

TRAFFIC STOPS STATISTICS STUDY ACT OF 2000

MARCH 13, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HYDE, from the Committee on the Judiciary,  
submitted the following

R E P O R T

[To accompany H.R. 1443]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1443) to provide for the collection of data on traffic stops, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:  
Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Traffic Stops Statistics Study Act of 2000”.

**SEC. 2. ATTORNEY GENERAL TO CONDUCT STUDY.**

(a) **STUDY.**—

(1) **IN GENERAL.**—The Attorney General shall conduct a nationwide study of stops for traffic violations by law enforcement officers.

(2) **INITIAL ANALYSIS.**—The Attorney General shall perform an initial analysis of existing data, including complaints alleging and other information concerning traffic stops motivated by race and other bias.

(3) **DATA COLLECTION.**—After completion of the initial analysis under paragraph (2), the Attorney General shall then gather the following data on traffic stops from a nationwide sample of jurisdictions, including jurisdictions identified in the initial analysis:

(A) The traffic infraction alleged to have been committed that led to the stop.

(B) Identifying characteristics of the driver stopped, including the race, gender, ethnicity, and approximate age of the driver.

(C) Whether immigration status was questioned, immigration documents were requested, or an inquiry was made to the Immigration and Naturalization Service with regard to any person in the vehicle.

(D) The number of individuals in the stopped vehicle.

(E) Whether a search was instituted as a result of the stop and whether consent was requested for the search.

(F) Any alleged criminal behavior by the driver that justified the search.

(G) Any items seized, including contraband or money.

(H) Whether any warning or citation was issued as a result of the stop.

(I) Whether an arrest was made as a result of either the stop or the search and the justification for the arrest.

(J) The duration of the stop.

(b) **REPORTING.**—Not later than 120 days after the date of enactment of this Act, the Attorney General shall report the results of its initial analysis to Congress, and make such report available to the public, and identify the jurisdictions for which the study is to be conducted. Not later than 2 years after the date of the enactment of this Act, the Attorney General shall report the results of the data collected under this Act to Congress, a copy of which shall also be published in the Federal Register.

**SEC. 3. GRANT PROGRAM.**

In order to complete the study described in section 2, the Attorney General may provide grants to law enforcement agencies to collect and submit the data described in section 2 to the appropriate agency as designated by the Attorney General.

**SEC. 4. LIMITATION ON USE OF DATA.**

Information released pursuant to section 2 shall not reveal the identity of any individual who is stopped or any law enforcement officer involved in a traffic stop.

**SEC. 5. DEFINITIONS.**

For purposes of this Act:

(1) **LAW ENFORCEMENT AGENCY.**—The term “law enforcement agency” means an agency of a State or political subdivision of a State, authorized by law or by a Federal, State, or local government agency to engage in or supervise the prevention, detection, or investigation of violations of criminal laws, or a federally recognized Indian tribe.

(2) **INDIAN TRIBE.**—The term “Indian tribe” means any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe.

**SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

## PURPOSE AND SUMMARY

H.R. 1443, the Traffic Stops Statistics Study Act of 2000, requires the Attorney General to conduct a study by acquiring data from law enforcement agencies regarding the characteristics of those stopped for alleged traffic violations and the rationale for any subsequent searches resulting from those violations. The Attorney General is directed to perform an initial analysis, not later than 120 days after the date of enactment of the Act, of existing data, including complaints and other information concerning traffic stops motivated by race and other bias. In this initial analysis, the Attorney General will identify those jurisdictions which will participate as sites for the collection and submission of data for the traffic stop study. This initial analysis will be submitted to Congress and made available to the public. The Attorney General will conduct a 2-year study and provide the results of the findings of the study to Congress. In order to complete the study, the Attorney General is given authority to provide grants to those law enforcement agencies participating in the study for the collection and submission of the data.

The 2-year study will include consideration of such factors as the race, gender, ethnicity and age of the individual stopped, the traffic infraction alleged to have been committed that led to the stop, whether immigration documents were requested or an inquiry was made to Immigration and Naturalization Service with regard to any person in the vehicle, the number of individuals in the stopped vehicle, whether the search was instituted as a result of the stop, was consent given for the search, whether there was any alleged criminal behavior by the driver that justified the search, whether any contraband or money was seized, whether any warning or citation was issued as a result of the stop, whether an arrest was made as a result of either the stop or the search and the duration of the stop.

