

# CRS Report for Congress

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## **Racial Profiling: Issues and Federal Legislative Proposals and Options**

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# Racial Profiling: Issues and Federal Legislative Proposals and Options

## Summary

In recent years, racial profiling has drawn the attention of state and federal governments. In this report, racial profiling is defined as the practice of targeting individuals for police or security interdiction, detention, or other disparate treatment based primarily on their race or ethnicity, in the belief that certain minority groups are more likely to engage in unlawful behavior. Assertions that law enforcement personnel at all levels unfairly target certain racial and ethnic groups, particularly but not exclusively for traffic stops and searches, have raised concerns about violations of the Constitution. Major debate on racial profiling centers on whether the practice should be prohibited entirely and whether data on traffic stops and searches should be collected to determine if the practice is occurring.

This report analyzes the debate and focuses on legislative proposals on racial profiling before Congress. A number of bills relating to racial profiling have been introduced in the 108<sup>th</sup> Congress and have been referred to their respective committees of jurisdiction (H.Res. 515, H.R. 2364 (Title II), H.R. 3847, S. 16 (Title V), S. 2112, and S. 2132). Some of these proposals include revisions or parts of proposals introduced during the 107<sup>th</sup> Congress. Also, this report analyzes legislative proposals that were introduced in the 107<sup>th</sup> Congress. They were varied and included provisions that would have: defined racial profiling, prohibited the practice, required a study of statistical data and/or a report of traffic stops, set data collection standards, established penalties for noncompliance, furnished funding for grants, provided for education and training, and held law enforcement personnel legally accountable for engaging in racial profiling. Both the Senate Subcommittee on the Constitution, Federalism and Property Rights and the House Committee on Government Reform held hearings on racial profiling during the 107<sup>th</sup> Congress.

There has been some recent presidential involvement on the issue of racial profiling. On June 18, 2003, President George W. Bush issued guidelines to bar federal agents from using race or ethnicity in routine investigations. The guidelines, however, exempt investigations of terrorism and other national security concerns. In 2001, the President instructed the Attorney General to review the role of race in the decision of federal law enforcement authorities to conduct stops and searches, to work with Congress on procedures for data collection, and to cooperate with state and local law enforcement to assess the extent and content of those procedures. Two federal agencies, the Bureau of Justice Statistics and the General Accounting Office, have researched and published their findings on aspects of racial profiling.

The major recommendations for determining if racial profiling is occurring are to collect data on stops and searches by law enforcement officers and to use technology as an aid in detecting the practice. The collection of data is controversial, leading to questions about what to collect, how to collect it, who is to analyze it, where the data would be housed and for how long, what the collection of statistics would accomplish, and whether its collection is an invasion of privacy. This report will be updated when legislative activity occurs.

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# Racial Profiling: Issues and Federal Legislative Proposals and Options

## Background

There are many definitions of racial profiling. For this report, racial profiling is defined as the practice of targeting individuals for police or security interdiction, detention or other disparate treatment based primarily on their race or ethnicity in the belief that certain minority groups are more likely to engage in unlawful behavior.<sup>1</sup> For years, members of African-American and Hispanic communities have complained that they were victims of profiling. The circumstances under which profiling may occur vary. For example, allegations of racial profiling have been aimed at security personnel of department stores who suspect African American shoppers of stealing. Traditionally, however, accusations of racial profiling have resulted from encounters at traffic stops and have been directed at local and state police. The impetus for police traffic stops and searches may be the perception that members of certain minority groups are more likely to be engaged in the illicit drug trade. In searching for illicit drugs, U.S. Customs agents and Border Patrol officers have been charged with racial profiling as well.<sup>2</sup> With the racial and ethnic makeup of the nation changing and after the terrorist attacks of September 11, 2001, other groups, such as Arab Americans, Muslims, and Asian Americans, have joined the call for an end to racial profiling.

Anecdotal accounts of racial profiling have been the basis for most complaints against the practice. Individuals reportedly have been subjected to racial profiling while walking, shopping and driving. Sometimes black individuals are stopped and questioned by police if, in the perception of the police, these individuals are walking in the “wrong” neighborhood; i.e., a white neighborhood or upper-middle class neighborhood.<sup>3</sup> Other points of contact with law enforcement personnel that lead to allegations of racial profiling are airports and border points of entry. More often, however, charges of racial profiling occur when a person is driving a vehicle and the driver or passengers of a car, based on the judgment of law enforcement personnel,

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<sup>1</sup> Charles Dale, Legislative Attorney, CRS, American Law Division, provided this definition. See CRS Report RL31130, *Racial Profiling: Legal and Constitutional Issues*, by Charles V. Dale.

<sup>2</sup> U.S. Customs Service, Personal Search Review Commission, *Report on Personal Searches by the United States Customs Service*, June 21, 2000, p. 1; Lori Montgomery, *Seattle Times*, “Under Suspicion Law-Enforcement Agencies Do Some Soul-Searching over Racial Profiling,” July 1, 2001, p. A3.

<sup>3</sup> Kathryn K. Russell, *Boston College Law Review*, “‘Driving While Black’: Corollary Phenomena and Collateral Consequences,” vol. 40, pp. 721-724.

do not apparently “fit” the type of vehicle they occupy; that is, they may be, for instance, a young black male in an expensive car.

Both S. 16 (Title V) and H.R. 2364 (Title II) have been introduced in the 108<sup>th</sup> Congress and contain provisions relating to racial profiling.<sup>4</sup> S. 16 (Daschle), an omnibus civil rights bill, includes provisions that would express a sense of the Senate that Congress enact legislation banning racial profiling and requiring law enforcement at the federal, state, and local levels to prevent the practice. H.R. 2364 (Engel), among other provisions, would amend provisions of the Immigration and Nationality Act by establishing a Visa Fairness Commission to collect data on racial profiling by American embassies and U.S. border and immigration inspectors.

Because a number of bills that were introduced in the 107<sup>th</sup> Congress offered a variety of approaches to addressing racial profiling, this report provides a detailed analysis of them. Some of these legislative proposals were directed specifically at certain federal agencies, others at state law enforcement officials. This report examines racial profiling and legislative proposals that affect law enforcement efforts.<sup>5</sup>

## Policy Questions

Racial profiling is a complex and controversial issue. In addressing the matter of racial profiling, whether practiced at the state and local levels or in federal agencies to combat illicit drug activity or terrorism, Congress is faced with a number of questions. Some of these questions are listed here, followed by a more detailed section on “Arguments on Racial Profiling.”

**How Should Profiling Be Defined?** There are many definitions of profiling, with federal agencies, states, local jurisdictions, and citizens all offering their own definitions; some are more comprehensive than others. Racial profiling may be defined as all law enforcement activities that are initiated solely on the basis of race, while another definition may focus only on the context of vehicle stops. The term racial profiling can overemphasize race, leaving out ethnicity, gender or other considerations as factors that influence law enforcement action.

**Is Racial Profiling a Common or an Exceptional Practice?** Studies that have attempted to measure the extent of racial profiling have been for the most part methodologically flawed. While some studies have shown that minorities are disproportionately subjected to traffic stops and searches, a General Accounting Office (GAO) report concluded that the studies did not distinguish between the

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<sup>4</sup> Racial profiling is sometimes referred to as “profiling” and “ethnic profiling.”

<sup>5</sup> For a fuller discussion of the action of *state legislatures* on racial profiling, see CRS Report RL31950, *Racial Profiling and Traffic Stops in the States: Selected Issues and Legislative Approaches*, by Sula P. Richardson. For literature on racial profiling, see CRS Report RS20954, *Racial Profiling: Bibliography-in-Brief*, by Tangela G. Roe. For legal issues, see CRS Report RL31130, *Racial Profiling: Legal and Constitutional Issues*, by Charles V. Dale.

seriousness of traffic violations nor did the analyses provide information on which traffic violations, if any, were more likely to result in a stop.<sup>6</sup> GAO suggests that analyses examine whether different groups may have been at different levels of risk for being stopped because their rates and/or severity of violating traffic laws differed. In other words, some racial/ethnic groups may commit more traffic violations such as speeding, tailgating, or having faulty equipment than other groups.

