



**Report to the
Colorado General Assembly**

**Profiling-Initiated
Contacts by Law
Enforcement Interim
Committee**

Prepared by

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Profiling-Initiated Contacts by Law Enforcement Interim Committee

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December 2015

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To Members of the Seventieth General Assembly:

Submitted herewith is the final report of the Profiling-Initiated Contacts by Law Enforcement Interim Committee. This committee was created pursuant to Interim Committee Letter 2015-5, submitted as required by Section 2-3-303.3, Colorado Revised Statutes. The purpose of this committee is to study data collection and evaluation methods related to contacts made by law enforcement officers to determine whether profiling is occurring in Colorado.

At its meeting on November 10, 2015, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bill therein for consideration in the 2016 session was approved.

Sincerely,

/s/ Senator Bill Cadman
Chairman

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This report is also available on line at:

www.colorado.gov/pacific/cga-legislativecouncil/2015PICLECommittee

Committee Charge

Pursuant to Interim Committee Letter 2015-5, the Profiling-Initiated Contacts by Law Enforcement (PICLE) Interim Committee was charged with studying methods for strategic data collection of traffic and pedestrian stops and searches by peace officers and methods for evaluating data collection of traffic and pedestrian stops and searches by peace officers to determine if profiling, as defined by Section 24-31-309, C.R.S., is occurring in Colorado.

Committee Activities

The PICLE Committee met five times during the 2015 interim. The committee discussed topics relating to the need for data collection, existing data collection programs and complaint processes, implementation of data collection programs and related costs and concerns, data analysis and interpretation, the statutory definition of profiling, electronic citation systems used by law enforcement, and self-reporting of race and ethnicity on state-issued identification cards. Entities represented before the committee included:

- the Colorado Latino Forum, Denver Chapter;
- the National Association for the Advancement of Colored People Colorado Montana Wyoming State Conference;
- the American Civil Liberties Union of Colorado (ACLU);
- the Center for Policing Equity;
- the Denver Office of the Independent Monitor;
- police departments of Aurora, Colorado Springs, Denver, Evans, Firestone, and Greenwood Village;
- the Weld County Sheriff's Office, the El Paso County Sheriff's Office, and the County Sheriffs of Colorado;
- state agencies, including the Colorado Civil Rights Division within the Department of Regulatory Agencies; the Department of Public Safety; and the Department of Revenue;
- the Maryland Governor's Office of Crime Control and Prevention; and
- the National Conference of State Legislatures.

The committee heard testimony at every meeting, including remote telephone testimony from out-of-state witnesses with expertise in data collection and racial profiling. The committee requested that three bills be drafted for its consideration and ultimately approved one of those bills. The following subsections discuss the PICLE Committee's activities during the interim in further detail.

Data Collection and Complaint Processes

Need for data collection. The committee heard from representatives of community groups, researchers, and law enforcement about the need for increasing data collection pertaining to race, ethnicity, law enforcement conduct, and racial profiling. The Denver Office of the Independent Monitor spoke about how the office tracks incidents of racial profiling, as well as its investigations of such incidents. Researchers and community groups discussed the difficulty in studying racial profiling by law enforcement agencies because there is little data available, and where information exists, it is incomplete.

Law enforcement agencies discussed data collection in the context of improving community relations. Generally, law enforcement agencies believed that reliable data could improve relationships with their communities, but they also expressed concern that certain methods of

data collection, such as expressly requesting a contact's race and ethnicity, could cause harm and distrust between law enforcement and the community.

Complaint processes. Law enforcement agencies in Colorado have different procedures for citizens to make complaints against officers, including complaints of racial profiling. The Colorado State Patrol (CSP) within the Department of Public Safety (DPS) informed the committee of its existing complaint investigation process, and told the committee that it is implementing a program that will provide those who have had contact with the CSP an opportunity to provide feedback on the incident. The El Paso County Sheriff's Office and the Aurora Police Department also provided the committee with information on existing complaint and investigation procedures.

The committee did not recommend a bill drafted for its consideration concerning complaint processes. The bill would have created the Racial Profiling Reporting Program within the Colorado Civil Rights Division in the Department of Regulatory Agencies. The program would have been responsible for processing complaints of alleged racial profiling by law enforcement and for maintaining the confidentiality of complainants wishing to remain anonymous. The program would have forwarded information about complaints to the appropriate law enforcement agency and submitted an annual report to the judiciary committees of the General Assembly and DPS.

The Definition of Profiling

The committee and a representative of the Colorado ACLU discussed a need to update the statutory definition of profiling. Profiling is currently defined in Section 24-31-309, C.R.S. Discussion centered on the groups included in the existing statute and those that are excluded from the definition, including lesbian, gay, bisexual, and transgender persons.