The data acquired under this section may not reveal either the identity of any individual stopped or of any law enforcement officer involved in the stop.

## BACKGROUND AND NEED FOR THE LEGISLATION

Race-based traffic stops turn driving, one of our most ordinary and quintessentially American activities, into an experience fraught with danger and risk for people of color. The offense of “D.W.B.” or “driving while black or brown” is well-known to African-Americans and Hispanics across the country. There are virtually no African-American males—including Congressmen, actors, athletes and office workers—who have not been stopped at one time or another for a pretextual traffic violation.<sup>1</sup> Because traffic stops can happen anywhere and anytime, millions of African-Americans and Hispanics alter their driving habits in ways that would never occur to most white Americans. Some completely avoid places like all-white suburbs, where they fear police harassment for looking “out of place.” Some intentionally drive only bland cars or change the way they dress. Others who drive long distances even

<sup>1</sup> Thomas Fields-Meyer, Maria Eftimiades, Hugh Bronstein, Ron Arias, Shawn Lewis Ramirez, Gail Schiller and Glenn Garelik, *Under Suspicion, People*, June 15, 1996 at 40.

factor in extra time for the traffic stops that seem inevitable. H.R. 1443 is intended to provide a comprehensive analysis of the scope and magnitude of the racial profiling problem.

While the catch phrase “driving while black” encapsulates the perception of the minority community, the definition and legal implications of racial profiling defy such simplification. The most sound definition of racial profiling embraces the widespread police practice of using race as a factor in deciding whom to target for law enforcement. Properly understood, racial profiling occurs whenever police routinely use race as a *negative* signal that causes an officer to react with suspicion.

Some commentators define racial profiling as occurring when a police officer stops, questions or arrests someone solely on the basis of race or ethnicity. This crude definition tells the reality of the exercise of power over one’s liberty by bigoted law enforcement officers intent on harassment. To fulminate against police officers who engage in such tactics, however, requires no real confrontation with the complex intersection between race, crime and law enforcement, because few would defend police surveillance triggered solely by race. Moreover, our legal system stands ready to sanction officers who use race alone as a signal of suspicion. Such a definition, however, diverts attention from the more complex and problematical use of race as trigger for suspicion that captures a disproportionate number of innocent minorities.

Media coverage of the phenomenon of racial profiling has produced an abundance of anecdotal evidence concerning abusive practices. Front-page stories, editorials and columns have appeared in every major national newspaper and countless local newspapers. The phrase “driving while black,” used with bitter familiarity for years in magazines and newspapers targeted for African-Americans, can now be found in the pages of national newspapers and featured as lead stories in television news commentary shows. While the media fascination with a social problem does not necessarily make it real, the dozens of stories in the press, combined with the lawsuits and recent State legislative actions, make a powerful argument that “driving while black” is not just an occasional problem.

The majority of white, as well as black Americans say that racial profiling is widespread in the United States today. In a 1999 Gallup Poll Social Audit on Black/White Relations in the U.S., 59% of a sample of national adults aged 18 and older say that racial profiling is widespread. 81% of the American public say they disapprove of this practice.<sup>2</sup>

Statistical evidence gathered in the course of litigation shows a clear pattern of racially discriminatory traffic stops and searches. An ACLU analysis of Maryland State Police data showed that 73% of cars stopped and searched on Interstate 95 between Baltimore and Delaware from January 1995 through September 1997 were those of African-Americans, despite the fact that only 14% of those driving along that stretch were black.<sup>3</sup> Moreover, police found nothing in 70% of those searches.<sup>4</sup> Similarly, in Florida, 70% of the per-

<sup>2</sup> Gallup News Service Poll, December 9, 1999

<sup>3</sup> Report of John Lamberth, PhD., ACLU Freedom Network, [www.aclu.org](http://www.aclu.org).

