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MOTOR VEHICLES AND TRAFFIC Racial Profiling: Amend the Official Code of Georgia so as to Require Policies that Prohibit Law Enforcement Officers from Impermissibly Using Race or Ethnicity in Determining Whether to Stop a Motorist; Require Annual Training of Law Enforcement Officers on Impermissible Uses of Race and Ethnicity in Stopping Vehicles; Require Law Enforcement Officers to Document the Race, Ethnicity, and Gender of a Motorist and Passengers; Provide for Other Matters Relative Thereto; Repeal Conflicting Laws; and for Other Purposes

MOTOR VEHICLES AND TRAFFIC

Racial Profiling: Amend the Official Code of Georgia so as to Require Policies that Prohibit Law Enforcement Officers from Impermissibly Using Race or Ethnicity in Determining Whether to Stop a Motorist; Require Annual Training of Law Enforcement Officers on Impermissible Uses of Race and Ethnicity in Stopping Vehicles; Require Law Enforcement Officers to Document the Race, Ethnicity, and Gender of a Motorist and Passengers; Provide for Other Matters Relative Thereto; Repeal Conflicting Laws; and for Other Purposes

BILL NUMBER: HB 1327

SUMMARY: In 2004, the Georgia General Assembly considered a bill to amend the portion of the Georgia Code dealing with motor vehicles and traffic. HB 1327 would have prohibited the use of race or ethnicity in forming probable cause or reasonable suspicion to stop a vehicle and would have mandated data collection for all traffic stops by state and local law enforcement officers. Law enforcement personnel would have recorded this information on a form that the Department of Motor Vehicles would have devised. The Georgia Attorney General would have then analyzed this data to test for racial profiling. Additionally, HB 1327 would have (1) required law enforcement agencies to create policies that prohibit using race or ethnicity in determining whether to stop a motorist, (2) required annual training on impermissible uses of race and ethnicity in stopping vehicles, and (3) mandated data

collection by all state and local agencies.

History

Representative Tyrone Brooks of the 47th district, speaking about HB 1327, cited one of President George W. Bush's State of the Union Addresses where the President described racial profiling as wrong and promised that racial profiling would end in America.[1] In an effort to uphold the President's promise, Representative Brooks, along with Representatives Warren Massey, Calvin Smyre, Tom Buck, Carolyn Hugley, and Pete Marin of the 24th, 111th, 112th, 113th, and 66th, districts, respectively, along with others, initiated HB 1327 in the 2004 Georgia General Assembly.[2] Mr. Brooks encouraged the Georgia General Assembly to support HB 1327 and to join approximately 30 other states that have already enacted similar legislation.[3]

HB 1327 would have amended Title 40, Chapter 1 of the Official Code of Georgia to prohibit law enforcement officers from impermissibly using race or ethnicity in determining whether to stop a motorist.[4] Additionally, the bill would have required county and city law enforcement divisions to train law enforcement officers annually on impermissible uses of race and ethnicity in stopping vehicles and would have required law enforcement officers to document motorists' and passengers' race, ethnicity, and gender after stopping them.[5] The Judiciary Committee unanimously agreed that this practice was necessary to combat a growing, state-wide problem.[6]

1. *See* Audio Recording of House Proceedings, Mar. 12, 2004 (remarks by Rep. Tyrone Brooks) *at* http:/www.georgia.gov/00/article/0,2086,4802_6107103_12595146,00.html [hereinafter House Audio].
2. HB 1327, as introduced, 2004 Ga. Gen. Assem.
3. *See* House Audio, *supra* note 1.
4. *See* HB 1327, as introduced, 2004 Ga. Gen. Assem.
5. HB 1327, as introduced, 2004 Ga. Gen. Assem.
6. *See* House Audio, *supra* note 1 (remarks by Rep. Tyrone Brooks).

