HB 2002 Work Group on the Prevention of Profiling by Law Enforcement

Report to the Legislature

December 1, 2015

INTRODUCTION

When any part of the American family does not feel like it is being treated fairly, that's a problem for all of us. It's not just a problem for some. It's not just a problem for a particular community or a particular demographic. It means that we are not as strong as a country as we can be. And when applied to the criminal justice system, it means we're not as effective in fighting crime as we could be.

-President Barack Obama
December 2014

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STATE OF OREGON
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WORK GROUP ON THE PREVENTION OF PROFILING BY LAW ENFORCEMENT

MEMBERS

Ellen F. Rosenblum
Attorney General of the State of Oregon, Chair

John Haroldson
Benton County District Attorney

Kayse Jama
Center for Intercultural Organizing

Anil Karia
Portland Police Association

Kimberly McCullough
American Civil Liberties Union

Jason Myers
Marion County Sheriff

Brook Reinhard
Oregon Criminal Defense Lawyers Association

Constantin Severe
Portland City Independent Police Review Board

John Teague
Chief of Police, City of Keizer

Irma Valdez
Attorney in Private Practice

INTRODUCTION

Overview

Profiling by law enforcement is a long-standing and deeply troubling national problem that occurs when law enforcement targets people of color and other specific populations for criminal investigation solely because of their race, ethnicity, national origin, religion, or other characteristics bearing no relation to their criminality. When it occurs, profiling is profoundly damaging to both law enforcement and the communities they serve. Profiling alienates the community from law enforcement, causes law enforcement to lose credibility and trust, and discourages community members from relying on law enforcement for help and protection. This, in turn, deters the investigation and prosecution of criminal activity by making witnesses more reluctant to come forward, and generally makes policing harder, less rewarding, and less credible in the eyes of the public.

In their 2004 Report, *Threat and Humiliation*, Amnesty International USA offered national polling numbers on racial profiling based on very broad parameters including searches at airports and negative interactions with private security personnel at shopping stores. This report concluded that approximately thirty-two million Americans, a number equivalent to the population of Canada, report that they have at some point been profiled.[1]

At the national level, the U.S. Department of Labor's Bureau of Justice Statistics reports that for the year 2005, the most recent data available, "[p]olice actions taken during a traffic stop were not uniform across racial and ethnic categories."

- Black drivers (4.5%) were twice as likely as White drivers (2.1%) to be arrested during a traffic stop, while Hispanic drivers (65%) were more likely than White (56.2%) or Black (55.8%) drivers to receive a ticket.
- Whites (9.7%) were more likely than Hispanics (5.9%) to receive a written warning, while Whites (18.6%) were more likely than Blacks (13.7%) to be verbally warned by police.
- Black (9.5%) and Hispanic (8.8%) motorists stopped by police were searched at higher rates than Whites (3.6%).
- The "likelihood of experiencing a search did not change for Whites, Blacks, or Hispanics from 2002 to 2005.[2]

The Legislature's Charge to the Work Group

On July 13, 2015, Governor Kate Brown signed into law House Bill 2002, which created a prohibition against profiling by law enforcement in Oregon. In doing so, Oregon became the 31st state to explicitly prohibit this conduct by statute. House Bill 2002 introduces a new definition

[1] Benjamin Jealous and Niaz Kasravi, *Threat and Humiliation: Racial Profiling, Domestic Security, and Human Rights in the United States* (Amnesty Int'l USA, 2004); http://www.amnestyusa.org/sites/default/files/rp_report.pdf
[2] "Contacts Between Police and the Public, 2005," U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Special Report, at http://bjs.ojp.usdoj.gov/content/pub/ascii/cpp05.txt.

of profiling unique to the state of Oregon. This definition, by any measure one of the nation's broadest and most inclusive, defines "profiling" as occurring when:

> "[A] law enforcement agency or a law enforcement officer targets an individual for suspicion of a violating a law solely on the real or perceived factor of the individual's age, race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, homelessness or disability, unless the agency or officer is acting on a suspect description or information related to an identified or suspected violation of a provision of law."[3]

House Bill 2002 also created a Law Enforcement Profiling Work Group consisting of 10 members and to be chaired by the Attorney General. The Work Group, appointed in equal measure by the Governor, President of the Senate, and Speaker of the House of Representatives, is asked to:

> "(a) Propose a process to identify any patterns or practices of profiling as defined [above].
> (b) Identify methods to address and correct patterns or practices of profiling.
> (c) Prepare a report identifying any statutory changes needed, including recommendations for legislation, to the interim committees of the Legislative Assembly related to the Judiciary no later than December 1, 2015."[4]

This report will describe the work of each topical subgroup as endorsed by the full Work Group, and includes broad consensus recommendations for specific policy provisions appropriate for legislative consideration. It is the unanimous recommendation of all members that the Work Group be extended through 2017 to provide the concepts outlined within this report an opportunity for additional development and consideration prior to introduction as Legislative Concepts in the 2017 session.

History and Scope of the Work Group

The Work Group was appointed on August 21, 2015, and met for the first time on September 14th. In assessing the scope of the work necessary to provide meaningful legislative recommendations, the Work Group elected to form three policy subgroups as follows:

(1) The Subgroup on Law Enforcement Response (LER), chaired by Michael Slauson, Special Counsel on Public Safety for the Department of Justice.
(2) The Subgroup on Accountability and Monitoring (AMS), chaired by Erious Johnson, Civil Rights Director for the Department of Justice.
(3) The Subgroup on Data (DAT), chaired by Aaron Knott, Legislative Director for Department of Justice.

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[3] HB 2002 § 1(3).

[4] Oregon House Bill 2002 § 1(3); (2015).

The members of the Work Group met in various combinations eleven times between August 21 and December 1. The full Work Group met on September 21, October 14 and November 17. Each of the three subgroups met twice. In addition, the Work Group hosted two opportunities for public comment, in Portland on October 27 and Medford on November 5.

Procedural Justice

The Work Group considered the formation of a fourth subgroup, which would have related broadly to issues of procedural justice, a category meant to include the specific mechanisms by which acts of profiling occur, including but not limited to the excessive use of searches of vehicles, consent searches, and other procedural mechanisms. The Work Group ultimately determined that while these mechanisms bear direct relation to the most negative effects of profiling in the form of disparate rates of incarceration and arrest among certain populations, the rigid time constraints imposed by House Bill 2002 did not allow for a full exploration of this complex subject matter. It is worth noting, however, that any full examination of the consequences of profiling should eventually include an analysis of the procedural mechanisms by which certain people are arrested, prosecuted and convicted at a higher frequency than others.

