

MEMORANDUM

August 18, 2015

TO: Profiling - Initiated Contacts by Law Enforcement (PICLE) Committee Members

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SUBJECT: Profiling and Other Legislation of Interest to the PICLE Committee

Summary

The Profiling - Initiated Contacts by Law Enforcement Interim Committee is charged with studying methods for strategic data collection and evaluation of traffic and pedestrian stops and searches by peace officers to determine if profiling is occurring in Colorado. This memorandum provides an overview of profiling as defined in Colorado law and describes legislation from the 2015 legislative session related to the committee's charge. Included legislation concerns data collection and reporting by law enforcement, body-worn cameras, and peace officer training.

Overview of Profiling

With respect to law enforcement, Section 24-31-309 (2), C.R.S., defines "profiling" as the practice of detaining a suspect based on race, ethnicity, age, or gender without the existence of any individualized suspicion of a crime by the particular person being stopped. Certified peace officers in Colorado must not engage in profiling. The law requires that a certified peace officer provide his or her business card and identifying information to any person whom the peace officer has detained in a traffic stop, but has not cited or arrested. The identifying information may be used to report any comments concerning the traffic stop, both negative or positive. Negative comments that constitute a complaint against the peace officer must initially be kept confidential; however, the agency receiving the complaint may also insist that the complainant identify him or herself, and failure to do so allows the agency to dismiss the complaint.

Each law enforcement agency in the state is required to annually compile any information derived from telephone calls received due to the distribution of business cards, and that allege illegal police profiling has occurred. The agency must make this information available to the public and may also include as part of the available information the costs to the agency of complying with the information and reporting provisions.

The Peace Officers Standards and Training Board is required to develop curriculum and training for pre-service peace officers that examine the patterns, practices, and protocols that result in profiling and prescribe patterns, practices, and protocols that prevent profiling. Each law enforcement agency in the state is required to have written policies, procedures, and training in place that are specifically designed to address profiling, and each peace officer employed by such law enforcement agencies must receive the training. Written policies and procedures must be made available for public inspection during regular business hours.

House Bill 15-1288 – Concerning Updates to the Statutory Prohibition on Profiling. House Bill 15-1288, proposed but not adopted during the last legislative session, would have expanded the existing prohibition and clarified limits on law enforcement activities.

The bill added color, national origin, nationality, language, sex, gender identity, sexual orientation, socioeconomic status, and disability to the list of factors that may not be used as a basis for interacting with the public, including suspects. Further, the practice of profiling was clarified to mean:

- selecting a person to be subject to routine or spontaneous investigatory activities including interviews, detentions, traffic stops, pedestrian stops, frisks and other types of bodily searches, or searches of personal or real property; or
- determining the scope, substance, or duration of investigation or law enforcement activity to which a person is subjected.

Except when reasonable and articulable suspicion exists, HB 15-1288 would have prohibited a peace officer from:

- keeping a person detained beyond the amount of time necessary to issue a citation, enforce a court order, or address a violation of criminal law; or
- asking questions of a person detained beyond the scope necessary.

The bill clarified that a peace officer may use physical descriptions, including sex, race, ethnicity, and color, to apprehend a suspect when there is credible information that links that person to a criminal incident or scheme. Any evidence obtained in violation of the law would not have been admissible or considered in a judicial proceeding. If a court suppressed evidence or dismissed a case as a result of profiling exclusively to obtain evidence to make an arrest without probable cause or articulable suspicion, the employer of the peace officer is required to host a profiling training session provided by the state.

Related Bills Adopted by the 2015 General Assembly

House Bill 15-1285 – Grant Program Body Worn Cameras. House Bill 15-1285 creates the Body-Worn Camera Grant Program in the Division of Criminal Justice (DCJ) in the Department of Public Safety (DPS). The grants are to fund the purchase of body-worn

cameras, for associated data retention and management costs, and for training for law enforcement officers in their use. It establishes the Body-Worn Camera Fund to accept gifts, grants, and donations, and authorizes the DCJ to apply for funding and to award grants to local law enforcement agencies. Other sources of funding include General Fund moneys appropriated by the General Assembly.