Bill Tracking of HB 1327

Consideration by the House

The House first read HB 1327 on February 3, 2004 and read it for a second time on February 5, 2004.[7] The Judiciary Committee favorably reported the bill on February 25, 2004 and proposed a substitute.[8]

When discussing their support of HB 1327, representatives often cited personal reasons and personal feelings to illustrate why racial profiling was "wrong" and why passing HB 1327 was the "right thing to do."[9] Representative Carolyn Hugley from the 113th district expressed her constituency's outrage at racial profiling, as well as her own personal rationale for opposing the bill.[10] Representative Hugley questioned how she could be confident that her 21-year-old son could travel the streets and highways of Georgia and avoid unfair targeting because "he's six foot three and black."[11] Representative Nan Orrock of the 51st district related her experiences as "a mother of white kids who go to school with black kids."[12] She stated that police pulled her son over and questioned him about why he was riding with black children in a black neighborhood.[13] She told the House that law enforcement officers stopped her son's black friends constantly and without probable cause.[14] Representative Pete Marin, a Hispanic member of the House of Representatives from the 66th district, stated that "to not vote in favor of this bill [would] assist in the erosion of community confidence with law enforcement agencies, [would] allow . . . infringement [on] constitutional rights and personal freedoms,

7. State of Georgia Final Composite Status Sheet, HB 1327, Feb. 3, 2004 (May 19, 2004); State of Georgia Final Composite Status Sheet, HB 1327, Feb. 5, 2004 (May 19, 2004).

8. State of Georgia Final Composite Status Sheet, HB 1327, Feb. 25, 2004 (May 19, 2004); HB 1327 (HCS), 2004 Ga. Gen. Assem.

9. *See, e.g.*, House Audio, *supra* note 1 (remarks by Rep. Stephanie Benfield).

10. *Id.* (remarks by Rep. Carolyn Hugley).

11. *Id.*

12. *Id.* (remarks by Rep. Nan Orrock).

13. *Id.*

14. *Id.*

and [would] continue the perpetuation of negative stereotypes based on fear, ignorance, and malice."[15]

Some representatives opposed the bill for financial reasons, arguing that HB 1327 would be an "unfunded mandate."[16] Representative Mike Snow from the 1st district argued that complying with the bill would cost the Public Safety Department an additional $1 million annually.[17] Further, Representative Snow introduced data that suggested most, if not all, counties and cities would experience an increase of $1 million to $2 million in yearly costs to comply with the bill's "shall adopt" provisions.[18] He pointed to other states that have introduced similar legislation to illustrate how complying with the mandatory data collection increased the financial burden on counties and cities in those states.[19]

Representative Warren Massey of the 24th district maintained that the current warning ticket already incorporated 80 to 90% of the questions the bill proposed.[20] "It's not that big of a burden," Representative Massey said.[21] Representative Massey also stated that the sheriff in his district believed the reporting requirement would assist law enforcement officers in defending their actions.[22] If a private individual sues an officer, the arrest and stop records might demonstrate that the police officer did not commit racial profiling.[23]

Representative Stephanie Benfield of the 56th district articulated three reasons why passage of the bill was important.[24] First, Representative Benfield thought the bill would send a message that law enforcement should treat all citizens fairly and equally, thus generally increasing citizens' trust in the Georgia law enforcement system.[25] Second, data collection would exonerate innocent officials who had not committed any discriminatory acts, while allowing officials to expose, reprimand, and punish racial profilers.[26] Third,

15. House Audio, *supra* note 1 (remarks by Rep. Pete Marin).
16. *Id.* (remarks by Rep. Mike Snow).
17. *Id.*
18. *See id.*
19. *Id.*
20. House Audio, *supra* note 1 (remarks by Rep. Warren Massey).
21. *Id.*
22. *Id.*
23. *Id.*
24. *See* House Audio, *supra* note 1 (remarks by Rep. Stephanie Benfield).
25. *Id.*
26. *Id.*

Representative Benfield said that the increased "paperwork" requirements associated with the bill's provisions were negligible when compared with its capacity to solve an issue as important as racial profiling.[27]