RECOMMENDATIONS

The Work Group on the Prevention of Profiling by Law Enforcement should be extended to 2017. The Work Group will use that time to develop and finalize legislative concept language which shall endeavor to do the following:

- **IMPROVE TRAINING.** The adequacy of training on the recruit, management, and in-service levels should be examined in light of HB 2002. Opportunities to coordinate with the community in the development of curriculum should be explored. One common curricula provided by the Department of Public Safety Standards and Training (DPSST) should be implemented via regional trainings.

- **IMPROVE LAW ENFORCEMENT RESPONSIVENESS.** Law enforcement should be obligated to respond to a complaint of profiling with a statement explaining the ultimate disposition of the complaint. The response should be made within a reasonable time following the conclusion of the investigation and contain basic information about the resolution of the complaint.

- **PROVIDE COMPLAINT INVESTIGATION INFORMATION TO THE LECC.** Under HB 2002, all profiling complaints are required to be shared with the Law Enforcement Contacts Policy & Data Review Committee (LECC). However, there is no requirement that the final disposition of the complaint be shared with the LECC. This should be changed; law enforcement should provide standardized information to the LECC as to the ultimate disposition of a complaint, and the steps taken to investigate it.

- **PROMULGATE MODEL POLICIES.** The Chiefs of Police, Sheriffs, District Attorneys, LECC, and Attorney General should work together to craft a policy framework for prohibiting profiling under HB 2002's expanded definition, for filing complaints, for submitting all received complaints to the LECC, for establishing model timelines for the investigation of profiling complaints, and for facilitating the complaint process. This would accelerate and make more uniform the implementation of HB 2002 across all levels of law enforcement.

- **DEVELOP AN ACCOUNTABILITY STRUCTURE BETWEEN THE CIVIL RIGHTS DIVISION OF THE DEPT. OF JUSTICE, THE LECC AND LAW ENFORCEMENT.** All aggregated complaint data, along with any stop data collected, should be forwarded to the Civil Rights Division of the Oregon Department of Justice (ODOJ) by the LECC. If ODOJ sees evidence of a pattern or practice of profiling, they will enter into a collaborative discussion with the law enforcement body and provide technical guidance similar in nature to the recommendations offered by the US Dept. of Justice in the Federal system. If attempts at collaboration fail, ODOJ will publish the existence of a suspected pattern or practice of profiling, as well as any guidance provided and any steps taken at remediation. This report would be distributed to the Legislature,

Governor, county or city where the law enforcement body resides, and the US Dept. of Justice.

- **REQUIRE THE COLLECTION OF STOP DATA WITHIN DESIGNATED PARAMETERS.** Stop data should be collected as broadly as possible without unduly burdening local law enforcement agencies. This data should be collected in a way that does not imperil the safety of individual officers or violate collective bargaining obligations already in place. This data should be forwarded by the LECC to the Civil Rights Division of the Oregon Department of Justice to assist with investigations of patterns or practices of profiling as detailed above.

- **REQUIRE THE LECC TO GENERATE AN ANNUAL REPORT.** The stop and complaint data collected should be synthesized into a publicly accessible report meant to analyze trend data, isolate and explore best practices, and provide policy makers, law enforcement and the public with tools to inform their decision making around law enforcement policy development. The LECC already has this expertise, but it may need to be enhanced.

LAW ENFORCEMENT RESPONSE

Overview

The Law Enforcement Response (LER) subgroup members are District Attorney John Haroldson, Anil Karia, Sheriff Jason Myers, Brook Rinehard, and Irma Valdez, and the subgroup is chaired by Michael Slauson, Special Counsel on Public Safety for the Oregon Department of Justice. LER's purpose was to identify proactive approaches that law enforcement agencies could employ to prevent and respond to instances of police profiling. The group met at the Oregon Attorney General's office in Salem on October 12, 2015, and again on November 3, 2015.

Training

As defined in HB 2002 (2015), "profiling" occurs when:

> "[A] law enforcement agency or a law enforcement officer targets an individual for suspicion of a violating a law solely on the real or perceived factor of the individual's age, race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, homelessness or disability, unless the agency or officer is acting on a suspect description or information related to an identified or suspected violation of a provision of law."[5]

LER recognized that HB 2002 broadly defined profiling to include identifying traits such as political affiliation and homelessness.[6] The members quickly identified training as an integral component of any law enforcement response to profiling. The expanded definition of profiling in HB 2002 will require law enforcement to consider the impact police practices may have on classes of individuals not traditionally identified as targets of profiling while simultaneously

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[5] Oregon House Bill 2002 § 5(2); (2015).

[6] By contrast, the anti-profiling laws in many other states are limited to protected classes, such as race, religion, ethnicity, national origin, and gender. *See, e.g.*, Alaska House Joint Resolution 22 (2003) (race, religion, ethnicity, or national origin); Ark. Code Ann. §§ 12-12-1403 (race, ethnicity, national origin, or religion); Colo. Rev. Stat. 24-31-309 (race, ethnicity, age, or gender); Conn. Gen. Stat. §§ 54-1m (race, color, ethnicity, age, gender or sexual orientation); Ky. Rev. Stat. Ann. § 15A.915 (race, color, or ethnicity); Md. Code Ann., Transp. §25-113 (race or ethnicity); Minn. Stat. § 626.8471 (race, ethnicity, or national origin); Montana 44-2-117 (racial or ethnic status); Nebraska Revised Statute §§ 20-502 and 503 (race, color, or national origin); NV Rev Stat § 289.820 (2013) (race, ethnicity or national origin); Oklahoma 22 O.S. § 34.3 (racial and ethnic status); R.I. Gen. Laws § 31-21.2-2 (race, ethnicity, or national origin); Tenn. Code Ann. § 38-1-502 (actual or perceived race, color, ethnicity, or national origin); W. Va. Code §30-29-10 (race, ethnicity, or national origin). On the other hand, other states, like HB 2002, include identifying characteristics other than protected classes. *See, e.g.*, NM Stat § 29-21-2 (2013) (race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, physical or mental disability or serious medical condition). And some states, such as California, do not limit the scope of profiling to specific classifications at all. *See, eg.*, Cal. Penal § 13519.4 (defining profiling as, "the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped").

calling into question the adequacy of older training methods based on a narrower definition. Moreover, continued training on profiling-based topics increases cultural awareness and helps to illuminate implicit biases.

Implicit bias is "the relatively unconscious and relatively automatic features of prejudiced judgment and social behavior."[7] Implicit biases related to race have been found to impact decision making by police officers in the field, whether in shooter situations or conducting traffic stops.[8] Such biases, although often unintentional, clearly contribute to present racial disparities in the criminal justice system.[9] While implicit bias in law enforcement has received the majority of the attention by the public in recent years, ample evidence has demonstrated implicit biases in nearly all professions, ranging from strike-zone judgments made by Major League Baseball umpires,[10] employer hiring decisions,[11] how teachers pay attention to students in the classroom[12], and recommendations for cancer screenings made by physicians.

