



WRITTEN TESTIMONY

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REGARDING SENATE BILL 1448

**HOUSE OF REPRESENTATIVES
COMMITTEE ON CRIMINAL JURISPRUDENCE**

MAY 8, 2007

Dear Members of the Committee,

My name is Molly Totman. I am the Senior Policy Analyst for the Texas Criminal Justice Coalition. Thank you for allowing me this opportunity to present testimony regarding Senate Bill 1448 by Senator West.

Texas' racial profiling law (S.B. 1074, passed in 2001) requires every Texas law enforcement agency to annually create a report on the race of individuals they stop and search and submit that to their local governing body. Because no central repository was written into the law to collect and analyze the data on a statewide level, the Texas Criminal Justice Coalition (TCJC) has served as the sole statewide repository and analyst of annual racial profiling reports from Texas law enforcement agencies since the inaugural year of data reporting in 2002.

WHAT WOULD S.B. 1448 DO?

- (1) Most significantly, S.B. 1448 would create a statewide repository for racial profiling reports at TCLEOSE (the Texas Commission on Law Enforcement Officer Standards and Education), which is currently responsible for developing and implementing training program curricula for peace officers, including racial profiling training.**

Essentially, agencies would be required to submit a copy of their annual data report both to their local governing body – to best maintain local oversight – as well as to TCLEOSE. In turn, TCLEOSE would analyze the submitted data on a statewide level.

TCLEOSE staff would also be able to assist officers with technical issues (legal requirements of the law), and help members of the public understand the data analysis. In 2006, TCJC received nearly 300 calls for information from law enforcement agencies that were unclear about what the law requires of them. Although we want to continue to foster these relationships and serve in this educational capacity, having an additional entity to provide technical assistance would be more efficient for all involved.

- (2) The bill would require TCLEOSE, Bill Blackwood,¹ and the University of North Texas (UNT) to develop a standardized reporting format for reports.**

This provision is extremely important. Through TCJC's collection of reports and data analysis efforts during the past 4 years, we know that law enforcement agencies continue to have problems complying with the reporting requirements of Texas' racial profiling law.

In fact, a review of 2005-year data reveals that nearly 10% of surveyed agencies did not report all required data elements, while 20% did not break out all data elements by required

¹ The Bill Blackwood Law Enforcement Management Institute of Texas (LEMITE) was created by the 70th Texas Legislature to develop the administrative, analytical, and executive skills of current and future law enforcement officials at no cost to either the participant or his/her agency. Public administration, management issues, the political, legal, and social environments of policing, and advanced technical issues are studied in detail. In September, 1993, the Texas Legislature placed LEMITE under the control of the President of Sam Houston State University and moved the headquarters to Huntsville.

racial categories. This means that submitted data was missing the exact components that the law intended to study.

The majority of non-compliant agencies are failing to meet the law's requirements because the law did not create a standardized reporting format (like a template or chart) to assist agencies in their data collection and reporting processes. As a result, agencies are interpreting the data collection and reporting provisions of the law differently. This, in addition to the lack of resources (like computers or copy machines) at many agencies, causes problems with non-comparable data in certain situations.

Streamlined and standardized reporting would help to create more usable and cost-effective data that could assist police supervisors in making informed, internal policy changes to improve the way they protect the public.

A standardized reporting format will also prevent agencies from submitting unnecessary information in their reports (like a history of their city or agency, personnel charts, or photos of their agency's vehicles) – which only wastes the agency's time and resources. Additionally, it will prevent agencies from having to spend time re-compiling their data when the public determines that their initial report was not done correctly.

NOTE: Ideally, the repository entity would be able to implement an online reporting format for law enforcement agencies, which would ease the speed with which the agencies could transmit their annual information. Many agencies send large bundles of information to TCJC and other requestors in response to open records requests; they are paying heavy postage costs, as well as costs for certified mail delivery. Implementation of an online submission format would eliminate those costs.

Electronically reported and stored data would also allow interested members of the public to contact the repository for information rather than having to burden agencies with open records requests. Agencies must incur legal expenses and administrative costs when providing their reports to members of the public. A repository could offer individuals easier access to racial profiling information about local agencies; the public could also view a majority of the data online if an online reporting format is established.

(3) The bill would allow TCLEOSE to charge an agency a \$1,000 fine for intentionally failing to report required data after a disciplinary hearing into that failed reporting.

To engage in report collection and data analysis efforts, TCJC mails open records requests for racial profiling reports and related information to law enforcement agencies. In 2006, we mailed requests to 1,074 agencies to get 2005-year data. We had a response rate of 58% to those requests. Subsequent requests for the information were made first by the Office of Senator Royce West, and then again by the Office of the Attorney General to agencies that still had not replied. Ultimately, 96 agencies either (1) did not respond to the open records request or responded too late to be included in our analysis, (2) did not provide usable information, or (3) never created an annual report or could not locate a copy of it. These factors all prevent the timely and comprehensive analysis of statewide data. A repository that agencies are required to submit their reports to would best ensure the accurate collection and consistent reporting of racial profiling data.

