotes exist about minority motorists' experiences, statistics would help identify problem areas. A data-collection law would communicate to law enforcement officers that profiling would not be tolerated.

Reporting information about the race and ethnicity of pedestrians and motorists and the disposition of traffic stops would not be burdensome or expensive. Officers could fill out a checklist at the time of each stop, enter the information directly into computers, or use radio codes to transmit the information.

The bill's requirements could be added to the paperwork that officers already fill out. It is important to collect data on pedestrian stops and when citations are not issued, because racial profiling can occur at those times.

The fiscal note for CSSB 1074 points out that there would be a range of costs to implement the bill, and that if an agency wanted to be exempt from the reporting requirements, it could install recording equipment and phase in its initial cost. Cost should not prohibit Texas agencies from collecting data. Hundreds of law enforcement agencies throughout the nation have been able to fund efforts to collect data similar to what would be required by CSSB 1074. The bill would give agencies more than one year to implement its provisions so they could plan and budget adequately.

Collecting data about racial profiling would not discourage good police work. Officers still would make stops and pursue suspects as long as the officers' actions met the applicable legal tests. CSSB 1704 would protect officers from individual scrutiny by prohibiting identifying information about peace officers in the reports. Analysis of the data could take into account the racial and ethnic makeup of the neighborhoods where police work or of motorists on a roadway. This would ensure that officers working in neighborhoods with large minority populations or on interstate highways would not be criticized unfairly. In addition, agencies could compare their statistics to local racial and ethnic statistics.

Although some argue that supervision and training of officers alone can suffice to combat racial profiling, there still would be a need to gather information about police practices to determine whether training and supervision were working.

The courts would not become clogged with lawsuits based on the collected data because of the expense and burden of filing such lawsuits. In any case, racial profiling lawsuits already are being filed without specific data collection by law enforcement agencies. The bill would protect peace officers by specifically exempting them from liability from acts relating to the collection and reporting of data.

Reporting exemptions if using recording equipment. CSSB 1704 would give agencies the flexibility to use to recording equipment instead of

manually collecting data. With recording equipment, peace officers would be exempt from the requirement that they report information about each traffic stop, and agencies would be exempt from the requirements that they analyze information and report it to their governing bodies.

State-required training for police chiefs and peace officers. Because training also can help combat racial profiling, CSSB 1704 would require training for peace officers and police chiefs to include information about racial profiling. These requirements would not be burdensome because they could be worked into the standard training and education given to these officers.

OPPONENTS
SAY:

Specific laws to prohibit racial profiling and to require the collection of data about traffic stops are unnecessary. It is unclear if so-called racial profiling even exists. What some call racial profiling simply may be law enforcement officers doing their jobs. In some circumstances, police officers may be justified in scrutinizing people in certain groups more closely, because people in those groups commit disproportionate numbers of certain kinds of crimes.

Using race as part of a criminal profile can be a race-neutral practice that varies from crime to crime and does not target any one race or ethnic group. For example, law enforcement officers looking for producers of illegal methamphetamines in certain areas might look for white motorists carrying propane canisters. The use of race in a profile can occur in affluent, middle-class, and low-income neighborhoods and is an effective crime-fighting tool that can lower the cost of law enforcement.

Police officers are trained to look at all factors in a situation before making a traffic stop and not to make stops based simply on race or ethnicity. Officers are justified in stopping any motorist who breaks the law, and officers may search a motorist or vehicle only if certain legal standards are met. Anecdotes about perceived racial profiling may not tell the full story of a traffic stop, such as why a car was stopped or what occurred after a stop.

Laws prohibiting racial profiling are unnecessary because of the general constitutional and statutory protections that can be used in courts to challenge police actions. Using skin color or ethnicity as a reason to stop

motorists clearly violates their constitutional rights to equal protection and against unreasonable search and seizure, and this can be used to challenge law enforcement officers if they apply laws intentionally in a discriminating way.

Required policy on racial profiling. The state should not mandate specific policies for local law enforcement agencies. Rather, the state should set broad guidelines and let localities implement them in their own ways.

Required reporting and compilation of data. It is unnecessary to mandate the collection of specific information to study racial profiling. People who feel that they have been stopped or searched illegally can challenge police actions in court. Broad statistical data would not prove or disprove allegations of racial profiling. It would be more useful for the state to focus its efforts on education, training, and peace officer protocols.