<sup>4</sup> *Id.*

sons stopped on I-95 were African-American, even though they made up less than 10% of the driving population.<sup>5</sup>

Data shows that Hispanics are similarly targeted for a disproportionate law enforcement focus. An ACLU analysis of Illinois State Police data found that, while Hispanics comprise less than 8 percent of the population and take fewer than 3 percent of the personal vehicle trips, they comprise approximately 30 percent of the motorists stopped by State police drug interdiction officers for discretionary offenses, such as failure to signal a lane change or driving one to four miles over the speed limit.<sup>6</sup> Further, the data revealed that State troopers singled out Hispanic motorists for searches of their vehicles, comprising 27 percent of all searches. Paradoxically, though troopers asked a higher percentage of Hispanic motorists than white motorists for consent to search their vehicles, they found contraband in a lower percentage of the vehicles driven by Hispanic motorists.

Dramatic statistics have formed the basis for legal findings of racial profiling across the nation. Lawsuits alleging racial profiling have been filed in numerous States including Colorado, Florida, Illinois, Maryland, New Jersey, Oklahoma and Pennsylvania. For example, in Colorado a class action suit filed on behalf of 400 individuals asked the court to halt racially based stops by a sheriff's department highway drug interdiction unit. Traffic infractions were cited as the reason for stopping the motorists, but tickets were not issued. The court ruled that investigatory stops based solely on a motorist's match with specified drug courier indicators violated the fourth amendment's prohibition against unreasonable seizures.<sup>7</sup> A settlement was reached that awarded damages to the plaintiffs and disbanded the drug unit.

Similarly, in 1993, the Ninth Circuit Court of Appeals recognized racial profiling as a problem after reviewing the case of a Santa Monica police officer who was found to have violated the rights of two black men he stopped and arrested at gunpoint.<sup>8</sup> The Court found that the case was an example of how police routinely violate the constitutional rights of minorities, particularly black men, by stopping them without just cause.<sup>9</sup> Most recently, a study commissioned by the State of New Jersey found that minorities were five times more likely to be stopped on the New Jersey Turnpike than non-minorities.<sup>10</sup> Based upon these findings and the results of a Department of Justice investigation, New Jersey settled a racial profiling case brought by the Department under 42 U.S.C.A. § 14141 to remedy an alleged pattern or practice of racially discriminatory conduct by troopers employed by the New Jersey State Police. The consent decree in that action appoints an independent monitor, requires the State to collect traffic stop data and to create

<sup>5</sup>David A. Harris, "Driving While Black and All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops," *The Journal of Law and Criminology*, Vol. 87, No. 2 (1997) at 544-82.

<sup>6</sup>ACLU Report, *Driving While Black: Racial Profiling on Our Nation's Highways* (1999) at 27-28.

<sup>7</sup>*Whitfield v. Board of County Commissioners of Eagle County*, 837 F. Supp. 338 (D. Colo. 1993).

<sup>8</sup>*Washington v. Skystone-Eagle Lambert*, 98 F. 3d 1181 (9th Cir. 1996).

<sup>9</sup>*Id.* at \* 42.

<sup>10</sup>Interim Report, New Jersey Attorney General's Office (1999).

new citizen complaint, training and early warning procedures for the State police.<sup>11</sup>

At the same time that racial profiling practices by law enforcement have been expanding, the Supreme Court's sensitivity to fourth amendment rights has been contracting. In *Whren v. United States*, the Supreme Court declared that any traffic offense committed by a driver was a legitimate legal basis for a stop, regardless of the officer's subjective state of mind.<sup>12</sup> In practice, the *Whren* decision has given the police virtually unlimited authority to stop and search any vehicle.<sup>13</sup> Because State traffic codes identify so many different infractions, every driver probably violates some provision of the vehicle code at some time, during even a short drive.

Since *Whren*, the Court has extended police power to stop and search drivers and cars even further. In *Ohio v. Robinette*, the Court rejected the argument that officers seeking consent to search a car must tell the driver he is free to refuse permission and leave.<sup>14</sup> The Court in *Maryland v. Wilson* gave police the power to order passengers out of stopped cars, whether or not there is any basis to suspect they are dangerous.<sup>15</sup> Most recently, in *Wyoming v. Houghton*, the Court ruled that after the lawful arrest of the driver, the police can search the closed purse of a passenger even though she had nothing to do with the alleged traffic infraction and had done nothing to suggest involvement in criminal activity.<sup>16</sup> As this line of cases have made traffic stops even harder to challenge, the controversy around racial profiling will continue to grow.