The implicit bias of community members can have a profound impact on law enforcement. Community members who initiate a call of suspicious activity can do so more quickly when observing a person from a demographic against which they harbor a bias. This leads a law enforcement interaction which has a basis in community bias, but not the bias of the law enforcement officer.

Implicit biases are malleable, and can be unlearned.[13] The effectiveness of implicit bias training further demonstrates its impact. More than 20% of all large U.S. employers utilize implicit bias training. These trainings show consistent benefit in the awareness and reduction of implicit biases.[14]

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[7] Brownstein, Michael, "Implicit Bias", *The Stanford Encyclopedia of Philosophy* (Spring 2015 Edition), Edward N. Zalta (ed.), http://plato.stanford.edu/archives/spr2015/entries/implicit-bias/.

[8] Stewart, S. G., & Covelli, E. (2014). STOPS DATA COLLECTION:The Portland Police Bureau's response to the Criminal Justice Policy and Research Institute's recommendations. http://www.portlandoregon.gov/police/article/481668.

[9] James, L., Klinger, D., & Vila, B. (2014). Racial and ethnic bias in decisions to shoot seen through a stronger lens: experimental results from high-fidelity laboratory simulations. Journal of Experimental Criminology, 10(3), 323–340.

[10] King, B., & Kim, J. "What Umpires Get Wrong," The New York Times (2014) http://www.nytimes.com/2014/03/30/opinion/sunday/what-umpires-get-wrong.html.

[11] Bertrand, M., Chugh, D., & Mullainathan, S. (2005). Implicit Discrimination. The American Economic Review, 95(2), 94–98; Carlsson, M., & Rooth, D.-O. (2007). Evidence of Ethnic Discrimination in the Swedish Labor Market Using Experimental Data. Labour Economics, 14(4), 716–729.

[12] Kumar, R., Karabenick, S. A., & Burgoon, J. N. (2014). Teachers' Implicit Attitudes, Explicit Beliefs, and the Mediating Role of Respect and Cultural Responsibility on Mastery and Performance-Focused Instructional Practices. Journal of Educational Psychology.

[13] Blair, I. V. (2002). The Malleability of Automatic Stereotypes and Prejudice. Personality and Social Psychology Review, 6(3), 242–261; Roos, L. E., Lebrecht, S., Tanaka, J. W., & Tarr, M. J. (2013). Can Singular Examples Change Implicit Attitudes in the Real-World? Frontiers in Psychology, 4(594), 1–14.

[14] Lebrecht, S., Pierce, L. J., Tarr, M. J., & Tanaka, J. W. (2009). Perceptual Other-Race Training Reduces Implicit Racial Bias. PLoS One, 4(1), e4215; Hilliard, A. L., Ryan, C. S., & Gervais, S. J. (2013). Reactions to the Implicit Association Test as an Educational Tool: A Mixed Methods Study. Social Psychology of Education, 16(3), 495–516.

The group agreed that an evidence-based, consistently implemented statewide training program housed within the Department of Public Safety Standards and Training (DPSST) would be the most effective method of assuring consistency across the state, as many smaller law enforcement agencies simply lack the resources to independently develop an appropriate training curriculum.

Currently, DPSST requires each police officer to undergo 84 hours of maintenance training every three years, including specific required topical trainings, such as training on firearms or the use of force.[15] The group proposes that DPSST mandate at least 4-hours of maintenance training for each officer on the topic of police profiling. Because this training would be mandatory, the group strongly suggests that such training be provided regionally by DPSST so as not to impose unnecessary hardships on smaller agencies with limited resources, and to ensure consistency across trainings. The goal of this proposal is to ensure that *all* officers receive consistent training.

LER's second meeting began with a presentation by DPSST Deputy Director Todd Anderson, who gave an overview of the relevant training available at DPSST to new recruits at the basic policy academy and to those in leadership positions. The following is a list of the relevant training options currently provided:

Basic Police Academy Training (Mandatory):

- History of Policing (4 hrs)
  Topics: Historical mistrust of authority, establishing legitimacy

- Ethics and Professionalism (10 hrs)
  Topics: Non-conscious behavior patterns, social influences, ethical decision making

- Cultural Awareness and Diversity (8 hrs)
  Topics: Cultural and interpersonal dynamics that influence values, attitudes, and beliefs

- Tactical Communication (8 hrs)
  Topics: Practicing empathy and procedural justice, creating positive interactions

- Community Policing and Problem Solving (6 hrs)
  Topics: Building community partnerships and engagement, service-oriented policing

Basic Police Academy Training (Optional):

- Tactical Ethics I: Perspectives on Profiling (4 hrs—Provided by the LECC)
  Topics: Legal and ethical boundaries of police profiling; bias-free decision making

Leadership Academy Training:

[15] OAR 259-008-0065(2)(c) provides, in part: "All active police officers must complete a total of at least eighty-four (84) hours of agency approved training every three (3) years."

- Ethical Leadership (8 hrs)
  Description: Students are required to complete two Implicit Association Tests (IATs). The tests are designed to measure a person's attitudes and beliefs about issues such as race or gender, even when that person is unwilling or unable to disclose those attitudes or beliefs. The course helps students recognize their intuitive biases, how those biases may influence their behavior, and how to engage in unbiased behaviors.

- Legitimacy and Procedural Justice (2 hrs)
  Description: This course includes a discussion across multiple public-safety disciplines regarding (1) impartial treatment and service, (2) preserving neutrality, dignity, and respect, and (3) fair, efficient and effective use of authority.

On its own initiative, DPSST plans to develop additional basic academy training in the areas of implicit bias, cultural competency, and community-police relations to complement trainings already being provided. Mr. Anderson also discussed DPSST's plans to make the Tactical Ethics class *required* for all basic academy students. He also noted that DPSST is developing a 16-hour instructor-level training course in collaboration with the Oakland, California Police Department. The course would make use of the growing body of research on how to improve community-police relations, and will include the involvement of community members in the training. This new training provides an opportunity to improve statewide law enforcement fluency with the language required by HB 2002. If extended, it is the intent of the Work Group to attend these trainings and incorporate any observations into the legislative recommendations to be returned in 2017.

LER noted that much of the current training is focused on those just beginning their law enforcement careers and, to a somewhat lesser extent, those in leadership roles. There appeared to be little or no mandatory training regarding profiling or police bias for senior officers who were not in management. The Work Group recommends that the Legislature fund training in the areas of implicit bias and cultural competency across three levels - recruit training, continuing in-service training, and management training.