Data Collection Programs

Current data collection programs in Colorado and other states. Representatives of law enforcement agencies and state agencies discussed current data collection programs in Colorado. Each of the law enforcement agencies that appeared before the committee provided information on data collection within their agencies, but most stated they do not collect information on the race and ethnicity of contacted individuals. The CSP stated that they collect race and ethnicity data, but when such information is not included on a license or driving record, or in a database, the officer must use his or her best judgment to determine a person's race and ethnicity. CSP stated that inaccurate identification, data entry errors, and the inability to independently verify race and ethnicity information provided by troopers are issues concerning the reliability of such data when it is based solely on officer perception. Bill A, recommended by the committee and discussed below, provides an opportunity for an applicant for a state-issued identification card to self-identify his or her race or ethnicity, which is maintained in the stored information on the card's magnetic strip and accessible to law enforcement equipped with magnetic strip card readers.

The committee also heard presentations on data collection programs from other states. The National Conference of State Legislatures (NCSL) provided an overview of other states' laws and policies, including statistics concerning the number of states with profiling-related laws, and discussed common elements in such legislation. NCSL explained that law enforcement

agencies' methods for eliminating racial profiling include training and car-mounted and body-worn cameras.

The DPS explained how data is shared among states. Data-sharing systems include nationwide databases and crime statistic reporting information that can be accessed by law enforcement in all 50 states. Finally, the Maryland Governor's Office of Crime Prevention and Control testified regarding Maryland's data collection processes, including statutory requirements for data collection; analysis methods, including data on race and ethnicity; and the electronic citation system used by Maryland law enforcement.

Best practices, implementation, and reporting requirements. Researchers, both academic and from law enforcement agencies, provided the committee with information concerning best practices for creating and implementing a data collection program. A researcher from the Colorado Springs Police Department raised concerns about how data collected on police contacts would be analyzed. Both the department and a researcher from the University of Colorado Denver outlined different methodological approaches to collecting and analyzing information. In addition to the researchers, law enforcement agencies also provided testimony on how data could be collected. The committee and representatives of law enforcement agencies had extensive discussions on how race and ethnicity data could be collected, including officers requesting information from contacts or having the information included in a database.

The committee did not recommend a bill drafted for its consideration that would have created an electronic data collection and electronic citation system pilot program consisting of six law enforcement agencies. The electronic citation system would have been used to record the perceived race or ethnicity of the person receiving a citation or warning. The bill required the Division of Criminal Justice in DPS to compile the race and ethnicity data gathered through the system into a quarterly report sent back to the participating law enforcement agencies and the members of the PICLE Interim Committee, and, beginning in 2018, into an annual report for the General Assembly's judiciary committees. The bill would have also required that an application for a driver's license or state-issued identification card offer the opportunity for the applicant to self-identify his or her race or ethnicity. The self-identification of race and ethnicity provision is included in Bill A, discussed below.

The committee also heard testimony regarding reporting requirements associated with a data collection program. A representative of the Colorado Latino Forum suggested that data and information concerning profiling should be available to the public in a central location. The Maryland Governor's Office testified that under Maryland's data collection program, reports are issued providing information based on data collected.

Concerns and issues. Various law enforcement agencies raised concerns regarding officers attempting to collect data relating to the race and ethnicity of those contacted. Some law enforcement representatives believed that collecting such information would be time-consuming, especially in cases where the contacted individual may not trust the law enforcement officer. Further, some representatives of law enforcement agencies were concerned that requesting such information may strain relations between law enforcement and the community. Law enforcement also expressed concern about attempting to identify the race and ethnicity of an individual without the individual self-identifying.

The Center for Policing Equity informed the committee that there is no consensus on best practices for collecting and analyzing data related to racial profiling, and that other states and the federal government are also trying to determine how law enforcement agencies can share,

collect, and analyze data. Researchers and analysts who testified before the committee raised concerns regarding the reliability of data collected, and how that information can be properly analyzed.

Interpretation and analysis of data. Beginning with the September 2 meeting, several witnesses provided testimony on how collected data should be analyzed and interpreted. A researcher from the Colorado Springs Police Department discussed how data from existing programs is analyzed. Specifically, she discussed an issue of finding a baseline to which to compare collected data in order to reach conclusions based on collected data. A researcher from the University of Colorado Denver also discussed how data could be collected and analyzed to determine whether profiling occurs, including challenges faced when analyzing data. An analyst with the Division of Criminal Justice within the DPS discussed how the division uses data to analyze trends in criminal offenses, but explained that this analysis does not generally include the analysis of information on race and ethnicity.