**Should Data on Stops and Searches Be Collected?** Supporters of data collection maintain that it can help determine if racial profiling is occurring, can assist law enforcement agencies in becoming more effective in identifying problems, and can indicate to the community a level of commitment to unbiased policing. Opponents of data collection believe that it is not cost effective. In addition, they warn that it can harm relations between police and the community because despite the limitations of data collection, there may be a public perception that conclusions drawn from analyses of these data are valid. Sometimes, law enforcement personnel and departments are unfairly disparaged based on data collection studies. Some feel the nature and extent of racial profiling cannot be determined by using social science methods.

**Who Should Be Held Accountable When Racial Profiling Is Practiced and How?** Some feel that ultimately, the head of an agency or department is responsible for establishing policies and procedures, not staff. In this view, the top administrator must set the cultural tone of the agency in word and action. Checks and balances and a review system can be established to ensure that laws, policies, and procedures relating to racial profiling are carried out at all levels in an acceptable fashion. They suggest that those who violate established rules of operation should be provided training, should be monitored in the future, and if they continue to disregard official policy and procedure, then they should be discharged from service.

Others believe that to eliminate racial profiling, there should be more severe consequences for individuals who practice it, as well as their supervisors. They want law enforcement agents and managers subject to civil suit. Opponents of lawsuits believe this is not a good way to solve the problem. They predict it will exacerbate tensions between police and minority communities and will cause valuable resources to be used defending law enforcement rather than battling crime.

**Should Technology Be Used as a Tool in Eliminating Racial Profiling?** It is generally accepted that technology can play an important role in identifying and eliminating racial profiling. Concerns, however, have been expressed about the sole reliance on technological devices to record traffic stop and passenger search occurrences. Some argue that the use of audio/video technological devices invades the privacy of citizens.

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<sup>6</sup> U.S. General Accounting Office, *Racial Profiling, Limited Data Available on Motorist Stops*, GAO Report GGD-00-41, Mar. 2000.

**What Data Should Be Collected?** Elements suggested for documentation in data collection include race; ethnicity; location of the traffic stop; reasons for the stop; searches conducted, if any; consent of vehicle occupants to the search; identification and confiscation of contraband; and action taken by law enforcement such as an arrest or issuance of a ticket. In addition, at issue is uniform data collection on traffic stops. Some feel it is sufficient to collect data only on certain law enforcement actions, e.g. arrests and issuance of tickets. Others argue that in order to accurately assess racial profiling, data on all traffic stops must be recorded.

**Who Will Analyze the Data Collected?** The same data can yield very different interpretations depending upon who analyzes it. Some suggest that the collected data be analyzed not by affected law enforcement departments or agencies but by an outside group or persons with recognized training in statistics design and data analysis. In this view, objective analysts would more likely be associated with a college or university or an independent social science research firm.

**How Should Collected Data Be Used?** Some question the need and appropriateness for the mass collection of racial and ethnic data. Their data collection concerns are citizen privacy, access to the material, protection of the identity of individuals and law enforcement agents, and maintenance, storage, and final disposition of the data.

**Who Will Provide Funds for the Cost of Purchasing, Maintaining, and Storing Technological Equipment and Data Collected?** Video technological devices are expensive. They are costly to purchase, require maintenance, and need to be stored. Who will bear the cost of acquiring and maintaining this equipment?

**Is Federal Racial Profiling Legislation Needed?** Many argue that racial profiling is largely a state and local problem and believe there is no good reason for ordering federal law enforcement agencies to record the race and origin of everybody they question, search, or arrest. They point to the current activity on racial profiling at both the state and local levels as an adequate response to the problem, to the extent that there is a problem.<sup>7</sup> Some believe that law enforcement personnel are more than capable of correcting racial profiling and want to do so. Further, they claim that not enough is known about the issue for Congress to offer broad solutions that affect states and localities. Others question whether, even at the federal level, legislation is needed to eliminate racial profiling in the executive branch, maintaining that if a federal agency is engaging in the practice, agency administrators can handle the problem by ordering an investigation and taking corrective action as needed.

Supporters of federal action respond by pointing out that there are many approaches to correcting racial profiling and that this creates a problem when comparative studies of different jurisdictions and agencies are made to determine the nationwide extent of the practice. GAO reported difficulty in determining whether race had been a primary factor in motorist stops because the studies it examined had

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<sup>7</sup> See CRS Report RL31950, *Racial Profiling and Traffic Stops in the States: Selected Issues and Legislative Approaches*, by Sula P. Richardson.



methodological limitations that subjected conclusions drawn from this data to serious challenge. Trying to compare studies was like comparing apples and nuts because of problems with data components. Others argue that states and localities use different strategies and policies to address racial profiling. Consequently, an individual's protection against this "unconstitutional practice" varies depending upon the jurisdiction in which the stop or profiling incident happens. According to this argument, provisions of the Constitution should uniformly protect citizens against racial profiling in all areas of the United States and federal legislation would ensure that this occurs. Further, federal legislation requiring uniform data collection standards could offer a comprehensive response to racial profiling and would allow a more valid comparison of studies of racial profiling in different jurisdictions or agencies to be conducted.<sup>8</sup>

## Arguments on Racial Profiling

Law enforcement has been accused of practicing racial profiling in the pursuit of two major goals — to prevent illicit drug activity and to stop terrorists. In the debate on the appropriateness of profiling, some make a distinction between the two. According to polls conducted since 1999, the vast majority of Americans disapprove of racial profiling when traffic stops are involved.<sup>9</sup> When questioned about racial profiling to identify terrorists, however, their response was quite different. A majority of Americans polled approved of racial profiling to intercept terrorists. Because the terrorist attackers of September 11, 2001 were identified as Arabs, many have asked for increased scrutiny of them. A majority of Americans polled favored "requiring Arabs, including those who are U.S. citizens, to undergo special, more intensive security checks before boarding U.S. airplanes." Nearly 50% of persons responding to one poll reportedly would support "requiring Arabs, including those who are U.S. citizens, to carry a special I.D."<sup>10</sup> According to another national poll of June 2002, conducted by Opinion Dynamics, 54 percent of respondents approved of "using racial profiling to screen Arab-male airline passengers," while 34 percent disapproved of the practice. A more recent national poll, conducted between October 21 and November 25, 2002 by Cornell University, indicated that 68 percent of respondents supported racial profiling as a tool to fight terrorism.<sup>11</sup> Some argue that an increased scrutiny of Arabs is justified because the public safety issue should be the major factor in deciding whether to profile any group. According to this view, when practiced "politely and respectfully," racial profiling may be a vital component

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<sup>8</sup> For constitutional arguments, see CRS Report RL31130, *Racial Profiling*.

<sup>9</sup> Neil Kurlander, "How to Track Traffic Stop Data," *Law Enforcement Technology*, July 2000, p. 148; *Gallup Poll* on racial profiling, released Dec. 9, 1999. See also, ACLU, "New Poll Shows Public Overwhelmingly Disapproves of Racial Profiling," Dec. 9, 1999. Gia Fenoglio, et al., "How Life Could Change, A Look at Some 30 Proposals to Combat Terrorism. Are They Worth the Trade-Offs?," *National Journal*, Sept. 22, 2001, p. 2912.

<sup>10</sup> Henry Weinstein, et al., "Racial Profiling Gains Support As Search Tactic," *The Los Angeles Times*, Sept. 24, 2001, p. 1; see also, Nicole Davis, "The Slippery Slope of Racial Profiling," *Color Lines Magazine*, Mar. 10, 2003.

<sup>11</sup> Dan Higgins, "Freedom Losing Its Grip," *Ithaca Journal*, January 23, 2003, p. 1.

of efforts to prevent mass murder, as occurred with the terrorist attacks;<sup>12</sup> thus, the advantages of using racial profiling might outweigh the disadvantages.