A repository entity would also be in the best position to track which agencies, over time, are having difficulty meeting the law's requirements. TCJC has found that, throughout the years as we have sent the open records requests for reports and information, certain agencies have continually failed to respond to initial requests for information – either within the time allotted under Texas' Public Information Act, or ever. Because by this point (after 4 years of reporting requirements), no agency should have an excuse for failing to submit a report, it seems Texas agencies are facing larger problems with management, efficiency, and internal information flow. A repository entity could track these agencies and help them to comply with both the racial profiling law and the Public Information Act. It is no longer excusable that some agencies continue to comply with these laws year in and year out, while others never do.

NOTE: By including the word “intentionally” in this provision of S.B. 1448, the bill exempts from civil penalty those agencies that had legitimate reasons for failing to report (including a new Chief Administrator's lack of knowledge about the law's reporting requirements, or an emergency situation).

(4) Finally, the bill would create a funding mechanism to support the creation of the repository.

S.B. 1448 imposes a new court cost (a 15-cent “civil justice fee”) to be paid by defendants convicted of moving violations in certain county courts.

According to the Fiscal Note associated with the bill, the funds that could be raised with a 15-cent civil justice fee would be \$181,000 during first year and \$438,000 by 2012. With these collected fees, costs of the repository – including salary costs and retirement benefits for two employees, as well as equipment costs – would be offset.

In addition, our counties and municipalities stand to make money with passage of this bill, since they remit the collected civil justice fees, *less a 10% collection fee*, to an account in the General Revenue Fund.

Bottom line: This repository would be a fully self-sufficient, self-sustaining entity.

WHY IS STATEWIDE DATA ANALYSIS IMPORTANT?

- Collection of reports on a statewide level allows the State access to data relating to what's happening on our highways. Officials can see trends of certain behavior (for instance, when certain types of searches are more likely to result in findings of contraband). This can help agencies develop more effective policing methods.
- A repository for reports (which establishes a standardized reporting format for data and can make that data easily accessible by other agencies) will allow for apples-to-apples comparisons of the data, in turn enabling law enforcement agencies to compare their data to that of other agencies, and making it more clear which agencies may need to make some improvements.

For instance, standardized data can point out patterns of profiling by officers or departments, which departments need to work to rectify through policy or personnel changes:

- Specifically, agencies can change policies that will improve the way they, for instance, allocate resources and protect the public. TCJC's reports, based on self-reported data from law enforcement agencies, continue to reveal that the vast majority of consent searches result in no findings of wrongdoing. In 2005, a representative with the Texas Municipal Police Association testified before the Texas Senate Criminal Justice Committee about this fact that consent searches are only rarely productive, stating that in his experience, "the vast majority of the time, we found nothing." So, high consent search rates lead to a question of resources. Since it seems officer time is being diverted away from actual crime-fighting tasks, many feel that law enforcement should redirect its energy away from what is considered to be a fruitless police practice, in turn saving departments (and taxpayers) money by letting them do more with the police they have.
- Or, agencies can use the data to weed out bad officers. Although in their required annual reports, agencies are prohibited from identifying individual officers or individual detainees, they can track that information internally to determine if unexplained disparities of bias-based profiling exist.

Essentially, the relationship between the community and law enforcement is based on confidence and trust. When law enforcement practices are perceived to be biased or unfair, the general public, and especially minority communities, are less willing to trust and confide in officers, report crimes, be witnesses at trials, or serve on juries. Agencies have a clear interest in ridding their departments of officers perpetuating racially based practices.

- On the other hand, sound and reliable data provided across agencies can show that officers are acting *properly* – and can help disprove false claims or counter allegations of racism.
- Furthermore, more accurate and standardized data can show which agencies are employing best practices. Some supervisors have expressed that, had they understood the value of data findings sooner, they would have changed internal policies earlier to mirror those already implemented by other agencies for the sake of efficiency and productivity.

I appreciate the opportunity to testify before this committee and to offer our organization's ideas about this important issue. S.B. 1448 would strengthen our state racial profiling law and help to ensure that our law enforcement agencies have access to reliable data that will enable them to provide value-driven police services throughout Texas. In turn, the expansion of effective community policing practices will allow both officers and civilians to assist each other in encouraging communication and improving the protection of the public on our roads. We hope that this committee will approve Senator West's bill. Law enforcement agencies and taxpayers invest significant resources in data collection and deserve accurate data comparisons and analysis.