The representative of the Maryland Governor's Office provided information about the analysis of data collected by its program. He discussed all of the factors that are analyzed when reviewing data, and stated that all of the reports issued contain a disclaimer that any information should not be used to draw conclusions about racial profiling. The Center for Policing Equity also provided the committee with information about data interpretation. The Greenwood Village Police Department explained how it uses data collected from its electronic citation system, which is discussed in greater detail below.

Costs and funding for programs. The committee expressed concerns over how to fund a data collection program or pilot program. Academic and law enforcement researchers and Legislative Council Staff provided the committee with information regarding federal grant programs that may be available to fund the implementation of a data collection program. Colorado received grant funding in fiscal years 2006 and 2007 from the National Highway Traffic Safety Administration to develop and implement programs for reducing racial profiling. This federal grant program has since been eliminated.

Data Collection Methods

Electronic citation systems. The Greenwood Village Police Department provided the committee with a demonstration of its electronic citation system. The demonstration included an explanation of how citations are issued, department procedures for processing each citation, data that the department can extrapolate from the citations, and the process for sharing data with the municipal court. The department explained that the electronic system can scan barcodes on driver's licenses and insurance cards to issue a citation with information about the traffic stop. The citation can include photographs of the driver and vehicle. The system also sends information about the citation to the municipal court for use in legal proceedings. The department can use the data from the system to create officer-specific or department-wide reports that may be used to evaluate officers and improve departmental efficiency. However, electronic citation systems currently in use by police departments cannot interface with each other or the Judicial Branch. Testimony from the Maryland Governor's Office of Crime Prevention and Control, discussed above, also included information on Maryland's electronic ticketing system.

Race and ethnicity on state-issued cards. The CSP and the Division of Motor Vehicles (DMV) within the Department of Revenue discussed the possibility of including self-identified race and ethnicity information on the application for state-issued cards, such as

driver's licenses. CSP stated that it collects race and ethnicity data, but when such information is not included on a license or driving record, or in a database, the officer must use his or her best judgment to determine the person's race and ethnicity. The DMV discussed its statutory requirements for data collection, which does not include race and ethnicity. In providing an overview of the DMV's data collection software, the DMV stated that the software could be updated to make it capable of collecting race and ethnicity information. Based on these discussions, the committee recommended the introduction of Bill A.

Summary of Recommendations

As a result of committee discussion and deliberation, the PICLE Committee recommends the following bill for consideration in the 2016 legislative session:

Bill A — Race Info ID Application

Bill A requires that the DMV modify the application process for driver's licenses and state-issued identification cards. Revised applications for these documents must include the opportunity for an applicant to self-identify his or her race or ethnicity. If an applicant chooses to report his or her race or ethnicity information, the information must not be printed on the card. Rather, this information must be maintained in the stored information on the card's magnetic strip, accessible to law enforcement equipped with magnetic strip card readers.

Resource Materials

Meeting summaries are prepared for each meeting of the committee and contain all handouts provided to the committee. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver (303-866-2055). The listing below contains the dates of committee meetings and the topics discussed at those meetings. Meeting summaries are also available on our website at:

<https://www.colorado.gov/pacific/cga-legislativecouncil/interim-committees>

Meeting Date and Topics Discussed

August 18, 2015

- ◆ Overview of 2015 legislation of interest to the committee
- ◆ Ethnic and racial profiling – need for data collection
- ◆ Data collection by law enforcement

September 2, 2015

- ◆ Racial profiling measurement issues
- ◆ Racial profiling research and methodological concerns
- ◆ Perspectives on the collection of racial profiling data based on police stops
- ◆ Racial profiling law in other jurisdictions
- ◆ Data collection systems administered within the Department of Public Safety

September 17, 2015

- ◆ Follow-up on the collection of profiling data by the Colorado State Patrol
- ◆ Data systems and data collection by the Department of Revenue
- ◆ Community feedback on racial profiling data collection
- ◆ Public testimony

September 28, 2015

- ◆ Law enforcement demographic data collection practices in Maryland
- ◆ Requests for drafting of committee legislation

October 28, 2015

- ◆ Bias-related Data Collection Initiatives and Programs
- ◆ Greenwood Village Police Department e-ticketing system
- ◆ Consideration of and final action on draft committee legislation

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

BILL A

Temporary storage location: S:\PUBLIC\LLS\2016A\Bills\Legislative Council Committee\Profiling - Initiated Contacts by Law Enforcement (PICLE)\Bill A_16-0334.wpd