Identifying an Arab by physical traits, however, is troublesome. Of the estimated 3 million Arab Americans in the United States, 63% were born in this country. Their appearance can vary from blond hair, white skin, and blue eyes to dark hair, dark skin, and brown eyes. Although they are often perceived as Muslims, the majority of Arab Americans are reportedly Christian. Of the estimated 6 million Muslims in the United States, the largest group is African American, not Arab according to *The Economist* magazine.<sup>13</sup>

Concern about terrorism also has prompted calls for profiling persons entering this country from a specific geographic region of the world, i.e., persons whose national origin is the Middle East. Proponents of this practice argue that the lack of technological means to detect bombs and long delays caused by searching the luggage of passengers make effective screening nearly impossible. Also, it is argued that were a policy of profiling by national origin in place on September 11, 2001, all 19 of the terrorists might have been intercepted. Those who oppose this strategy point out that Muslims and people of Middle Eastern descent have migrated to countries around the world. Terrorists of Middle Eastern background could come from Germany, France, or any country outside of the Middle Eastern region. In addition, the largest population of Muslims (about 200 million) lives in Indonesia. They suggest that, in searching for terrorists, the emphasis should be on suspicious behavior.<sup>14</sup>

Some believe that racial profiling has been shown to be ineffective when used to identify persons involved in illicit drug activities. In support of their argument, they offer an *Orlando Sentinel* investigation of vehicle stops on an interstate highway in Florida. While nearly 70% of motorists stopped were black or Hispanic, only 5% of the drivers on that highway were minorities. Of the 1,000 stops police made, nine resulted in a traffic ticket. As another example, they point to the New York Attorney General's report that found stop-and-frisk tactics on minorities were less likely to lead to arrests than stops of whites.<sup>15</sup> Critics of using racial profiling to combat illicit drugs argue that despite rising rates of arrest and incarceration and record drug seizures, drugs are more available than ever. They also point to the difficulty in visibly discerning race or ethnicity.<sup>16</sup>

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<sup>12</sup> Stuart Taylor, Jr., "The Case for Using Racial Profiling at Airports," *National Journal*, Sept. 22, 2001, p. 2877.

<sup>13</sup> *The Economist*, "Arab-Americans, Suddenly Visible," Sept. 22, 2001, p. 31; Evan P. Schultz, "Whatever It Takes?," *Legal Times*, Oct. 1, 2001, p. 50.

<sup>14</sup> Stuart Taylor, Jr., "All About Security, Passport Profiling is Necessary, Not Evil," *Legal Times*, Nov. 5, 2001, p. 52.

<sup>15</sup> U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on the Constitution, Federalism, and Property Rights, *S. 989: The End Racial Profiling Act of 2001*, hearings, 107<sup>th</sup> Cong. 2<sup>nd</sup> sess., Aug. 1, 2001 (Washington: GPO, 2001), p. 114.

<sup>16</sup> David Borden, Executive Director, Drug Reform Coordination Network, "Profiling and the Drug War."

Many civil rights advocates charge that racial profiling violates individuals' constitutional rights, specifically, the Fourth (protects against unreasonable searches and seizures), Fifth (protects against discrimination by federal law enforcement officers that is based on race, ethnicity, or national origin) and the Fourteenth Amendment (provides security and equal protection of the laws).<sup>17</sup>

Spokesmen for various law enforcement groups have commented on the practice of racial profiling. Recognizing the central and difficult position that law enforcement officers occupy in balancing individual rights and public safety in basic enforcement, the International Association of Chiefs of Police (IACP) states that if officers are perceived as biased in their actions, it can foster mistrust and suspicion among some members of the public. According to the IACP, those persons who mistrust law enforcement officers often believe that police officers violate rather than protect their civil rights. IACP states that although this perception is inaccurate, it damages efforts to reduce crime because law enforcement agencies need community support to solve crimes. Therefore, to build confidence in law enforcement, the IACP opposes "biased enforcement practices."<sup>18</sup>

The National Organization of Black Law Enforcement Executives (NOBLE), another law enforcement group, opposes racial profiling whether it is used to fight illicit drugs or terrorism on the grounds that it threatens our democratic way of life. Pointing to historical abuses that have occurred under the umbrella of national security (for example, the internment of Japanese-Americans in World War II), a spokesman for NOBLE rejects justification of the practice on those grounds. Arguing further that people, not a race or ethnicity, commit crime, he questions linking an entire group of people to crime based on the behavior of a few of that race or ethnicity. He uses the following example: Blacks are responsible for 80% of reported crime in a town, but that doesn't mean that 80% of blacks commit crime. More likely, 5% of the town's black population is responsible for the high crime rate. In addition, he states that fear is the driving force behind demands for ethnic and racial profiling, whether it is fear of crime and violence or fear of another terrorist attack, and that "[b]ias, prejudice and racism only add fuel to the fire of fear."<sup>19</sup> NOBLE believes that over the past few years law enforcement has lost the respect and confidence of the public and that the heroic response of public safety officers to the terrorist attacks offers a second chance to restore that trust and achieve national unity. Therefore, it maintains that we should learn from our historical mistakes and be creative in addressing national challenges.

The Fraternal Order of Police (FOP) opposes the practice of stopping someone based solely on race because it is wrong to believe a person is a criminal based on

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<sup>17</sup> For a legal analysis of the issue of racial profiling see CRS Report RL31130, *Racial Profiling: Legal and Constitutional Issues*, by Charles V. Dale.

<sup>18</sup> Bruce D. Glasscock, President, International Association of Chiefs of Police, remarks at the 2<sup>nd</sup> National Symposium on Racial Profiling, Northwestern University — Center for Public Safety, Rosemont, Illinois, Oct. 1, 2001, pp. 17-20.

<sup>19</sup> Captain Ronald L. Davis, Keynote address, 2<sup>nd</sup> National Symposium on Racial Profiling, Northwestern University — Center for Public Safety, Rosemont, Illinois, Oct. 2, 2001, pp. 5-6.

the color of his or her skin. According to a spokesman for FOP, “racism is never a legitimate law enforcement tool.”<sup>20</sup> He also states that, “Statistically, minorities have a greater chance of being crime victims because crimes occur more frequently in areas with a large minority population. Good policing means going after criminals and patrolling areas where crimes are committed. This is good police work — not racism.”<sup>21</sup>

## Collection of Traffic Stop Data

Collecting data that might help in evaluating the relationship between race and traffic stops by law enforcement officers has been offered as the primary way of determining whether racial profiling is practiced. But analyzing data on the nature, character, and demographics of law enforcement practices to determine racial profiling is very complex. A major problem with data collection is how to analyze data once collected, since there are no national data-collection standards or guidelines. There is no agreement on what racial profiling is or how to measure it. For instance, if blacks comprise 15% of a city’s population but 20% of the traffic stops, is that evidence of racial profiling; what if traffic stops for them were 30%? Should the number of searches conducted at traffic stops be recorded? Not only what information is collected but where it is collected is relevant. Should residential populations or driving populations be used? Are the population data used current; census data may be 10 years old and may poorly reflect the changing populations in urban areas with increased mobility and immigration. Data collected in an urban area, with a dense, poor minority population with few car owners, will likely result in very different findings than data collected on an interstate highway where the driving population is likely to be more diverse.

The same data can result in divergent interpretations. The challenge, according to Harvard Law School professor Margo Schlanger, is that legally it is very difficult to use statistics to determine a police officer’s motivation. Officers can respond to statistics revealing that a high percentage of blacks is indeed stopped and searched by saying that there are just more blacks who do suspicious things. Statistics alone cannot prove intentional discrimination.<sup>22</sup>

When first proposed, the International Association of Chiefs of Police and the Grand Lodge Fraternal Order of Police opposed the collection of data. Three police chiefs charged the methodology was flawed that was used in an ACLU report which

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<sup>20</sup> Steve Young, National Vice President, Fraternal Order of Police, Testimony before the U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution, Federalism and Property Rights, S. 989, *The End Racial Profiling Act of 2001*, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., Aug. 1, 2001 (Washington: GPO, 2002), p. 35.

<sup>21</sup> Ibid.