During the Public Comment Hearings held in Portland and Medford, Work Group members heard consistently that any statewide training needs to be developed with opportunities for meaningful community input as to the curriculum used and training methods provided. This opportunity merits further exploration. A curriculum developed in isolation risks illegitimacy in the eyes of the community members it works to protect, and hazards missing or misunderstanding cultural dynamics essential to reducing incidents of profiling. If the Work Group is permitted to extend our work, additional Public Comment Hearings will be scheduled in other areas of the state not previously reached.

Complaint Responsiveness

The Work Group heard complaints during both Public Comment periods regarding a failure by law enforcement agencies to respond to complaints of profiling. An individual would experience what they perceived to be a profiling incident, respond by initiating a complaint with that law enforcement agency, and receive no information about the final disposition of their complaint: It

would simply disappear. All Work Group members agreed that this practice is unacceptable. HB 2002 requires all complaints to be shared with the LECC as it is received, but requires no ultimate statement of disposition to be shared with the LECC or the complainant. The Work Group recommends that law enforcement agencies be obligated to submit a basic statement of the final disposition of any complaint to both the LECC and the complainant.

The Work Group considered recommending a specific time period to be required by statute but ultimately rejected this approach as inflexible. While many complaints of profiling can be resolved quickly, a small subset can lead to further actions including disciplinary actions subject to administrative appeal and, in the extreme case, criminal prosecution. As such, the Work Group recommends that a response be required within "a reasonable period following the conclusion of any investigation."

ACCOUNTABILITY & MONITORING

Overview

The Accountability and Monitoring subgroup (AMS) consists of Kayse Jama, Sheriff Jason Myers, Kimberly McCullough, Anil Karia, and Chief John Teague, and is chaired by Erious Johnson, the Civil Rights Director for the Department of Justice. The group met on October 13, 2015 and November 3, 2015, at the Oregon Department of Justice offices located in Portland.

AMS members who represented community stakeholders expressed concerns around law enforcement's current practice of conducting its own investigations into alleged police profiling practices. Although these members saw the Attorney General's involvement as a means of addressing these concerns, they stressed the need for transparency and public awareness of any actions taken or results reached.

The Role of the Attorney General and the "Home Rule" Doctrine

The work of the AMS opened with a discussion of the state statutes governing profiling which contemplate some role for the Attorney General. Early drafts of HB 2002 contemplated that the Attorney General would "take action as the Attorney General deems appropriate" to prevent patterns or practices of profiling.[16] This language derived from a New Mexico statute which asks its Attorney General to investigate and punish allegations of profiling as "deemed appropriate."[17] AMS then considered the range of powers available to the Attorney General in this context.

AMS identified two significant factors that must be respected when crafting a system of Accountability and Monitoring: First, that the Attorney General is a statutory, rather than constitutional, office. This means that her power and duties are derived from statute, which may be expanded only through legislative action. Second, that the doctrine of "Home Rule" prevents the Attorney General from determining the law enforcement practices of Oregon's counties and municipalities. Each individual locality, municipality and city within Oregon has the constitutional authority to tend to its own affairs free of state legislative interference outside of narrow parameters. The Oregon Attorney General has no *de facto* jurisdiction over local law enforcement.

a. Statutory vs. Constitutional Grant of Authority

[16] HB 2002 (Introduced). § 1(2)(c).
[17] *See* N.M. Stat. Ann. § 29-21-4 (2013).

Oregon is one of five states whose Attorney General's office is not established by constitution. [18] This office is a purely statutory construct, created by legislative action in 1891. As such, the Oregon Attorney General has "powers, duties and discretion grounded on the best reading of the law rather than self-serving readings" of a constitution.[19] In order for the Attorney General to invoke the power to monitor law enforcement agencies' anti-profiling efforts, or otherwise hold them accountable for failing to properly execute this function, she must be able to "invoke powers arising from state law."[20] The Oregon Attorney General's specific powers and duties are set out in ORS Chapter 180 and do not allow for supervision over non-state actors. In the absence of a specific delegation of authority, the doctrine of Home Rule sets the presumption of authority in favor of counties and municipalities to govern their own affairs.

b. Home Rule

Home rule is a term that is frequently used but which has a multiplicity of definitions. The U.S. Bureau of the Census defines home-rule local governments as "those governments in which the form and the organization of the government is specified by a locally-approved charter rather than by a general or specific state law." There are other definitions of home rule which allow for a broader use of local power. For instance, the now-defunct U.S. Advisory Commission on Intergovernmental Relations reaches beyond the powers of organization, adding to the definition of local discretionary authority the issues of self-function, employment conditions, taxing and finances.[21]

Oregon's home rules are located in its constitution at Article IV § 1(5), which states that "[t]he initiative and referendum powers reserved to the people … are further reserved to the qualified voters of each municipality and district as to all local, special and municipal legislation of every character in or for their municipality or district." And at Article XI, § 2, which states that "[t]he Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon …" Although these are two separate provisions, creating two separate powers, courts have held that they must be read in unison to create Oregon's home rule authority.[22]

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[18] Oregon Department of Justice Administrative Overview 1 (2007), available at http://arcweb.sos.state.or.us/doc/recmgmt/sched/special/state/overview/20060011dojadov.pdf

[19] Neal Devins & Saikrishna Bangalore Prakash, *Fifty-State, Fifty-Attorneys General, and Fifty Approaches to the Duty to Defend*, 124 Yale L.J. 2100, 2121 (2015).

[20] *Id*. at 2119.

[21] League of Oregon Cities, *Home Rule in Oregon Cities: 100 Years in the Making 1906-2006* 1 (2006), available at http://www.orcities.org/Portals/17/Premium/HomeRule06newcover2012.pdf (citing to National League of Cities, "*How many home rule cities are there in the U.S.?*," p. 1.; Advisory Commission on Intergovernmental Relations (ACIR), *Measuring Local Discretionary Authority* (Washington DC: 1981), p. 1., respectively).

[22] *See, e.g., Rogue Valley Sewer Services v. City of Phoenix*, 357 Or. 437, 445 (2015 (stating that "[h]ome rule is the authority granted to Oregon's cities by Article XI, section 2, and Article IV, section 1(5), of the Oregon Constitution—adopted by initiative petition in 1906—to regulate to the extent provided in their charters"); *see also id*. at 443 (stating that "'home rule' has been described as the 'political symbol' for the objectives of local authority").

The initial intent of these provisions "was to create 'free cities' that could tend to the local needs of citizens and serve as units of governmental experimentation."[23] Based on this premise, coupled with the statutory framework our Attorney General must adhere to, it is necessary to create a model of Accountability and Monitoring that satisfies the concerns of the populace without intruding on the sovereignty of local municipalities. It is not sufficient to ask the Attorney General to take action as she "deems necessary." Without a specific grant of authority, this language is meaningless. AMS attempted to craft recommendations within these restrictions.