LLS NO. 16-0334.01 Michael Dohr x4347

HOUSE BILL

HOUSE SPONSORSHIP

Salazar,

SENATE SPONSORSHIP

Ulibarri and Roberts,

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING PROVIDING THE OPPORTUNITY TO COLLECT IDENTIFYING**
102 **INFORMATION FROM APPLICANTS FOR STATE-ISSUED CARDS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Profiling - Initiated Contacts by Law Enforcement (PICLE) Interim Study Committee. The bill requires that an application for a driver's license or state identification card include the opportunity for the applicant to self-identify his or her race or ethnicity. The race or ethnicity

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

information will not be printed on the driver's license or identification card but will be included in the information on the stored information magnetic strip on the card. A law enforcement officer will be able to access the information when he or she swipes the driver's license or identification card.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 42-2-107, **amend** (2)
3 (a) as follows:

4 **42-2-107. Application for license or instruction permit -**
5 **anatomical gifts - donations to Emily Maureen Ellen Keyes organ and**
6 **tissue donation awareness fund - legislative declaration - rules -**
7 **repeal.** (2) (a) (I) Every application shall state the full name, date of
8 birth, sex, and residence address of the applicant; briefly describe the
9 applicant; be signed by the applicant with such applicant's usual
10 signature; have affixed thereon the applicant's fingerprint; and state
11 whether the licensee has ever been licensed as a minor driver or driver
12 and, if so, when and by what state or country and whether any such
13 license has ever been denied, suspended, or revoked, the reasons therefor,
14 and the date thereof. These statements shall be verified by the applicant's
15 signature thereon.

16 (II) IN ADDITION TO THE INFORMATION REQUIRED BY
17 SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), EVERY APPLICATION SHALL
18 INCLUDE THE OPPORTUNITY FOR THE APPLICANT TO SELF-IDENTIFY HIS OR
19 HER RACE OR ETHNICITY. THE RACE OR ETHNICITY INFORMATION THAT
20 MAY BE IDENTIFIED ON THE APPLICATION SHALL NOT BE PRINTED ON THE
21 DRIVER'S LICENSE BUT SHALL BE MAINTAINED IN THE STORED
22 INFORMATION AS DEFINED BY SECTION 42-2-114 (1) (b). THAT
23 INFORMATION MUST BE ACCESSIBLE TO A LAW ENFORCEMENT OFFICER

1 THROUGH MAGNETIC OR ELECTRONIC READERS.

2 **SECTION 2.** In Colorado Revised Statutes, 42-2-114, **amend** (1)
3 (b) (I) as follows:

4 **42-2-114. License issued - fees - rules - repeal.** (1) (b) (I) In the
5 event the department issues a driver's license that contains stored
6 information, such license may include only the information that is
7 specifically referenced in paragraph (a) of this subsection (1) and that
8 appears in printed form on the face of the license issued by the
9 department to the licensee AND ANY RACE OR ETHNICITY INFORMATION
10 IDENTIFIED ON THE APPLICATION PURSUANT TO SECTION 42-2-107 (2) (a)
11 (II); except that such stored information shall not include the licensee's
12 social security number.

13 **SECTION 3.** In Colorado Revised Statutes, 42-2-302, **add** (1) (a)
14 (VI) as follows:

15 **42-2-302. Department may or shall issue - limitations - rules.**
16 (1) (a) (VI) EVERY APPLICATION SHALL INCLUDE THE OPPORTUNITY FOR
17 THE APPLICANT TO SELF-IDENTIFY HIS OR HER RACE OR ETHNICITY. THE
18 RACE OR ETHNICITY INFORMATION THAT MAY BE IDENTIFIED ON THE
19 APPLICATION SHALL NOT BE PRINTED ON THE IDENTIFICATION CARD BUT
20 SHALL BE MAINTAINED IN THE STORED INFORMATION AS DEFINED BY
21 SECTION 42-2-303 (1) (b) (II). THAT INFORMATION MUST BE ACCESSIBLE
22 TO A LAW ENFORCEMENT OFFICER THROUGH MAGNETIC OR ELECTRONIC
23 READERS.

24 **SECTION 4.** In Colorado Revised Statutes, 42-2-303, **amend** (1)
25 (b) (I) as follows:

26 **42-2-303. Contents of identification card.** (1) (b) (I) In the
27 event the department issues an identification card that contains stored

1 information, such card may include only the information that is
2 specifically referenced in paragraph (a) of this subsection (1), and that
3 appears in printed form on the face of the card issued by the department
4 to the registrant AND ANY RACE OR ETHNICITY INFORMATION IDENTIFIED
5 ON AN APPLICATION PURSUANT TO SECTION 42-2-302 (1) (a) (VI); except
6 that such stored information shall not include the registrant's social
7 number.

8 **SECTION 5. Applicability.** This act applies to driver's license
9 and state identification card applications made on or after January 1,
10 2017.

11 **SECTION 6. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.