<sup>22</sup> Justin Pritchard, “More Police Study Racial Profiling, But What Are They Looking For?” Associated Press State and Local Wire, Jan. 13, 2001; Deborah Ramirez, McDevitt, and Amy Farrell, *A Resource Guide on Racial Profiling Data Collection Systems, Promising Practices and Lessons Learned*, U.S. Department of Justice, Nov. 2000.

found their departments practiced racial profiling.<sup>23</sup> Some groups deny that racial profiling occurs, stating that police are using professional crime-stopping methods. Others express concerns that the traffic-stop data proposals would burden already overworked police forces and would run counter to police training efforts to teach officers not to consider race.<sup>24</sup> Another argument of opponents is that resources might be better used fighting racially biased policing and the perceptions thereof rather than collecting data.<sup>25</sup> In 1999, the executive director of the Fraternal Order of Police said, “It [collecting data] shortcuts meaningful dialogue between the police and the community. If anything, it exacerbates the gulf.”<sup>26</sup>

Some oppose the federal government’s mass collection of racial and ethnic data “without good reason”<sup>27</sup> on the grounds that it is an invasion of privacy. Proponents of this view state that when police stop people because of racial or ethnic characteristics and not what they have done, it is both wrong and bad police work. To them, the objective of wanting to do something about racial profiling is too vague to merit intrusion in “our shrinking zone of privacy.”<sup>28</sup> They also question the ultimate use of these data.

By 2000, however, the International Association of Chiefs of Police had joined other groups, such as NOBLE, in support of legislation requiring collection of traffic-stop data. NOBLE supports data collection citing the following reasons: to build trust between law enforcement and minority communities; to identify and stop inappropriate police conduct; to improve police productivity by enabling police to use the most effective stop-and-search practices by assessing and studying the types of stops, time spent on them, and the results of such stops; to reenforce to officers that racial profiling is not consistent with effective policing and with equal protection under the law; to identify practices that some officers may be using subconsciously; and to assist law enforcement departments in developing strategic ways to use the power at their disposal.<sup>29</sup>

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<sup>23</sup> Finn Bullers, “Three Chiefs Criticize ACLU’s Traffic Study,” *Kansas City Star*, Jan. 13, 2001, p. B1.

<sup>24</sup> Keith W. Strandberg, “Racial Profiling,” *Law Enforcement Technology*, June 1999, p. 64.

<sup>25</sup> Lorie Fridell and Robert Lunney, et al., *Racially Biased Policing, A Principled Response*, Police Executive Research Forum, Washington, D.C., 2001, pp. 117-119.

<sup>26</sup> Naftali Bendavid, “Collect Racial Data, Feds Told,” *Sun-Sentinel* (Fort Lauderdale), June 10, 1999, p. 3A; Finn Bullers, “Three Police Chiefs Criticize ACLU’s Traffic Study; Race-Profiling Report Was Flawed, They Say,” *The Kansas City Star*, Jan. 13, 2001, p. B1.

<sup>27</sup> *Ventura County Star* (Ventura County, California), Editorial: “One More Intrusion,” June 24, 1999, p. B06.

<sup>28</sup> *Ibid.*

<sup>29</sup> National Organization of Black Law Enforcement Executives, “A Noble Perspective: Racial Profiling — A Symptom of Bias-Based Policing (Next Steps — Creating Blindfolds to Justice),” May 3, 2001, p. 7.

Yet many police remain uncomfortable with data collection. They fear that “statistics fuel allegations of racism without offering clear solutions.”<sup>30</sup> Recognizing the complexity of data collection and the potential to abuse interpretation of statistics, the International Association of Chiefs of Police issued another statement in 2001 qualifying its endorsement of data collection. The Association will only support data collection legislation “that ensures that an impartial and scientifically sound methodology will be used for evaluating collected data.”<sup>31</sup>

While some governmental agencies and private groups have collected data that suggest minorities are disproportionately the subject of routine traffic stops, many law enforcement organizations challenge these findings. To demonstrate how law enforcement results can be misinterpreted, FOP representative Steven Young cited an experience of the Arlington County, Virginia Police Department. In response to demands from the black community for increased enforcement against drug dealers in Arlington County, the police instituted aggressive motor-vehicle checks and other actions to make dealers uncomfortable in the neighborhood. Their efforts, however, resulted in increased arrests of minorities and, ironically, left the police department vulnerable to accusations of disproportionately arresting minorities. He argued that “To use statistical data without an adequately sophisticated benchmark for analysis is bad policy.”<sup>32</sup>

Efforts to rely on comprehensive data, rather than anecdotal accounts, to determine if racial profiling occurs in federal, state, or local law enforcement have proved troubling, primarily because the lack of *uniform data components* makes the validity of comparing different studies questionable. Both of two federally sponsored studies conducted by the Bureau of Justice Statistics (BJS) of the Department of Justice (DOJ) and the United States General Accounting Office (GAO) found limitations in data components.

## Bureau of Justice Statistics Study

In 1999, the Bureau of Justice Statistics conducted a national survey of 19.3 million people, aged 16 and older. The survey examined how often and under what circumstances contact and traffic stops between police and U.S. residents occurred. Key data elements included the number of licensed drivers, vehicle stops and searches, and race or ethnicity. In the survey, police searched the driver, the vehicle or both for drugs, alcohol, stolen property or other evidence of criminal wrongdoing. Published in February 2001, the survey indicated that blacks were disproportionately likely to be stopped at least once by police. On the other hand, Hispanics were less likely to be stopped by police (**Table 1**). Both black and Hispanic drivers/vehicles,

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<sup>30</sup> Lori Montgomery, “Under Suspicion Law-Enforcement Agencies Do Some Soul-Searching Over Racial Profiling,” *Seattle Times*, July 1, 2001, p. A3.

<sup>31</sup> Fridell, *Racially Biased Policing, A Principled Response*, p. 116.

<sup>32</sup> Steve Young, National Vice President, Fraternal Order of Police, Testimony before the U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution, Federalism and Property Rights, *S. 989, The End Racial Profiling Act of 2001*, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., Aug. 1, 2001 (Washington: GPO, 2002), p. 35.

however, were disproportionately searched by police relative to their numbers of licensed drivers. White drivers/vehicles had a greater chance of escaping a search (Table 2).<sup>33</sup>

**Table 1. Percentage of Licensed Drivers by Race/Ethnicity Who Were Stopped at Least Once: Survey Results**

Race/ethnicity	Number with driver's license	Percent of licensed drivers	Percent of licensed drivers stopped at least once
Black	18,134,397	9.8	11.6
White	142,767,917	76.8	77.0
Hispanic	18,298,101	9.8	8.4
Other races	6,708,204	3.6	3.0
Total	186,322,014	100.0	100.0

**Source:** U.S. Department of Justice, Bureau of Justice Statistics, Contacts between Police and the Public, Findings from the 1999 National Survey, by Patrick A. Langan, et al., (Washington: Feb. 2001), p. 13.

**Table 2. Percentage of Selected Licensed Drivers by Race/Ethnicity Who Were Searched: Survey Results**

Race/ethnicity	Percent licensed drivers stopped at least once	Percent drivers/vehicles searched
Black	11.6%	19.4%
Hispanic	8.4%	14.4%
White	77%	63.2%

**Source:** U.S. Department of Justice, Bureau of Justice Statistics, Contacts between Police and the Public, Findings from the 1999 National Survey, by Patrick A. Langan, et al., (Washington: Feb. 2001), p. 18.