The Promulgation of Model Policies

AMS members agreed that the Attorney General's office should work in collaboration with the Chiefs of Police, Sheriffs, District Attorneys and LECC to develop model policies and procedures for: prohibiting profiling[24], receiving profiling complaints[25]; submitting complaints to the LECC[26]; and investigating profiling complaints.[27] This collaboration should extend to developing a process to identify any patterns or practices of profiling, and to identify methods to address and correct patterns or practices of profiling.[28] It is the group's strong belief that such an approach would assure swift and uniform implementation of the requirements of HB 2002. Law enforcement accreditation agencies also provide model policy language to prohibit bias-based policing and ensure effective and prompt investigation of profiling complaints.[29] If our work is extended, the Work Group intends to monitor, though not direct, the development of model policies and reevaluate the efficacy of that process prior to advancing finalized legislative recommendations.

The group also discussed requiring all policies and procedures required by HB 2002 to be forwarded to the LECC, or, alternatively, to provide the LECC with the ability to periodically request and archive them. Developing a sole repository for these policies allows for meaningful side-by-side comparisons and provides the public with a meaningful transparency mechanism. Law enforcement policies and procedures are periodically revised to maintain contemporaneity with best practices and other legal developments – while the group stopped short of endorsing that all revisions must be sent to the LECC immediately upon promulgation, the LECC should

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[23] *Home Rule*, *supra* n. 12, at 3 (citing to Orval Etter, *Municipal Home Rule in Oregon* (Eugene, OR: University of Oregon, 1991), at 53; *see also City of La Grande v. PERS*, 281 Or 137, 171 (1978) (stating that "[w]hile there may be some virtue in a more specific definition of the nature and scope of the matters subject to a constitutional grant of "home rule" to cities, in the absence of specific definitions or other terms as set forth in a constitutional home rule amendment, the courts have usually declined to attempt to specify such matters by "judicial fiat," but have usually held, as in Oregon by Welch, Heinig and Woodburn, that the purpose of amendments in such broad terms was to make a grant to cities of exclusive power to legislate as to all matters of "local concern," except for those courts which have adopted a rule of "legislative supremacy" as to all matters").

[24] HB 2002 § 2(1)(a).

[25] *Id*. at § 2(1)(b).

[26] *Id*. at § 2(1)(c).

[27] *Id*. at § 2(1)(e).

[28] *Id*. at § 5(2)(a), (b).

[29] *See* Oregon Accreditation Alliance Model Policy 1.2.5 – Bias-Based Policing Changes (11/11/15)

receive from all law enforcement agencies documentation sufficient to establish that the agency has satisfied their burden to adopt a policy prohibiting profiling as required by HB 2002.[30]

LECC Review of Internal Investigation Data

AMS members discussed letting the LECC review individual complaint files. The group decided that a case-by-case audit of specific decisions made by internal investigations was not as important as ensuring that the internal investigative process was itself grounded in fairness and adequacy. The group recommended the development of generating a "checklist" of basic procedural steps which should be considered minimally necessary for any LECC investigation of a profiling complaint.[31]

Under this proposal, upon the conclusion of the investigation of a profiling complaint, law enforcement would be required to forward a statement of resolution to the LECC affirming that minimum procedural steps were followed.

This list would be inclusive of but not limited to:

- A form affirming that the checklist was followed.
- The number of biased-based policing complaints received.
- The date each biased-based policing complaint is filed.
- Any action taken in response to each biased-based policing complaint.
- The date of any action taken.
- The disposition of each biased-based policing complaint.
- The date each biased-based policing complaint is closed.
- Whether the complainant was notified as to the ultimate disposition of the investigation.
- Whether or not the law enforcement officer(s) involved received required anti-profiling/bias training.
- Whether the agency involved has a policy prohibiting biased-based policing.
- Whether the agency involved has a policy mandating specific discipline for sustained complaints of biased-based policing.
- Whether the agency involved has a community advisory board.
- Whether the agency involved has an anti-biased-based policing comprehensive plan or if it collects traffic or pedestrian stop data.

[30] House Bill 2002 § 2 (2015)
[31] Kansas was later discovered to have taken the same approach. *See* K.S.A. § 22-4610(d)(2)(A)-(J).

DOJ Use of Complaint Data

AMS members proposed a system of responding to patterns or practices of profiling revealed by the data collected and forwarded by the LECC. The process is intended to mirror that used by the Civil Rights Department of the USDOJ while recognizing that many of the remedies available in Federal law are not available under Oregon statute.[32] At the same time, the proposed process is driven by a desire to encourage collaboration, cooperation, transparency and efficiency amongst all concerned, especially between the LECC, ODOJ, and law enforcement.

1. The LECC collects complaint data pursuant to the "checklist". [33]
2. The LECC forwards the data to ODOJ in a form as yet to be determined. This data will be published to the public.
3. ODOJ surveys the data and identifies any patterns which require further examination, and notifies the law enforcement agency to whom the data pertains as to what examination is occurring, and why. [34]
4. If necessary, ODOJ may request additional information from the LECC to properly evaluate the data or asses any anomalies. This may include, but is not limited to, reviewing LECC Annual Reports, LECC Data Review Minutes, LECC Full Minutes, profiling complaints, and interviewing witnesses or complainants.
5. If the data suggest the possibility of a "pattern or practice" of profiling activity, ODOJ will initiate a dialogue with the relevant agency.[35] This dialogue is meant to allow the agency to provide an explanation or, if necessary, for ODOJ to offer technical guidance on how to remedy the issue. [36] This dialogue may also include discussions of the time frame during which the agency can implement ODOJ's suggestions.[37]

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[32] Police Executive Research Forum, *Critical Issues in Policing Series – Civil Rights Investigations of Local Police: Lesson Learned, Summary; U.S. Justice Department Oversight of Local Police* 5 (July 2013) (describing DOJ's limited role as "investigat[ing] police agency policies that violate the Constitution, or multiple incidents that amount to a "pattern or practice" of conduct that deprives people of their Constitutional rights"), *available at* http://www.policeforum.org/assets/docs/Critical_Issues_Series/civil%20rights%20investigations%20of%20local%20police%20-%20lessons%20learned%202013.pdf.

[33] Police Executive Research Forum, *Critical Issues in Policing Series – Civil Rights Investigations of Local Police: Lesson learned, DOJ's Role in Ensuring Constitutional Policing* 10 (July 2013) (Jonathan Smith, Chief, DOJ Civil Rights Division, Special Litigation Section stating that "[t]he first step in the process is to open a preliminary investigation, which means nothing more than an entry in a computer").

