

Profiling - Initiated Contacts by Law Enforcement Interim Committee

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November 2015

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Committee Charge

The Profiling - Initiated Contacts by Law Enforcement (PICLE) Interim Committee was created pursuant to Interim Committee Letter 2015-5. The committee is charged with studying the following policy issues:

- 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, electronic citation systems used by law enforcement, and self-reporting of race and ethnicity on state-issued 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 Area Conference;
- the American Civil Liberties Union of Colorado;
- 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 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.

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.

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.

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 between 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 concerns regarding data collection programs. 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.

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 and that getting information could be difficult, 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.

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.

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 also 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.

Public comment. The committee opened the floor for public testimony at its September 17 meeting. The committee heard from a representative of the Colorado Police Protective Association and the Denver Police Protective Association, who provided the committee with information about possible witnesses for the committee. There was no other public testimony.

Draft bills not recommended by the committee. The committee did not recommend two bills drafted for its consideration. One bill would have created an electronic citation system and electronic data collection 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.

A second 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.

Committee Recommendations

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.