Although survey results indicated that in 1999 the chance of blacks being stopped at least once was slightly higher than that of whites, these differences do not necessarily mean that law enforcement officers used racial profiling. The survey only provided data on how often people were stopped; it did not address the question of whether blacks were more likely than whites to violate traffic laws. To determine if racial profiling occurs, the survey needed to show both that, all other things being

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<sup>33</sup> Survey findings passed a significance test at .05-level. Patrick Langan, Statistician, Department of Justice, Bureau of Statistics, telephone conversation with, February 3, 2004.

equal, blacks were no more likely than whites to break traffic laws and that law enforcement agents stopped blacks at a higher rate than whites.<sup>34</sup>

## General Accounting Office Report

In response to a congressional request, GAO sought analyses of racial profiling of motorists, as well as federal, state, and local data on motorist stops. On March 13, 2000, GAO reported that it found no comprehensive source of information that could be used to determine if race had been a primary factor in motorist stops. A problem associated with traffic data analysis is the small number of locations studied. Only five quantitative analyses were available and, according to GAO, they were methodologically flawed. GAO stated that these analyses failed to provide conclusive empirical data from a social science standpoint<sup>35</sup> to determine the extent to which racial profiling may have occurred. That is, while the analyses included data on the relative proportion of minorities stopped on a roadway, GAO believes that is only part of the information needed to assess the extent of racial profiling that may have occurred.

The best of the studies that GAO analyzed determined the race of motorists at risk of being stopped and collected information on the number of travelers and traffic violations on specific roads, but even this study did not distinguish between the gravity of different traffic violations. These analyses did not provide information on which traffic violations, if any, were more likely to result in a stop. GAO suggests that analyses fully examine the question of whether different groups may have been at different levels of risk for being stopped because they differed in their rates and/or the severity of traffic law violations. That is, were some groups more likely than others to commit certain traffic violations, such as speeding, tailgating, failing to give a signal when changing lanes, driving without a license or without proper vehicle registration, and equipment violations? Such a consideration might determine if minority groups are stopped at the same rate that they violate traffic laws, and if so, might suggest that group members were stopped for particular traffic violations rather than for race or ethnicity.<sup>36</sup> Despite these limitations, GAO found that in the studies it reviewed, African-American and other minority motorists “were proportionately more likely than whites to be stopped on the roadways studied.”<sup>37</sup>

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<sup>34</sup> U.S. Department of Justice, Bureau of Justice Statistics, *Contacts between Police and the Public, Findings from the 1999 National Survey*, by Patrick Langan, et al., BJS Statisticians, (Washington: Feb. 2001), p. 12.

<sup>35</sup> According to GAO, a basic social science research principle is that studies rule out plausible alternative explanations for findings. GAO found that available research on racial profiling of motorists did not sufficiently rule out factors other than race to account for differences in stops. See U.S. General Accounting Office, *Racial Profiling, Limited Data Available on Motorist Stops*, GAO Report GGD-00-41 (Washington: Mar. 2000), pp. 18-20.

<sup>36</sup> Ibid., pp. 1-3.

<sup>37</sup> Ibid.



## Executive Action

In recent years, the issue of racial profiling has attracted the attention of both the Clinton and Bush Administrations. In 1999, the Clinton Administration determined that a systematic collection of statistics on traffic stops that tracked the race, ethnicity, and gender of individuals stopped or searched by law enforcement was needed to establish where problems exist and to develop solutions. Therefore, on June 9, 1999, President Clinton issued a memorandum to the Secretary of the Treasury, the Attorney General, and the Secretary of the Interior instructing them to design and implement such a plan within 120 days. They were to provide the President with information on departmental training programs, policies, and practices on using race, ethnicity, and gender in law enforcement activities. After a year, each department was to submit to the Attorney General a summary of the information collected, including complaints lodged by civilians claiming bias by law enforcement based on race, ethnicity, or gender; how complaints were investigated and resolved; and the results of any investigations. In consultation with agency heads, the Attorney General was to report to the President on an evaluation of the field tests, a plan to broaden the data collection system, and a recommendation on providing the fair administration of law enforcement to all.

In response to the directive, Richard J. Gallo, president of the Federal Law Enforcement Officers Association, stated that, “[f]ederal agencies do not do traffic stops.”<sup>38</sup> Clearly, some federal agencies, such as the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury and the Federal Bureau of Investigation of DOJ, do address criminal conspiracies and are concerned with long-term investigations rather than spot enforcement. Aware that most police work is performed by state and local agencies, and not the federal government, President Clinton also urged state and local law enforcement agencies to collect data and analyze the results to determine if racial profiling was occurring.<sup>39</sup>

The Bush Administration has not released reports on statistics on traffic stops that were completed during the Clinton Administration. On February 27, 2001, President George W. Bush issued a memorandum to the Attorney General directing him to review the role of race in the decision of federal law enforcement authorities to conduct stops, searches, and other investigative procedures. Further, the President instructed the Attorney General to develop, in concert with Congress, procedures for collecting any relevant data from federal law enforcement agencies and, in cooperation with state and local law enforcement, to assess the extent and nature of those procedures.<sup>40</sup>

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<sup>38</sup> Steven Holmes, “Clinton Orders Investigation on Possible Racial Profiling,” *New York Times*, June 10, 1999, p. A22.

<sup>39</sup> Patrick Strawbridge, “President Seeks Data on Profiling, Federal Agencies Are Told to Provide Race and Gender Statistics on Everyone They Stop,” *Omaha World-Herald*, June 10, 1999, p. 1; Steven A. Holmes, “Clinton Orders Investigation on Possible Racial Profiling,” *The New York Times*, June 10, 1999, p. 22.

<sup>40</sup> No report on these efforts has yet been released.

Recently, in response to the President's directive on racial profiling, DOJ issued a policy-guidance that bars all federal law enforcement agents from using race or ethnicity in routine investigations. The guidelines, however, exempt investigations that involve terrorism or other national security concerns.<sup>41</sup>

## Legislative Proposals and Options

### 108<sup>th</sup> Congress

Six bills have been introduced into the 108<sup>th</sup> Congress with provisions on racial profiling — H.Res. 515, *Expressing the Sense of the House of Representatives That Congress and the States Should Act to End Racial Profiling*; H.R. 2364, *Caribbean Amnesty and Relief Act* (Title II); H.R. 3847, *End Racial Profiling Act of 2004*; S. 16 *Equal Rights and Equal Dignity for Americans Act of 2003* (Title V); S. 2112, *UNITE Act*; and S. 2132, *End Racial Profiling Act of 2004*. As of this date, no hearings have been held on any of these bills.

**H.Res. 515** (Bell) would express the sense of the House of Representatives that Congress and the states should enact legislation banning the practice of racial profiling and requiring federal, state, and local law enforcement to take measures to prevent the practice. In addition, the bill would express the sense of the House of Representatives that each state should require law enforcement agencies to collect relevant data, including ethnicity, concerning traffic stops; have a written policy prohibiting racial profiling; and create a grievance policy for persons who believe they have been victims of racial profiling. H.Res. 515 was referred to the House Judiciary Committee on February 4, 2004 and to the Subcommittee on Crime, Terrorism, and Homeland Security on March 1, 2004.

**Title II of H.R. 2364** (Engel) would establish a Visa Fairness Commission which, in concert with the Director of the Bureau of Citizenship and Immigration Services, would gather empirical data on economic and racial profiling by Consular Affairs Offices in American embassies and by U.S. Customs and immigration inspectors at points of entry into the United States. H.R. 2364 was referred to the House Committee on the Judiciary on June 5, 2003.

**H.R. 3847** Conyers) and **S. 2132** (Feingold) are identical measures and are essentially the same proposals as the identical bills H.R. 2074 and S. 989 respectively, which were introduced in the 107<sup>th</sup> Congress. Among other provisions, these bills would: define racial profiling; prohibit the practice; require state and federal law enforcement agencies to establish policies and procedures to eliminate racial profiling and to stop practices that encourage racial profiling before they would be eligible to receive funds for a covered federal program; empower the Attorney General to withhold federal grants from a state that is not in compliance with

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<sup>41</sup> U.S. Department of Justice, "Justice Department Issues Policy Guidance to Ban Racial Profiling, *Fact Sheet*, June 17, 2003; U.S. Department of Justice, "Racial Profiling," *Fact Sheet*, June 17, 2003; Eric Lichtblau, "Bush Issues Federal Ban on Racial Profiling, But Exempts Security Inquiries," *New York Times*, June 18, 2003, pp. A1, A14.

provisions to eliminate racial profiling; provide for a private party to report a grantee that violates racial profiling provisions; require a federal, state or governmental unit to have procedures for disciplining law enforcement agents guilty of racial profiling; require the Attorney General not later than six months after passage of the act to establish standards for collecting racial profiling data; require the Attorney General not later than two years after enactment of the act, and thereafter annually, to submit a report summarizing data collected on routine investigatory activities as well as state and federal law enforcement agencies' policies and procedures on racial profiling; provide grants to support independent procedures for receiving, investigating, and responding to complaints of racial profiling by law enforcement officers; require training for law enforcement officers that would prevent racial profiling and improve officers' interaction with the public; and protect the identity of the driver of a car stopped by a law enforcement officer. (For further information, see discussion on H.R. 2074 and S. 989 in the section below on the 107<sup>th</sup> Congress.) H.R. 3847 was referred to the House Judiciary Committee and S. 2132 to the Senate Judiciary Committee.