[34] *Id*. at 10 (finding that "In a small subset of these cases, there will be indicators that there is something very serious going on … .").

[35] *Id*. at 11 (stating that "[w]e encourage departments to work with us during the investigative process").

[36] *Id*. at 11 (Prince George's County, MD Deputy Chief Hank Stawinski stating that "[a]s we negotiated with the Justice Department, DOJ didn't say, "You have to do A, B, and C." Rather, they said, "You have to live up to certain Constitutional standards," and we had to find a way to tailor those standards to policing in Prince George's County while remaining effective").

[37] *Id*. at 9 (Elizabeth Township Police Chief Bob McNeilly stating that "I tell officers that we have to fix things ourselves, and if we don't, somebody else like the Justice Department is going to come along and fix them for us").

6. The final stage involves ODOJ evaluating the agency's response. If the agency made a good faith effort to implement the suggested guidance—or provides a valid explanation for why such guidance is inapplicable—ODOJ may issue a public statement indicating its findings, as well as the agency's satisfactory response. If the agency fails to take meaningful steps toward remediation, the Civil Rights Division of the Department of Justice may recommend to the Attorney General that she certify the existence of a "pattern or practice" of profiling. This statement would be released to the budgetary/supervisory authority responsible for the law enforcement agency – a city council for municipal police, a county commission for sheriffs – in addition to the Senate President, Speaker of the House, Governor and US DOJ. This document would contain the formal declaration of the Attorney General that a "pattern or practice" of profiling had been identified, and would enumerate the recommendations provided to law enforcement and the extent to which those recommendations were not followed, and any additional steps taken by the agency. This document would be disclosed to the public.

House Bill 2002 requires a determination of a "pattern or practice" of profiling by law enforcement.[38] This term is not otherwise defined. The use of the term "pattern or practice" carries a specific meaning under Federal law. Under the Federal system, a finding of a "pattern or practice" of profiling suggests a specific process and the existence of remedies which have no equivalent under state law and which cannot be replicated by the work of this Work Group. The Work Group will continue to consider whether this term is appropriate and fully functional under Oregon law.

[38] Oregon House Bill 2002 § 5(2)

DATA

Overview

The Subcommittee on Data (DAT) is composed of District Attorney John Haroldson, Kayse Jama, Kimberly McCullough and Constantine Severe, and is chaired by Aaron Knott, Legislative Director for the Oregon Department of Justice. DAT convened on October 2 at the Department of Justice offices in Portland and November 4 at the Department of Justice offices in Salem. At the November 4 meeting, DAT received presentations regarding the existing collection of data from Chief Jonathan Sassaman of the Corvallis Police Department, Chief Pete Kerns of the Eugene Police Department and Dr. Brian Renauer of the LECC.

Analyzing racial disparities in policing data has been a recognized policy tool for at least twenty years, though this methodology is not evenly deployed across either the State of Oregon or nationally. Although there is widespread public support for the equitable treatment of all individuals across all demographics, recent headlines have sharpened the debate about the adequacy of existing data reflecting law enforcement contacts with the public. Without clear data regarding who is being stopped by law enforcement, who is being cited, who is being subjected to a search, and who is being let off with a warning, any description of the nature and scope of law enforcement activity is inevitably partial. At the same time, the vastly varied activities of law enforcement agencies are not easily reducible to easily isolated data points from which broad conclusions may accurately be drawn.

Among those states that have crafted statutory responses to the question of profiling by law enforcement, the majority require law enforcement officers to gather and retain data related to their interactions with the public. Sixteen states mandate some degree of collection of stop data by statute, in addition to dozens of municipalities and counties around the country who have required the collection of this data on their own initiative. While these provisions all share the common quality of requiring some quantum of data relating to the frequency and character of "stops" – generally defined as a temporary restraint of a person's liberty by a police officer lawfully present,[39] they are otherwise diverse as to the scope of the data to be collected and the matter in which it may be used.

Oregon law does not currently require the collection of stop data. In the aftermath of the passage of House Bill 2002, data regarding profiling complaints must be sent to the Law Enforcement Contacts Policy and Data Review Committee (LECC). This will consolidate complaint data within a single public body. Aggregated complaint data is not exceptionally useful in isolation. Complaint data alone provides no benchmark for the normal conduct of law enforcement against which a complaint or pattern of complaints could be measured. Consider the following example:

> *Officer A is the subject of seven complaints, all by Hispanics, during a one year period. Officer B is the subject of four similar complaints during the same period.*

[39] Ore. Rev. Stat § 131.605(7).

Without any additional contextual data, it would appear that Officer A may be engaging in conduct which is attracting complaints at a significantly higher rate of frequency than Officer B. Without additional context, a reviewer of the complaint data might not realize that Officer B is receiving complaints from a far higher relative proportion of the Hispanics with whom he interacts than Officer A, as Officer A works in an area with a significantly larger Hispanic population than Officer B.

By its very nature, complaint data is generated only by those individuals who understand how to file a complaint and are inclined to do so. No matter the effectiveness of any campaign to raise awareness of the complaint process, complaints will only ever be filed by a small percentage of the individuals who may have felt wronged or unfairly targeted by law enforcement.

Thus, requiring the collection of stop data in addition to complaint data yields a far fuller and more useful, albeit incomplete, picture of the objective realities of law enforcement contacts with the public. Most states also require that this information be made public to some degree, often by the issuance of a periodic report by an appointed public body. The voting public requires information about what police departments do, the costs and benefits of policing strategies, and an awareness of areas of difficulty or inequity. This allows the public to develop and express preferences about policing via elections and other democratic processes.

Data Collection in Oregon

Profiling and stop data collection in Oregon is handled by the Law Enforcement Contacts Policy and Data Review Committee (LECC). The LECC was created by Senate Bill 415 in 2001 and charged with obtaining data on law enforcement stops, providing technical assistance in collecting and analyzing that data, and identifying and disseminating information on programs, procedures and policies from communities that have forged positive working relationships between law enforcement and communities of color.[40]

The original charge of the LECC was based on the legislative finding that state and local law enforcement agencies can perform their missions more effectively when all Oregonians have trust and confidence that law enforcement stops and other contacts with individuals are free from inequitable and unlawful discrimination, and that data collection can establish a factual foundation for measuring progress in eliminating discrimination.[41]

Since 2001, the LECC has received and analyzed traffic stop data from five Oregon police agencies: Beaverton PD, Corvallis PD, Eugene PD, Hillsboro PD and the Oregon State Police (OSP). These municipalities have elected to submit traffic data voluntarily, but the exact nature of the data collected, as well as the methodology of its collection, is not consistent. Among the data points not consistently tracked is the presence of *consent data*; information describing whether a stopped individual was asked to be searched, whether they consented to that search and whether anything noteworthy was located as a result. The LECC has issued periodic reports

[40] LECC Annual Report 2010, p. 1
[41] *Id.*

describing the data submitted by participating municipalities and the Oregon State Police.[42] No coordinated statewide collection effort of consistent stop data across all jurisdictions exists, or has existed, in Oregon.