Lack of comprehensive nationwide empirical data on racial profiling has led to the call for systematic data collection. In June 1999, the President issued a memorandum on fairness in law enforcement that addressed the issue of racial profiling. The memorandum directed the Departments of Justice, the Interior and the Treasury to design and implement a system for collecting and reporting statistics on the race, ethnicity and gender of individuals who are stopped or searched by law enforcement.<sup>17</sup> Several States have introduced legislation that would require their State and/or local police departments to collect data on the race of the drivers pulled over for traffic stops. As of March of 2000, 20 State legislatures have data collection bills pending. Two States—North Carolina and Connecticut—have already passed comprehensive legislation requiring the collection and compilation of data on traffic stops. Over 100 police jurisdictions have begun collecting data on a voluntary basis including among others—the States of Michigan, Rhode Island and Florida, and the cities of Houston and San Francisco.

<sup>11</sup> *U.S. v. State of New Jersey et al.*, Civil No. 99-5970 (D. N.J.).

<sup>12</sup> *Whren v. United States*, 116 S.Ct. 1769 (1996).

<sup>13</sup> David Harris, *The Open Road is Not so Free*, *The Legal Times*, July 14, 1997 at S42.

<sup>14</sup> *United States v. Robinette*, 117 S.Ct. 417 (1996).

<sup>15</sup> 519 U.S. 408 (1997).

<sup>16</sup> 526 U.S. 295 (1999).

<sup>17</sup> The three departments were tasked with developing data collection plans within 120 days and implementing field tests within 60 days of finalizing the plans. After 1 year of field testing, the departments are to report on complaints received that allege bias in law enforcement activities, the process for investigating and resolving complaints and their outcome.

## CONCLUSION

Widespread racial profiling practices deeply undermine the legitimacy—and, therefore, the effectiveness—of the criminal justice system, making police work that much more difficult and dangerous. Pretextual traffic stops fuel the belief that the police are unfair and biased. H.R. 1443 requires the gathering of solid, comprehensive information to determine the nature and extent of the problem of racial profiling.

## HEARINGS

No hearings were held in the 106th Congress on H.R. 1443.

## COMMITTEE CONSIDERATION

On March 1, 2000, the committee met in open session and ordered reported favorably the bill H.R. 1443 by a voice vote, a quorum being present.

## VOTE OF THE COMMITTEE

There were no recorded votes in the committee during the consideration of H.R. 1443

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the committee sets forth, with respect to the bill, H.R.1443, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, March 9, 2000.*

Hon. HENRY J. HYDE, *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1443, the Traffic Stops Statistics Study Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts for this estimate are Mark Grabowicz (for federal costs), who can be reached at 226-2860, and Theresa Gullo (for the state and local impact), who can be reached at 225-3220.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.  
Ranking Democratic Member

*H.R. 1443—Traffic Stops Statistics Study Act of 2000.*

CBO estimates that enacting this legislation would have no significant impact on the federal budget. The bill would not affect direct spending or receipts, so pay-as-you-go procedures would not apply. H.R. 1443 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

H.R. 1443 would require the Attorney General to conduct a nationwide study of stops of vehicles made by law enforcement officers for traffic violations. Under the bill's provisions, the Attorney General would collect and analyze data from a sample of law enforcement agencies and submit two reports to the Congress within two years of the bill's enactment. The Attorney General would be authorized to provide grants to states to provide data for this study; however, the agency anticipates cooperating with law enforcement agencies that already collect data required for this study. Consequently, we estimate the cost of state and local grants that could be provided under this bill would be minimal. Based on information from the Department of Justice, we estimate that implementing this legislation would cost less than \$500,000 annually over the next two years, assuming appropriation of the necessary amounts.

H.R. 1443 would only have an impact on the budgets of state, local, or tribal governments if those governments accept grant funds and choose to provide information to the Attorney General in connection with this study. In any event, the costs of providing this information are not likely to be significant.