**Title V of S. 16** (Daschle) would express a sense of the Senate that Congress enact legislation to ban racial profiling and require law enforcement to take steps to prevent the practice at the federal, state and local levels. S. 16 was referred to the Senate Committee on Finance on January 1, 2003.

**S. 2112** (Voinovich), would, among other provisions, define racial profiling as any action initiated by police that is based on the race, ethnicity, or national origin of a person rather than one that relies on the behavior of an individual or information that leads the police to a particular individual who has been identified as being, or having been engaged in criminal activity. The bill would prohibit any federal, state, or local law enforcement agent or agency from engaging in racial profiling. It would: require federal law enforcement agencies to maintain policies and procedures to eliminate racial profiling and stop existing practices that encourage the practice; require that these policies and procedures include a prohibition on racial profiling, include educational training on racial profiling issues as part of federal law enforcement training; and establish procedures to receive, investigate and respond meaningfully to complaints of racial profiling by federal law enforcement agents, as well as procedures to discipline federal law enforcement agents guilty of racial profiling.

In addition, S. 2112 would establish, within DOJ, a National Task Force on Racial Profiling (Task Force). This nine-member Task Force would include one presidentially appointed member who had to be approved by the Attorney General and the head of DOJ's Civil Rights Division; one member appointed by the Democratic leadership of both the House and Senate; one member appointed by the Republican leadership of the House of Representatives and the Senate. These three appointees would appoint six additional members to the Task Force with expertise in each of the following categories: law enforcement, civil rights, community or faith based, government, political or legislative, and professional research. Each member of the Task Force would serve two-year terms except for the chairperson who would serve a four-year term. The presidential appointee would serve as the chairperson of the Task Force and would have a permanent office with DOJ. Any vacancy in the

Task Force would not affect its powers and would be filled in the same manner as the original appointment.

The Task Force would establish goals and objectives and focus groups to accomplish these goals and objectives; form subcommittees to conduct research, host meetings, conferences, and symposia; and oversee state-based administrative complaint procedures. Not later than six months after enactment of this act, the Task Force, based on information supplied by the subcommittees, hearings, and other reliable sources, must submit a comprehensive report outlining lessons learned and best practices and recommendations for eliminating racial profiling.

S. 2112 also provides for the Task Force to establish an education and awareness program on racial profiling that would include information on the negative effects of the practice on both individuals and law enforcement. The purpose of the program would be to encourage state and local law enforcement agencies to stop racial profiling and to become involved with the community in addressing it, as well as to assist state and local law enforcement agencies in developing and maintaining adequate policies and procedures to do so. The education and awareness program would be offered to state and local law enforcement agencies at various regional centers across the country to ensure that all law enforcement agencies would have reasonable access to it.

S. 2112 would provide for a state-based administrative complaint procedure that would include establishment of grievance procedures for a state seeking funding under a DOJ grant program. Under provisions of the bill, complaint procedures would:

- be uniform and nondiscriminatory;
- allow anyone to file a racial profiling complaint;
- provide that a complaint be sworn in writing, signed by the complainant, and notarized;
- allow the state to consolidate racial profiling complaints;
- provide that a hearing be held at the request of a complainant;
- provide an appropriate remedy if racial profiling occurs;
- provide for the state to dismiss a complaint and publish the results when racial profiling is found not to have occurred;
- provide that on a racial profiling complaint a final determination be made within a 90-day period beginning on the date the complaint is filed, unless the complainant consents to an extension of time;
- provide that the record and other materials that relate to the complaint proceedings be made available under the alternative dispute resolution procedures; and
- provide the Task Force with a record of all complaints and proceedings.

If the Task Force determines that any state or local law enforcement agency or a law enforcement agent is violating this act, the complaints would be referred to the Attorney General for investigation.

This bill would require that no later than 12 months after enactment of this act that each state and local law enforcement agency, with its application for funding for a DOJ grant program, would provide certification that it is developing and implementing a plan to maintain adequate policies and procedures to eliminate racial profiling. This plan would prohibit racial profiling; inform the public on the state-based administrative complaint procedures; require appropriate action against a law enforcement agent who is proven to have engaged in racial profiling; and provide training on racial profiling issues as part of law enforcement training. Further, S. 2112 would provide that no later than 24 months after enactment of this act, each state and local law enforcement agency must certify to the Attorney General that the plan the agency is implementing meets the plan requirements of this act. The measure also would provide that any revisions to a racial profiling plan made by a state or local law enforcement agency would have to be submitted to the Attorney General for review. The Attorney General would have the discretion to determine whether or not the plan complies with provisions of this act. At any time during the implementation or revision of an agency's racial profiling plan, the Attorney General would have discretion to determine whether the agency or the plan is in compliance with provisions of this act. Under provisions of this bill, the Attorney General could make recommendations to assist the state or local law enforcement agency in developing a plan that complies with provisions of this act and could withhold, in whole or in part, the agency's grant until compliance is established.

S. 2112 would provide grants through the Bureau of Justice to assist state and local law enforcement agencies in eliminating racial profiling and in establishing and maintaining administrative complaint procedures for racial profiling complaints. S. 2112 was introduced on February 25, 2004 and referred to the Senate Judiciary Committee.

## 107<sup>th</sup> Congress

Multiple proposals for addressing racial profiling were introduced in the 107<sup>th</sup> Congress, but with the exception of S. 989, no further action was taken on them. The Senate Subcommittee on the Constitution, Federalism, and Property Rights held a hearing on S. 989, the End Racial Profiling Act of 2001, but no further action was taken on it. The bills contained provisions that would have: defined racial profiling, prohibited the practice, established standards that would have included a report on racial profiling, required collection of data, required a study of statistical data, provided for civil suits, provided for a complaint process, required training, and protected the privacy of individuals. Because of the variety and comprehensiveness of legislation on racial profiling that was proposed in the 107<sup>th</sup> Congress, following are selected provisions and the bills that contained them. (For a tabular presentation of this information, see **Table 4.**)

**Definition.** The four racial profiling bills that specifically would have defined the term were H.R. 1907, *Racial Profiling Prohibition Act of 2001*; H.R. 2074/S. 989, *End Racial Profiling Act of 2001*; and S. 799, *Reasonable Search Standards Act*. All of these bills would have prohibited a law enforcement officer from relying solely on race, national, or ethnic origin of drivers or passengers in deciding which individuals to subject to routine investigatory activities. Only S. 799 would have added the sexual orientation of an individual to this list of prohibited factors.

**Prohibition of Racial Profiling.** The following bills contained provisions that specifically would have prohibited a law enforcement agent or law enforcement agency from practicing racial profiling: H.R. 965, H.R. 1907, H.R. 1996, H.R. 2074/S. 989, and S. 799. Both H.R. 965 and H.R. 1907 would have required a state to adopt and enforce standards that would have prohibited state law enforcement officers from using racial profiling to enforce state laws on federal-aid-highways.

Provisions of H.R. 1996 and S. 799 would have been directed at the United States Customs Service inspectors or other officials. These bills would have prohibited pat down searches, intrusive nonroutine searches, or similar investigative actions based solely on the actual or perceived race, religion, gender, national origin, or sexual orientation of the traveler. S. 799 would have required Customs Service personnel to document why a person was suspected of carrying prohibited contraband, unless a person was believed to have been armed.