Scope

Data collection statutes vary significantly across the states. Connecticut, North Carolina, Missouri, California, and Maryland mandate the collection of dozens of data points from every stop. Alabama, Louisiana, and South Carolina simply record the race, age and gender of the driver. California's recent "Racial and Identity Profiling Act of 2015" contains the most expansive list of data points required, including:

> *(1) The time, date, and location of the stop.*
>
> *(2) The reason for the stop.*
>
> *(3) The result of the stop, such as, no action, warning, citation, property seizure, or arrest.*
>
> *(4) If a warning or citation was issued, the warning provided or violation cited.*
>
> *(5) If an arrest was made, the offense charged.*
>
> *(6) The perceived race or ethnicity, gender, and approximate age of the person stopped, provided that the identification of these characteristics shall be based on the observation and perception of the peace officer making the stop, and the information shall not be requested from the person stopped. For motor vehicle stops, this paragraph only applies to the driver, unless any actions specified under paragraph (7) apply in relation to a passenger, in which case the characteristics specified in this paragraph shall also be reported for him or her.*
>
> *(7) Actions taken by the peace officer during the stop, including, but not limited to, the following:*
>
> > *(A) Whether the peace officer asked for consent to search the person, and, if so, whether consent was provided.*
> >
> > *(B) Whether the peace officer searched the person or any property, and, if so, the basis for the search and the type of contraband or evidence discovered, if any.*

[42] The LECC generated Annual Reports analyzing stop data from 2005 to 2011. This practice was discontinued in 2012 due to a budgetary shortfall. *See* http://www.pdx.edu/cjpri/annual-reports.

(C) Whether the peace officer seized any property and, if so, the type of property that was seized and the basis for seizing the property.[43]

Who Collects the Data

The Work Group discussed extensively whether all law enforcement agencies should be required to collect stop data. To date, all collection of stop data in the State of Oregon has been done on the initiative of the individual law enforcement agency.[44] In contrast, with the exceptions of Washington and Colorado, all statutes governing the collection of data passed in other states have required the collection of data by all law enforcement agencies, regardless of size. Washington's statute requires the gathering of demographic data on traffic stops only within the "fiscal constraints" of the law enforcement agency, though this term is not otherwise defined.[45] Colorado confines the collection of traffic stop information to "[t]he Colorado state patrol and any law enforcement agency performing traffic stops that serves the city and county of Denver…"[46] Many Oregon counties are suffering profound crises in law enforcement funding levels, leading to long response times and chronic staffing shortfalls. Seen through this lens, the Work Group expressed concern that smaller, rural law enforcement agencies might not be able to afford either the infrastructure necessary for data collection or the additional officer time necessary to enter the data.

In other jurisdictions, lawmakers have attempted to minimize the recordkeeping burden on smaller law enforcement entities by requiring data to be collected only on stops *initiated by the officer*. This would exclude from collection any stop initiated upon a 9-1-1 call, dispatch call, or any other circumstance where the decision to initiate a stop was not discretionary. This approach would eliminate much of the burden in counties too financially stressed to engage in law enforcement activities beyond the management of emergency calls for service, which are not initiated by the officer. This approach is largely consistent with other states that have chosen to focus, sometimes exclusively, on traffic stop data.[47]

The Work Group discussed several alternatives to requiring all law enforcement agencies to collect stop data, including the imposition of a participatory cut off based on other factors such as fiscal capacity, population size, or ratio of officers-per-thousand citizens. The Work Group also discussed the creation of a grant based "incentive system" which would compensate law enforcement jurisdictions for choosing to engage in a voluntary data collection system. The Work Group plans to continue detailed study of these competing models.

Data Analysis and Reporting

[43] Cal. Gov. Code § 12525.1(b)(1-7)
[44] The USDOJ agreement with the City of Portland involves data collection but was the result of a collaborative process. *See* U.S. Dept. of Justice Civil Rights Division Compliance Report re: *United States v. City of Portland*, No. 3:12-cv-02265-SI, at p.90 (Sept 2015).
[45] RCW § 43.101.410(1)(f)
[46] Colo. Rev. Stat § 42-4-115(1)
[47] See, e.g., Tex. Crim. Code § 2.131(a)(2), R.I. Gen Laws § 31-21.2-6(a), Colo. Rev. Stat. § 42-4-115(1).

HB 2002 calls upon the Work Group to "propose a process to identify any *patterns or practices* of profiling…"[48] This suggests that the process developed by the Work Group is meant to address profiling in the aggregate rather than an analysis of individual profiling incidents. Most states who have required the collection of traffic stop data contemplate the aggregation and analysis of this data with eventual disclosure to the public. The extent to which this data is put through analysis varies significantly by state. Colorado, for example, simply requires that the data be compiled and made available to the public.[49] Connecticut, by contrast, calls upon a specific public body to analyze the data and issue an annual report.[50] Connecticut issued the first of these reports in 2014.[51] The resulting 174 page document speaks to the wealth of analytical possibilities which can be extracted from this data, allowing for meaningful analysis of the rate of consent searches, citations versus warnings given, and the frequency of stops as compared across region and demographic. These data points provide meaningful insight into the presence of differential treatment in ways not captured by complaint data alone. However, the degree of professionalism and analytical sophistication necessary to draw accurate conclusions from this complex dataset will require the appointment and continued compensation of appropriate staff. DAT notes that while data can be profoundly useful, it also carries to potential to badly mislead if analyzed inappropriately.

In Oregon, the LECC has a history of collecting data substantially similar to what would be required by a larger and more standardized stop data collection regime. The LECC has both the topical experience and most relevant mandate to allow for the generation of annual reports of use to the public by policy makers. However, funding has been an issue across the life of the commission and would need to be a continuing legislative priority to allow for meaningful statistical analysis. Data becomes more valuable and reliable across a longer timeframe – trend lines can be discerned, and different methodologies can be compared across multiple baselines and time periods. This important opportunity is undone when the body charged with the analysis suffers fluctuations in funding.