Collecting data on all police stops would be burdensome and expensive for law enforcement agencies, because they would have to adopt numerous policies and procedures, conduct public information campaigns, develop methods for collecting information, and implement collection requirements. Collecting data on pedestrian stops and recording stops in which no citation was issued would be especially burdensome, since these encounters often involve officers asking a few questions and then moving on, and the stops often are not recorded. CSSB 1704 would lengthen the duration of these stops and could heighten tensions between officers and pedestrians.

The fiscal note reveals the burden that CSSB 1074 would place on agencies. It reports that Harris County estimates that its cost to implement data collection and reporting for the sheriff's department and county constables would be about \$1.2 million annually, with additional annual training costs of \$150,000. The Austin Police Department estimated it would cost \$400,000 to implement CSSB 1074 and \$328,000 annually to meet its requirements, not including costs for video and audio equipment.

Compiling statistics on police stops could impede police work. Officers could become hesitant to stop minority drivers who broke the law and could be discouraged from pursuing suspects. This might result in increased crime and danger to the public, because police would identify fewer fugitives with

outstanding arrest warrants or criminal charges or people illegally carrying guns or drugs. Police officers should be free to do their jobs without worrying about what statistics may say about their stops.

Statistics could lead to unfair criticism of officers who work in minority neighborhoods and who might stop large numbers of minorities. It is not fair to examine traffic stops by officers in an area without knowing the makeup of motorists in the area, which is difficult to determine.

Courts could become clogged with lawsuits using the data to challenge stops, whether or not the data revealed any questionable practices.

Reporting exemptions if using recording equipment. The fiscal note estimates that it would cost about \$5,000 per vehicle to install recording equipment that would exempt an agency from the collection, analysis, and reporting requirements. This would be too expensive for many agencies. There would be some ongoing costs even with recording equipment, because it would have to be maintained and replaced periodically. According to the fiscal note, it would cost Harris County at least \$450,000 initially to install video and audio equipment.

OTHER
OPPONENTS
SAY:

The only fair way to implement CSSB 1074 would be for the state to provide funding for local law enforcement agencies to buy video and audio recording equipment.

If a stop is deemed to be racially motivated, the bill should prohibit evidence gathered at the stop from being used in trials.

NOTES:

The committee substitute made several changes to the Senate engrossed version, including eliminating a provision that would have made certain reporting requirements mandatory only during state fiscal years in which state agencies received state funds or equipment for audio and video taping of traffic stops. This provision would not have prohibited cities or counties from requiring or permitting reporting.

The companion bill, HB 2458 by Thompson, was reported favorably as substituted by the House Criminal Jurisprudence Committee on March 27 and has been sent to the House Calendars Committee. Two related bills, HB

1250 by Dutton and HB 1643 by Hinojosa, would make it a Class A misdemeanor to make a discretionary decision relating to the detention, arrest, or search of a person based on the person's race or ethnicity. Another related bill, HB 1336 by Wilson, would require information on all traffic stops, including the race or ethnicity of the driver as determined by a peace officer, to be reported by peace officers to their law enforcement agencies. Information would have to be compiled by cities and counties and submitted to the state Commission on Human Rights annually. Law enforcement agencies would have to analyze the information, conduct investigations of officers if the agency found that the number of vehicles stopped by a peace officer was disproportionate by race or ethnicity to the county or city served by the agency, and, if done routinely, terminate the officer. HB 1336 also would define and prohibit pretext search and seizures. All three related bills are pending in the House Criminal Jurisprudence Committee.

The issue of racial profiling was considered during the 76th Legislature when Rep. Domingo Garcia offered a floor amendment to SB 370 by Brown, the DPS sunset bill, to prohibit the agency from using racial profiling in enforcing highway or traffic laws. The House adopted the amendment by a nonrecord vote, but the conference committee removed the amendment.

Also in the 76th Legislature, Rep. Senfronia Thompson offered a floor amendment dealing with racial profiling to the DPS sunset bill. The amendment, later withdrawn, would have required local law enforcement agencies to report to DPS demographic information such as the observable racial or ethnic background, age, and sex of motorists who were stopped, searched, or arrested. DPS would have had to analyze the information and report to the Legislature and the governor.