**Grants.** Under S. 19 and H.R. 1778, the Attorney General would have been authorized to provide grants *directly* to law enforcement agencies. To complete a study of stops for traffic violations, the Attorney General, under provisions of S. 19, would have been able to offer grants to law enforcement agencies to collect and submit data on:

- the alleged traffic infraction;
- identifying characteristics of the driver who was stopped;
- the number of occupants in the vehicle;
- the duration of the stop;
- whether a search was conducted, and if so, whether the driver consented to it;
- whether the driver was engaged in criminal behavior that justified the search;
- whether any items were seized, including money or contraband;
- whether a warning or citation was made;
- whether an arrest was made and why; and
- whether immigration status was questioned or an inquiry was made to the Immigration and Naturalization Service.

The Attorney General would have designated what agency would have received this data. H.R. 1778 contained data collection provisions similar to S. 19 except that it would have required the data to include whether any occupant of the vehicle was turned over to immigration officials.

Both bills would have required the Attorney General, after performing an initial analysis of existing traffic-stops data on racial profiling, to use the above data provided by law enforcement agencies to conduct a nationwide study of police stops for traffic violations. Not later than 120 days after enactment of this legislation, the Attorney General would have been required to report to Congress and to inform the public of the initial analysis of racial profiling data. On completion of this analysis, the Attorney General then would have been required to gather data on traffic stops from a nationwide sample of jurisdictions, including jurisdictions identified in the initial analysis. Not later than two years after enactment of this act, the Attorney

General again would have reported to Congress on the results of the nationwide study. A copy of the report also would have been published in the *Federal Register*.

Another method of providing grants, which was proposed in H.R. 2074/S. 989, would have authorized the Attorney General to use funding under *existing* grant programs (such as the Community Oriented Policing Services Program and the Edward Byrne Memorial State and Local Law Enforcement Assistance program)<sup>42</sup> to make grants to states and federal law enforcement agencies. Bill provisions also would have authorized the Attorney General to make grants to states and other entities to develop best practice systems that ensure justice would be administered in a racially neutral way. These grants specifically would have supported:

- training to prevent racial profiling;
- acquiring technology to both collect data on routine investigatory activities to determine if racial profiling is occurring and to verify the accuracy of data collection, including in-car video cameras and portable computer systems;
- developing and acquiring early warning systems that enable the officers engaged in or likely to engage in racial profiling or other misconduct to be identified;
- establishing procedures for receiving and responding responsibly to complaints of misconduct by law enforcement officers; and
- installing management systems that would hold supervisors accountable for the actions of their subordinates.

**State and Federal Policy Requirements to Eliminate Racial Profiling.** Under provisions of H.R. 2074/S. 989 any state or governmental unit that applied for funding under a covered federal program would have had to certify that program participants had effective policies and procedures to eliminate racial profiling and to stop practices that encouraged racial profiling. Policies and procedures that would have been established for state and federal law enforcement agencies would have included:

- prohibiting racial profiling;
- collecting data on routine investigatory activities so that a determination can be made if law enforcement officers are practicing racial profiling, and submitting that data to the Attorney General;
- establishing independent procedures for receiving, investigating, and responding responsibly to complaints of racial profiling;
- disciplining law enforcement officers who practice racial profiling; and
- ending the practice of racial profiling by using other policies or procedures that the Attorney General deems necessary.

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<sup>42</sup> See CRS Report 97-265, *Crime Control Assistance Through the Byrne Programs* by Garrine P. Laney, CRS Report RS20539 *Federal Crime Control Assistance to State and Local Governments*, by Joanne O'Bryant, and CRS Report 97-196, *Community Oriented Policing Services: An Overview*, by Joanne O'Bryant.

Under provisions of another bill, H.R. 1907, any state or governmental unit seeking funding would also have had to have policies and procedures that included a record of the name and identification number of the law enforcement officer making the stop, characteristics of the car passengers including race, national origin, ethnic origin, the alleged traffic violation, whether a search was conducted and, if so, the legal basis for it, the results of the search, and whether a warning, citation, or arrest occurred as a result of the stop.

**Noncompliance.** Under provisions of H.R. 2074/S. 989, if the Attorney General determined that a state was not complying with provisions to eliminate racial profiling, the Attorney General could have withheld all or part of certain federal grants until compliance was established. The bill would have provided opportunities for a private party to report a grantee that violated anti-racial profiling provisions.

Measures such as H.R. 965 and H.R. 1907 would have used federal funds for highways, under the Interstate System and the National Highway System, to ensure that provisions prohibiting racial profiling were adopted and that standards were enforced. A maximum of 10% of funds apportioned to a state could have been withheld for noncompliance. A state's funds would have been held for three fiscal years before lapsing.

**Accountability.** To receive funding under a covered grant, H.R. 2074/S. 989 would have required a federal, state or governmental unit to have procedures for disciplining law enforcement agents who use racial profiling, although the specific disciplinary procedures were not outlined in the bill.

**Standards.** Several bills would have required either the Attorney General or the Commissioner of the U.S. Customs Service to submit a report summarizing data collected on routine investigatory activities. Bills also would have required federal agencies and states to establish standards for the collection of data and to review the effectiveness of procedures used to end the practice of racial profiling.

*Collection of Data.* Some legislative proposals were directed at federal agencies and others at states in requiring racial profiling data collection. Both H.R. 1996 and S. 799 would have required the Commissioner of U.S. Customs to conduct, annually, a study on detentions and searches of persons by the agency's personnel, during the preceding calendar year, that would have included the race, gender, and citizenship of travelers searched, the type of search conducted and the results of the search.

H.R. 2074/S. 989 would have required the Attorney General to establish standards for the collection of data no later than six months after passage of the act, including standards for setting benchmarks against which collected data could be measured. Specifically, the data collected would have included stops, searches, seizures, and arrests, to determine if law enforcement agencies were practicing racial profiling and to monitor the effectiveness of policies and procedures established to eliminate the practice.



Both S. 19 and H.R. 1778 would have required the Attorney General to collect nationwide data on:

- the alleged traffic infraction that led to the stop;
- the race, gender, ethnicity, and approximate age of the driver;
- the number of occupants in the vehicle;
- whether passengers were questioned on their immigration status;
- whether passengers were asked for immigration documents;
- whether an inquiry to the Immigration and Naturalization Service was made on car passengers;
- whether the vehicle was searched and if permission was requested for the search;
- whether a warning or citation was issued;
- whether anyone was arrested;
- any alleged criminal behavior by the driver that justified the search;
- any items seized, including contraband or money; and
- the duration of the stop.

H.R. 1778 also would have required a comparison of the number of stops made within 25 miles of the United States-Mexican border with the number of stops made within 25 miles of the United States-Canadian border.

In order to have federal funds fully apportioned to a state for use on federal-aid highways, H.R. 1907 would have required the state to maintain and allow public inspection of statistical information on every motor vehicle stop made by a law enforcement agent on a federal-aid highway.

**Reports.** H.R. 2074/S. 989 provided that not later than two years after the enactment of the act and then annually, the Attorney General would have had to submit a report to Congress on racial profiling by federal, state, and local law enforcement agencies that would have summarized data collected on routine investigatory activities. Also, the report would have included information on the status of racial profiling policies and procedures implemented by federal and state law enforcement agencies.

H.R. 1996 and S. 799, would have required similar information from the U.S. Customs Service, as noted earlier. In addition, the Commissioner of Customs would have been required to submit a report to Congress by March 31 of each year on the results of the study conducted the preceding calendar year.

**Civil Suits.** Only H.R. 2074/S. 989 would have permitted a victim of racial profiling to seek injunctive relief from the practice by filing a civil suit against the government employing a law enforcement agent practicing racial profiling, an agent of such a unit, and any supervisor of the agent. The suit could have been filed in either a state court or in a District Court of the United States. If routine investigatory activities of law enforcement officers in a jurisdiction had a disparate impact on racial or ethnic minorities, that would have been prima facie evidence of racial profiling. Further, if the plaintiff prevailed in the lawsuit, the plaintiff could have received reasonable reimbursement for attorney and expert fees.