Cost Management Considerations

While every additional data point gathered provides an additional possible avenue of insight into law enforcement activities, each data point also carries with it a meaningful marginal cost in terms of the officer time needed to enter the data and the additional technological and human infrastructure needed to process the data. Fiscal impacts of data collection accrue at several different junctures, including the infrastructure needed to record the data in the field, the cost of storing the data, and any analytical resources needed to draw meaningful statistical conclusions

[48] House Bill 2002 § 5(2)(a)(emphasis added).
[49] Colo. Rev. Stat § 42-4-115(3)
[50] Conn. Gen. Stat § 54-1m(i)(" The Office of Policy and Management shall, within available resources, review the prevalence and disposition of traffic stops and complaints reported pursuant to this section. Not later than July 1, 2014, and annually thereafter, the office shall report the results of any such review, including any recommendations, to the Governor, the General Assembly and any other entity deemed appropriate.")
[51] April 2015 Connecticut Racial Profiling Report, available at http://www.ctrp3.org/reports/.

from the collected dataset. Fiscal estimates of the cost of implementing a data collection requirement vary considerably across other states.[52]

The Work Group considered Connecticut as a state somewhat comparable to Oregon. Connecticut is similar in size to Oregon, albeit with a larger police force, and the amount of stop data generated in Oregon is unlikely to exceed Connecticut's, suggesting that Connecticut is a potentially valid comparable state in assessing fiscal cost. Like Oregon, Connecticut also lacks a centralized data management infrastructure across all law enforcement agencies.

Statewide, Oregon has a lower officer-per-capita ratio than Connecticut, which could exacerbate implementation problems for small agencies. California and Connecticut estimate that complying with their stop data program takes approximately 90-120 seconds of officer time per stop, regardless of the size of the agency. The burden of consolidating and sharing the data so collected has the potential to fall more heavily on those law enforcement agencies lacking robust IT infrastructure and already facing shortfalls in administrative personnel.

Connecticut's implementation of a data collection requirement highlights many of the same challenges present in Oregon. Because of the absence of a standardized statewide technological infrastructure, Connecticut was forced to integrate a number of differing report management and dispatch systems with no common interface or coding language. Connecticut responded by entering into a contract with a single contractor who was responsible for generating code language useable across a wide range of systems. Because not all systems were able to use this language, no matter how broadly written, the contractor also generated a web portal which could be accessed securely through any internet browser. This allowed for direct data entry regardless of the underlying technological infrastructure. Connecticut was able to fully implement their data collection system, including the development of the code and the statewide rollout, for roughly $250,000, despite the lack of uniformity between law enforcement agencies. [53]

Aggregation vs Disaggregation

DAT considered how any collected data should appropriately be used. Collected stop data is useful at different levels; municipal or agency level data allows comparison across comparable municipalities or counties, or a critical evaluation of trends in a particular county over time. Comparative data within different units of the same agency allows for yet more granular and

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[52] California estimates the complete costs of implementation for AB-953 is in the tens of millions, though this statutory proposal contains many requirements beyond the recordation of stop data. "Bill Analysis," *Senate Rules Committee*, "AB 953," (2015) http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0951-1000/ab_953_cfa_20150830_194339_sen_floor.html. Texas, conversely, found that there would be "no significant fiscal implication." *Legislative Budget Board*, Fiscal Note S.B. 1074, "Relating to the prevention of racial profiling by certain peace officers,"(2001) http://www.legis.state.tx.us/tlodocs/77R/fiscalnotes/html/SB01074F.htm. Illinois found that it would cost their state police a one-time expenditure of $40,000. "Fiscal Note for SB0030," *Illinois General Assembly*, (2003) http://www.ilga.gov/legislation/BillStatus.asp?DocNum=30&GAID=3&DocTypeID=SB&LegId=299&SessionID=3&GA=93.

[53] *Office of Fiscal Analysis - Connecticut General Assembly*, "SB-364, An Act Concerning Traffic Stop Information," (2013) (while Connecticut appropriated 'up to' $300,000 for full implementation of the data collection system, only roughly $250,000 has been spent). https://www.cga.ct.gov/2012/fna/2012SB-00364-R00LCO03154-FNA.htm.

specific levels of analysis. Finally, the use of individual officer data can provide highly detailed comparisons about the relative rate in which an officer stops a particular demographic category, how often they are to ask for a search relative to similarly situated officers, the duration of detention, frequency of citation, and so forth. This level of detail also creates additional complexities, including possibly imperiling officer safety by allowing for a particular officer to be identified via publicly accessible data, and violating existing collective bargaining agreements.

Of the states currently collecting stop data, roughly half of the states require reporting of an officer's name, badge number, or other personally identifiable information in conjunction with the information collected. Most of these states shield the information from disclosure. States have taken varying approaches in attempting to balance officer concerns with the public interest in broad disclosure. Connecticut, for example, requires each law enforcement agency to assign a unique identifier to each officer. This allows stop data to be shared on an officer-by-officer basis without exposing sensitive personal information or violating existing collective bargaining agreements.[54] Massachusetts confines the use of any data collected to statistical analysis only.[55]

[54] Conn. Gen. Stat § 54-1m(b)(1).
[55] 2000 Mass. Acts. Ch. 228 § 9 ("Individual data acquired under this section shall be used only for statistical purposes and may not contain information that may reveal the identity of any individual who is stopped or any law enforcement officer.")

CONCLUSION

The Work Group on the Prevention of Profiling by Law Enforcement met frequently and worked quickly to provide meaningful recommendations to the Legislature within the three months allocated for this effort. The enclosed recommendations provide a blueprint for future legislative policies in the continued struggle against all forms of profiling. The three basic broad topic areas detailed in this report – Law Enforcement Response, Accountability and Responsibility, and Data – are not yet reducible to proposed statutory language. The Work Group is confident that this process can be completed by 2017 and requests the opportunity to continue its work. Additional time will allow the formalization of all proposals, but will also permit:

- An audit of existing training options available at DPSST and elsewhere by Work Group members.
- A detailed comparative and fiscal analysis of the stop data collection systems implemented across 18 other states.
- Additional opportunities for public comment in areas not yet reached by the Work Group, including but not limited to Eugene, Bend, Pendleton and the Oregon Coast.
- A further modeling of the Federal system of investigating profiling complaints, and a side-by-side comparison with Oregon law.
- The development of model policies generated by law enforcement stakeholders allowing feedback from Work Group members.
- A critical analysis of the adequacy of the statutory language of House Bill 2002 as written.
- Continued responsiveness to rapidly developing national trends in this policy area.

The Work Group will continue to be staffed by the Department of Justice and chaired by the Attorney General, thereby avoiding any fiscal impact. Work Group members are eager to continue the work, and proud of what has been accomplished thus far.

The public is concerned about profiling, and Oregonians expect proposals that are smart, cost-effective, and likely to change future behavior. An additional year of work will do much to allow the Work Group to meet that expectation.