



207 East Buffalo Street, Suite 325
Milwaukee, WI 53202-5774

April 13, 2009

Representative Jason Fields
Wisconsin State Assembly
Room 221 North
State Capitol
P.O. Box 8952
Madison, WI 53708

Via Facsimile

Dear Representative Fields,

The American Civil Liberties Union of Wisconsin (the ACLU/WI) is a membership organization whose mission since 1930 has been to promote the civil liberties and civil rights of all Wisconsin residents. The ACLU/WI is opposed to any police initiated action that relies upon the race, ethnicity, national origin or religion of an individual rather than the behavior of that individual or information that leads the police to a particular individual who has been identified as being engaged in unlawful activity. We believe the police may not use racial, ethnic or religious stereotypes as factors in selecting whom to stop and whom to search.

The previous paragraph gives a definition of racial profiling that comes from the Governor's Task Force on Racial Profiling, Report, 2000. Governor Tommy Thompson created this task force in 1999. Judge Maxine Aldridge White chaired the task force, which included Representative Pedro Colon among a bipartisan and diverse group of district attorneys, law enforcement professionals, legislators and others. We mention the Governor's Task Force on Racial Profiling to acknowledge that racial profiling has been a serious concern for years. The Report includes a quote from Chief Joseph, "Good words do not last long unless they amount to something." Which brings us to 2009 Executive Budget – Assembly Bill 75.

As you obviously know in Assembly Bill 75 there are two proposals related to racial profiling, one addressing the problem of racial profiling and a second dealing with primary seat belt enforcement that could exacerbate the problem of racial profiling.

Section 2449 of 2009 Assembly Bill 75 creates a system whereby law enforcement agencies in populous counties are required to collect information concerning motor vehicle stops. The agencies report the information to the Department of Justice, which

then compiles and analyzes the information to determine if members of racial minorities have been stopped or searched disproportionately. If so, then the DOJ determines whether the disparity is the result of racial profiling. DOJ prepares an annual report.

Section 2991 of 2009 Assembly Bill 75 removes the prohibition against primary seat belt enforcement currently in Wis. Stat. § 347.48 (2m) (gm). Under the bill, officers stopping a vehicle solely to determine compliance with seat belt use requirements would still be subject to any constitutional requirement that the officer have probable cause to believe that a violation has occurred.

The American Civil Liberties Union of Wisconsin is concerned that primary seat belt enforcement would result in unlawful discriminatory stops and searches. *Until the potential for abuse of primary seat belt enforcement is addressed adequately based on its actual use, the ACLU of Wisconsin will oppose enactment of Section 2991.*

We believe that addressing racial profiling in regard to all motor vehicle stops is part of the way to address our concern. We thank you and your Milwaukee colleagues for your leadership on this issue. We commend Governor Jim Doyle for including Section 2449, which provides for some data collection and analysis to address racial profiling. However, there is more work to be done.

Attorney General Van Hollen in the written version of his March 17, 2009 testimony before the Joint Committee on Finance questioned this proposal's utility. (See pages 5-6.) His testimony reads in part, "I question whether it is ever possible to determine whether motor vehicle stops are the result of racial profiling merely by looking at raw demographic data and not looking at the context and behaviors in each individual stop and at those situations where a stop was not made." Apparently, the Attorney General fails to appreciate what this proposal asks the DOJ to do. The first step for DOJ is to analyze the raw demographic data to determine if racial minorities are being stopped or searched disproportionately. The second step is to determine whether any disparity is the result of racial profiling.

We would remind the Attorney General that you can't manage what you don't measure. We don't know the extent of racial profiling in Wisconsin – we only know the strong anecdotal evidence and that polls have shown that a majority of both African Americans and whites believe that racial profiling is widespread across America. Getting the raw data compiled and analyzed by DOJ will suggest where the DOJ, police supervisors from the reporting agencies, legislators and others should investigate further. Further investigation will assess the context, whether it points to a "bad apple" in a particular department, a shift or squad that may have problems, or a systemic problem related to poor training or leadership. Even if the analysis determines that racial profiling is not an issue for a particular law enforcement agency, there is a substantial benefit in finding out. A bona fide analysis explained to the community will diminish suspicion and resentment in targeted communities, thereby making them more likely to cooperate in police investigations.

Unfortunately, the Governor's data collection and analysis proposal currently is inadequate.

Section 2449 only includes the 11 most populous counties in our state. It exempts 61 other counties, whose residents and visitors deserve to have the same level of police service and constitutional protection. Remarkably, if limited to counties having a population of 125,000 or more, then Fond du Lac, La Crosse and Ozaukee counties among others would not be included. *We urge you and your fellow legislators to amend this provision to provide comprehensive coverage including every county, the University of Wisconsin campus police departments, and the State Patrol.*

Also, the 2000 Report of the Governor's Task Force on Racial Profiling recommended that "appropriate funding of initiatives should be sought from federal, state and local government and private sources and provided to law enforcement to establish programs to address the perception and problem of racial profiling during traffic stops." (See page x.) The report is correct in suggesting that all levels of government have an interest in paying for this proposal.

When the state is offering an important management tool to law enforcement agencies, it is not unreasonable to expect local agencies to bear some of the cost. And we should not exaggerate new costs, because many agencies already have started data collection or have the technology in place. Departments with in-vehicle computer terminals (MDTs) will have almost no additional costs.

The state should also be looking for other sources of support. These sources should include the \$30 million in federal stimulus funds which Governor Doyle wants to use for law enforcement. And it should include if possible, the nearly \$15 million to \$20 million that would come to the state from federal sources, if the state adopted primary seat belt enforcement.

Wisconsin should carefully evaluate primary seat belt enforcement, if it is adopted. One aspect of that evaluation should include an investigation into whether or not it is applied in a discriminatory way. *The DOJ should determine after a reasonable period if primary seat belt enforcement stops are plagued by racial profiling. If so, the prohibition against primary seat belt enforcement should be automatically re-instated.*

We urge you to urge your colleagues on the Joint Committee on Finance to strengthen the proposed budget's racial profiling section and to evaluate and potentially sunset its primary seat belt enforcement section.

Thank you for your attention.

Sincerely,

Chris Ahmuty
Executive Director

Renee Crawford
Associate Director

cc: Senator Miller, Representative Pocan and members of Legislature by email.