**Complaints.** H.R. 2074/S. 989 would have provided funding for best practices development grants to support establishment of independent procedures at both the state and federal levels for receiving, investigating, and responding to complaints of racial profiling by law enforcement officers. Bill provisions would have provided funding to establish a system for disciplining law enforcement agents who practice racial profiling and, at the state level, their supervisors, but did not state what the disciplinary measures should be.

**Education and Training.** Bills that would have provided for training for law enforcement agents at the federal and/or state levels, were H.R. 1996, H.R. 2074/S. 989, S. 799, and S. 2114. H.R. 1996 would have required Customs Service inspectors and officials to have periodic training on procedures for detaining and searching travelers without the use of racial profiling. S. 799 would have required a review of why Customs Service personnel conducted certain searches, the results of the searches conducted, and the effectiveness of the searches in detecting contraband. H.R. 2074/S. 989 would have required that law enforcement officers receive training both to prevent racial profiling and to improve their interaction with the public. S. 2114 would have authorized the Attorney General to establish, in consultation with law enforcement agencies and civil rights groups, education and awareness programs on racial profiling and the negative effects of the practice on individuals and law enforcement. The purposes of the programs would have been to encourage state and local law enforcement agencies to stop racial profiling and to assist them in developing and maintaining adequate policies and procedures to do so. This bill would have provided for evaluation of best practices of programs.

**Privacy.** Bills containing provisions that would have protected the identity of any individual or law enforcement officer involved in a traffic stop include H.R. 1778, and H.R. 2074/S. 989. S. 19 and H.R. 1907 would have provided for the protection only of the identity of the driver of a car stopped.

## **Congressional Hearings**

### **108<sup>th</sup> Congress**

To date, no hearing has been held on racial profiling in the 108<sup>th</sup> Congress.

### **107<sup>th</sup> Congress**

**Senate Subcommittee on the Constitution, Federalism, and Property Rights.** The Senate Subcommittee on the Constitution, Federalism and Property Rights of the Judiciary Committee, on August 1, 2001, held a hearing on S. 989, the End Racial Profiling Act of 2001. Some witnesses, for example David Harris, Law Professor, University of Toledo College of Law, testified in support of the bill's provisions that would have required a DOJ study of traffic stops, would have required data collection and training, and would have offered grants to law enforcement agencies. To them, these just continued state and local law enforcement cooperative efforts to enhance public safety. Other witnesses, including Reuben M. Greenberg, Chief of Police, Charleston, South Carolina Police Department,

expressed concerns about certain provisions of the bill. They questioned whether the legislation would interfere in an area that states and localities are currently and legitimately addressing. Some opposed mandatory data collection and provisions that would deny funds to states and localities that do not comply with federal mandates. Representing the Grand Lodge Fraternal Order of Police, Steve Young opposed provisions that would have used statistical data against law enforcement officers and agencies in court. Young believed that the bill, rather than repairing the bonds of trust and respect between law enforcement and minority communities, would widen them because it presumed that racist tactics are commonly used by police departments. According to him, the definition of racial profiling was too broad because unless there was an eyewitness or a specific description of a suspect's race or ethnicity, a law enforcement officer could never use race as a factor in an investigation.<sup>43</sup>

**House Committee on Government Reform.** On July 19, 2001, the House Government Reform Committee held a hearing that focused on technology as a tool to eliminate racial profiling.<sup>44</sup> Witnesses identified advantages and disadvantages of using the two major visual technologies — analog and digital — in traffic stops. These surveillance systems are often mounted in the grill, on the dash or on the roof of a car, with a recorder placed in the trunk. Similar to the home VHS video cassette recorder, the analog video simply records an image on tape and the tapes are kept for a certain period of time and then either discarded or reused. With digital technology, the recorded image is converted into a digital file and recorded on either tape, flash memory cards, hard drives, CD ROMs or DVD discs. The advantages of video technologies are: they provide an objective documentation of events that the camera can see and hear; the material can be reviewed by supervisors and researchers; and they can influence in a positive way the behavior of a citizen and law enforcement officer. Video tapes also can be used as a teaching tool for law enforcement officers.

A disadvantage of using video technologies is that if relied upon solely to detect racial profiling, the device usually sees less than the officer can. Cameras may not show what precipitated the stop before filming began. The purchase price (\$3,000-\$5,000 per video camera) and maintenance of equipment are expensive. Maintenance is expensive because of the number of tapes used (typically, six patrol cars use over 500 tapes each month), of storage facilities that would be needed, and of the review of videos that a supervisor would have to conduct. Many systems are improperly installed and poorly maintained, resulting in poor audio and image quality. Most installations allow the operator to re-record which could result in tampering. Finally, privacy concerns are raised in using technological devices.

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<sup>43</sup> Testimony of Steve Young, National Vice President of the Grand Lodge, Fraternal Order of Police, in the U.S. Senate Subcommittee on the Constitution, Federalism and Property Rights, *S. 989, the End Racial Profiling Act of 2001*, [In] U.S. Congress, Senate Committee on the Judiciary, Subcommittee on the Constitution, Federalism and Property Rights, hearings on S. 989, the End Racial Profiling Act of 2001, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., Aug. 1, 2001, pp. 33-35.

<sup>44</sup> U.S. Congress, House Committee on Government Reform, *The Benefits of Audio-Visual Technology in Addressing Racial Profiling*, hearing, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., July 19, 2001 (Washington: GPO), 186 pp.

Former Commissioner of the U.S. Customs Service, Raymond Kelly, testified about the effective use that Customs made of technology in addressing charges of racial profiling.<sup>45</sup> According to him, technological devices reduced considerably the number of intrusive body searches that many travelers were subjected to at ports of entry into the United States and increased the amount of contraband discovered.

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<sup>45</sup> Ibid., pp. 136-140.

**Table 3. Racial Profiling Bills Introduced in 108<sup>th</sup> Congress: Selected Provisions**

Bill	Definition	Standards	Prohibition	Data		Complaints	Training	Grants	Civil Suits	Accountability	Penalties
				Collection	Specification						
H.Res. 515 (Bell)	—	—	—	X	X	X	—	—	—	—	—
H.R. 2364 (Title II) (Engel)	—	—	—	X	—	—	—	—	—	—	—
H.R. 3847	X	X	X	X	X	X	X	X	X	X	X
S. 16 (Title V) (Daschle)	X	—	X	—	—	—	—	—	—	—	—
S. 2112 (Voinovich)	X	—	X	—	—	X	X	X	—	X	X
S. 2132 (Feingold)	X	X	X	X	X	X	X	X	X	X	X

**Source:** This table summarizes provisions of the above identified racial profiling bills. For further details of provisions of these bills, see full text.

**Notes:** — Denotes “no provisions found”; X denotes “would provide for.”

**Table 4. Racial Profiling Bills Introduced in 107<sup>th</sup> Congress: Selected Provisions**

Bill	Definition	Standards	Prohibition	Data		Complaints	Training	Grants	Civil Suits	Accountability	Penalties
				Collection	Specification						
H.R. 965 (Norton)	—	X	X	—	—	—	—	—	—	—	X
H.R. 1907 (Norton)	X	X	X	X	X	—	—	—	—	—	—
H.R. 1778 (Jackson-Lee)	—	—	—	X	X	X	—	X	—	—	—
H.R. 1996 (Lewis)	—	X	X	X	X	—	—	—	—	—	—
H.R. 2074 (Conyers)	X	X	X	X	X	X	X	X	X	X	X
S. 19 (Daschle)	—	X	—	X	X	X	—	X	—	—	—
S. 799 (Durbin)	X	X	X	X	X	—	X	—	—	—	—
S. 989 (Feingold)	X	X	X	X	X	X	X	X	X	X	X
S. 2114 (Voinovich)	—	—	—	—	—	—	X	—	—	—	—

**Source:** This table summarizes provisions of the above identified racial profiling bills. For further details of provisions of these bills, see full text.

**Notes:** — Denotes “no provisions found”; X denotes “would have provided for.”