However, Representative Barbara Bunn of the 63rd district put forth what she called a publicly unpopular, but valid, argument.[28] Representative Bunn did not believe the bill would stop any of the racial profiling mentioned by the previous speakers.[29] While Representative Bunn agreed that training was necessary to prevent such profiling, she noted that the bill could be counterproductive to newly enacted anti-terrorism legislation.[30]

Floor Amendments

On March 12, 2004, the House read the bill a third time, and Representatives Mike Snow of the 1st district, Austin Scott of the 138th district, and Brian Joyce of the 2nd district each introduced amendments that the House ultimately voted down.[31] Representative Snow proposed changing selective "shall" provisions to "may" provisions.[32] Thus, subsequent to Representative Snow's amendments a portion of the bill would read as follows:

> (b)(1) Each state and local law enforcement agency [may] adopt a policy and implement an annual training program regarding racial profiling that provides and instructs that a law enforcement officer shall not use a person's race or ethnicity to form probable cause or reasonable suspicion to stop a vehicle but may use a person's race or ethnicity to confirm a previously obtained description of a suspect.

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27. *Id.*

28. *See* House Audio, *supra* note 1 (remarks by Rep. Barbara Bunn).

29. *Id.*

30. *See id.* Representative Bunn stated, "It is not in our best interest or the [interests of the] people of Georgia to intimidate in any way our law enforcement from being able to stop individuals." *Id.*

31. State of Georgia Final Composite Status Sheet, HB 1327, Mar. 12, 2004 (May 19, 2004); Georgia House of Representatives Voting Record, HB 1327 (Mar. 12, 2004).

32. *Compare* Failed House Floor Amendment to HB 1327, introduced by Rep. Mike Snow, Mar. 12, 2004 *with* HB 1327 (HCS), 2004 Ga. Gen. Assem.

> (2) Except in instances where a vehicle is stopped in a fixed road block, each time a state or local law enforcement officer stops a motor vehicle to issue a citation or to make an arrest that officer [may] document the following information in a public record whose format shall be determined by the Department of Motor Vehicle Safety . . . ."[33]

On March 12, 2004, the House voted down Representative Snow's amendment by a vote of 57 to 93.[34] That same day, Representative Scott proposed striking subsection (2) of part (b) and subsection (4) of part (b).[35] Representative Scott moved to exclude the following:

> (2) Except in instances where a vehicle is stopped in a fixed road block, each time a state or local law enforcement officer stops a motor vehicle to issue a citation or to make an arrest that officer shall document the following information in a public record whose format shall be determined by the Department of Motor Vehicle Safety: (A) The gender of the driver; (B) The race or ethnicity of the driver; (C) The suspected violation that led to the stop; (D) Whether the vehicle, personal effects, driver, or any passenger was searched and, if any passenger or his or her effects were searched, the passenger's gender and the passenger's race or ethnicity; (E) Whether a search was conducted pursuant to consent, probable cause, or reasonable suspicion to suspect a crime, including the approximate duration of the search and the basis for the request for consent or the circumstances establishing probable cause or reasonable suspicion; (F) Whether contraband was found, the type and approximate amount of contraband, and whether contraband was seized; (G) Whether any arrest, citation, or any oral or written warning was issued as a result of the stop; (H) Whether the officer making the stop encountered any physical resistance, whether the officer engaged in the use of force, and whether injuries resulted; (I) Whether the circumstances surrounding the

33. *See* HB 1327, as introduced, 2004 Ga. Gen. Assem.
34. Georgia House of Representatives Voting Record, HB 1327 (Mar. 12, 2004).
35. *See* Failed House Floor Amendment to HB 1327, introduced by Rep. Austin Scott, Mar. 12, 2004.