The bill also establishes a 15 member study group within the DPS to identify policies and best practices concerning body-worn cameras and make recommendations to the General Assembly no later than March 1, 2016. The study group is repealed on July 1, 2016.

HB 15-1285 was signed by the Governor and became effective on May 20, 2015.

House Bill 15-1287 – Concerning Measures To Improve Peace Officer Training. House Bill 15-1287 expands the scope and responsibilities of the Peace Officers Standards and Training (POST) Board within the Department of Law. Specifically, it expands the number of board members from 20 and 24 and specifies that 5 of its members are to be non-law enforcement who have completed a citizen's law enforcement academy within one year of appointment. Under the bill, the board is required to:

- review and evaluate the basic academy curriculum by July 1, 2016, and every five years thereafter;
- establish subject matter expertise committees to develop skills training programs, academic curricula, and POST board rules; review documents for and approve or deny academy training programs, lesson plans, training sites, and skills instructors; and assist POST board staff with academy inspections and skills testing;
- develop a community outreach program that explains the role of the board; and
- develop a recruitment program to create a diverse pool of applicants for the board and the four new subject matter expertise committees.

The subject matter expertise committees must include at least four non-law enforcement members with law enforcement, professional experience, or subject matter training.

The bill also requires the board to include a two hour anti-bias course and, in alternating years, either a two-hour community policing course or a situation de-escalation training in the annual in-service training curriculum. These courses must be available by July 1, 2016. All certified peace officers must complete them by July 1, 2017, and then at least once every five years thereafter. Any full-time peace officer, who must be afforded due process as required by law, who fails to comply with the training requirements is subject to suspension of his or her peace officer status.

HB 15-1287 was signed by the Governor and became effective on May 20, 2015.

Senate Bill 15-185 – Concerning Provisions to Improve Police Operations. Senate Bill 15-185 creates the "Community Law Enforcement Action Reporting (CLEAR) Act." Under the act, the Division of Criminal Justice (DCJ) in the Department of Public Safety is required to compile and report data to the Judiciary Committees of the General Assembly and the Colorado Commission on Criminal and Juvenile Justice. The data includes:

- arrest data already reported to the Colorado Bureau of Investigation (CBI) by law enforcement agencies for the purposes of compiling uniform crime statistics;

- charging, disposition, sentencing, and defendant demographic data from the Judicial Department; and
- parole hearing, offender demographic, and parole outcome data from the Department of Corrections.

Law enforcement agencies, the Judicial Department, and the Department of Corrections are required to provide the prior calendar year's information to the DCJ by March 31. The DCJ is required to distribute its report by September 30 of each year.

SB 15-185 became effective on August 5, 2015.

Senate Bill 15-217 – Concerning Data Collection Related to Officer Involved Shootings of a Person. Senate Bill 15-217 creates a process for public reporting of specified data concerning officer-involved shootings that occur within certain law enforcement agencies, including the Colorado Bureau of Investigation, Colorado State Patrol, county sheriff's offices, municipal police departments, the Division of Parks and Wildlife within the Department of Natural Resources, and town marshal's offices. Each named law enforcement agency must submit its data to the Division of Criminal Justice (DCJ) within the Department of Public Safety.

The first report concerns the period from January 1, 2010 through June 30, 2015, with an annual report filed each year thereafter, through FY 2019-20. DCJ is required to compile the agency information and submit a report to the House and Senate Judiciary Committees and post that report on its website. Named agencies must file the initial report by September 1, 2015; DCJ's initial report is due by March 1, 2016. Agencies' subsequent annual reports are required by September 1 of the fiscal year following the reporting period; DCJ must report by March 1 of the fiscal year following the reporting period.

SB 15-217 was signed by the Governor and became effective on May 20, 2015.