The CBO staff contacts for this estimate are Mark Grabowicz (for federal costs), who can be reached at 226-2860, and Theresa Gullo (for the state and local impact), who can be reached at 225-3220. This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

*Section 1. Short Title*

The title of this Act is the “Traffic Stops Statistics Study Act of 2000.”

*Section 2. Attorney General to Conduct Study*

Section 2 of H. R. 1443 authorizes the Attorney General of the Department of Justice to conduct a study of law enforcement stops for traffic violations. The study shall include a collection and analysis of information identifying the traffic infraction alleged to have been committed that led to the stop; the race, gender, ethnicity and age of the driver stopped; whether immigration status was questioned, immigration documents requested or an inquiry made to the Immigration and Naturalization Service with regard to any person in the vehicle; the number of individuals in the stopped vehicle; whether there was a search conducted as a result of the stop and whether consent was requested for the search; whether any items including contraband or money were seized; whether any warning or citation was issued as a result of the stop; whether an arrest was made as a result of either the stop or the search and the justification for the arrest; and the duration of the stop. This section gives the Attorney General no longer than 2 years to complete the study and report the results of the study to Congress.

This section also requires that within 120 days of enactment of this Act, the Attorney General shall perform an initial analysis of the existing data concerning traffic stops motivated by race and bias, report this to the Congress and identify the jurisdictions that will participate in the study.

*Section 3. Grant Program.*

This section authorizes the Attorney General to provide grants to law enforcement agencies to assist them in the collection and submission of traffic stops data.

*Section 4. Limitation on Use of Data*

The section provides that data acquired under this section may not reveal either the identity of any individual stopped or of any law enforcement officer.

*Section 5. Definitions*

This section defines “law enforcement agency” and “Indian tribe” for purposes of this Act.

*Section 6. Authorization of Appropriations*

This section authorizes such sums as may be necessary to carry out this Act.

## AGENCY VIEWS

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF LEGISLATIVE AFFAIRS,  
*Washington, DC, June 23, 1999.*

Hon. HENRY J. HYDE, *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: I am writing to express the views of the Department of Justice on H.R. 1443, the Traffic Stops Statistics Act of 1999. The Department supports the collection of data on traffic stops as envisioned in this legislation. We believe that a study as outlined in the legislation would provide valuable information.

By studying data that reveal the race and ethnicity of motorists who are stopped, the reason they are stopped and the outcomes of the stops, we can begin to assess the extent of the profiling based on race or ethnicity. Gathering the facts about traffic stops is an important step in our work with law enforcement to develop possible solutions.

Also, we are pleased that the current version of the bill authorizes funding for the study, including grants to law enforcement agencies to collect and submit traffic stop data that will be helpful to the Attorney General's analysis. I am sure you are aware that one obstacle to a study of this kind is the lack of resources at the local level for the collection of data.

We have also considered how the legislation would be implemented if enacted. One method of obtaining nationwide information about traffic stops would be to collect data through the National Crime Victimization Study (NCVS), an annual survey of households across the country. Such data would not, however, provide data broken down by individual law enforcement agencies. Instead, data on individual agencies would have to be collected directly from those agencies. Thus, we would supplement the NCVS results with data obtained from those agencies that are now beginning to collect traffic stop data and from agencies receiving the grants contemplated by the legislation.

Finally, we would suggest that three revisions be made to the legislation. First, we believe that the "initial analysis" called for in the bill would be more detailed if the Attorney General had 180 days to complete the analysis. Second, we recommend deleting the requirement that the Attorney General identify in the initial analysis those agencies from which the data for the study will be collected. The Justice Department will likely not know at that point which agencies will be applying for grants to collect traffic stop data. Third, we believe the Justice Department's ability to report statistics by individual agencies is dependent on the agencies' willingness to undertake data collection and then submit the results to the Department. Several organizations have urged that the data be used solely for research and statistical purposes, and that the agency reporting the data be given an opportunity to address any problems that the data identify. We recommend that appropriate language regarding the limitations on use of the data be added to address these concerns.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

JON P. JENNINGS, *Acting Assistant Attorney General.*

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