> stop were the subject of any investigation and the result of the investigation; and (J) The location of the stop.
>
> . . . .
>
> (4) Law enforcement agencies shall maintain the data required to be collected under paragraph (2) of this subsection for not less than seven years.[36]

On March 12, 2004, the House voted down Representative Scott's amendment with 98 nays and 55 yeas.[37] The same day, Representative Joyce asked to amend the bill by striking the words "and implement an annual training program."[38] On March 12, 2004, the House rejected Representative Joyce's amendment by a vote of 55 to 96.[39]

Passage by the House

By a vote of 34 to 116, the House denied all floor amendments and passed HB 1327 on March 12, 2004.[40]

Consideration by the Senate

The House transferred HB 1327 to the Senate for consideration on March 15, 2004.[41] The Senate read the bill and referred it to the Public Safety and Health Safety Committee.[42] Ultimately, however, the bill died when the Senate referred it back to committee.[43]

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36. *Id.*
37. Georgia House of Representatives Voting Record, HB 1327 (Mar. 12, 2004).
38. *See* Failed House Floor Amendment to HB 1327, introduced by Rep. Brian Joyce, Mar. 12, 2004.
39. Georgia House of Representatives Voting Record, HB 1327 (Mar. 12, 2004).
40. *Id.*
41. State of Georgia Final Composite Status Sheet, HB 1327, Mar. 15, 2004 (May 19, 2004).
42. *See id.*
43. State of Georgia Final Composite Status Sheet, HB 1327, Apr. 7, 2004 (May 19, 2004).

Analysis

HB 1327 faced a great deal of criticism within the various executive departments it would have ultimately affected had it become a law. The Executive Director of the Georgia Association of Chiefs of Police commented that the bill would bog down police by increasing the average stop time from 15 minutes to 30 or even 45 minutes.[44] Additionally, the bill may have cost the various departments upwards of $1 million in additional expenses, thereby making it essentially an unfunded mandate.[45] Some representatives also asserted that the bill would have tied the hands of hardworking law enforcement officers in a time of grave concern over national security and possible terrorist attacks.[46]

Further, the bill raised concerns over the issue of stopping people without cause. Even without HB 1327, a police officer cannot pull over a motorist without cause.[47] If a court finds that the officer did not have cause, then the stop is illegal and unconstitutional, and the court may exclude any and all criminal evidence found as a result of the illegal stop.[48] However, HB 1327's supporters argued that this safeguard is ineffective; police continue to profile motorists and to pull them over for no reason other than the color of their skin.[49]

As Kristen Wyatt noted, "Bill supporters in the black caucus argue that the extra record-keeping is needed to make sure police [are not] discriminating against minority groups," and the records that HB 1327 would have mandated are essential in identifying systemic profiling and in punishing racial profilers.[50] She further stated, "Several states have passed bills aimed at racial profiling in the last decade or so, mostly in response to police practices in New Jersey, where for a time officers were asked to target non-white motorists as

44. Kristen Wyatt, *Racial Profiling Bill Up For House Vote*, ASSOCIATED PRESS NEWSWIRE, Mar. 11, 2004, *available at* WL 3/11/04 APWIRES 15:39:23 [hereinafter *Up For House Vote*].

45. *See* House Audio, *supra* note 1 (remarks by Rep. Mike Snow).

46. Kristen Wyatt, *Racial Profiling Bill Clears State House*, MACONTELEGRAPH.COM, Mar. 13, 2004, *at* http://www.tallahassee.com/mld/macon/news/local/8175881.htm [hereinafter *Bill Clears State House*].

47. *See Up For House Vote*, *supra* note 44.

48. *See id.*

49. *See id.*

50. *Id.*; *Bill Clears State House*, *supra* note 46.

a way to reduce crime."[51] Other bill supporters argued that HB 1327 would not only have weeded out racial profilers but would have also exonerated those wrongly accused officers who are in fact not racially profiling motorists.[52]

Approximately 30 states have already enacted legislation to comply with the nationwide initiative set forth by President Bush to stop racial profiling in the United States.[53] However, at the completion of this legislative session, Georgia will not be joining those states.

Jason Sheffield

51. *Up For House Vote*, *supra* note 44.
52. *Id.*
53. *See* House Audio, *supra* note 1 (remarks by Rep. Tyrone Brooks).