

2005 DRAFTING REQUEST

Bill

Received: 01/18/2005

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Leon Young (608) 266-3786**

By/Representing: **Greg**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - law enforcement
Transportation - traffic laws**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Youngl@legis.state.wi.us**

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us
cathlene.hanaman@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Racial profiling

Instructions:

same as 05-0146 minus seat belt

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 01/21/2005	kfollett 02/04/2005		_____			S&L
/1			pgreensl 02/04/2005	_____	lemery 02/04/2005	mbarman 06/28/2005	

FE Sent For:

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FE Sent For:

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2005 BILL

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1 AN ACT *to amend* 347.48 (2m) (e), 347.48 (2m) (gm) and 347.50 (2m) (a); and *to*
2 *create* 165.842 and 165.85 (4) (b) 1d. f. of the statutes; **relating to:**
3 ~~enforcement of motor vehicle safety belt violations~~, collection of information
4 regarding motor vehicle stops, law enforcement training standards, granting
5 rule-making authority, ~~and providing a penalty.~~ and

Analysis by the Legislative Reference Bureau

Primary enforcement of safety belt law

This state requires the use of safety belts in certain motor vehicles. Under current law, with specific exceptions, no person may drive a motor vehicle unless he or she is properly restrained by a safety belt and unless he or she reasonably believes that each passenger between the ages of four and fifteen years old is properly restrained by a safety belt. No person who is at least four years old may be a passenger in the front seat of a motor vehicle unless that person is properly restrained by a safety belt. Current law prohibits a law enforcement officer from stopping or inspecting a motor vehicle solely to determine compliance with safety belt use requirements. The officer may, however, issue a citation for a violation observed in the course of a stop or inspection made for other purposes. A law enforcement officer may not take a person into physical custody solely for a violation of safety belt use requirements.

This bill authorizes a law enforcement officer to stop or inspect a vehicle solely to determine compliance with safety belt use requirements, if the officer has probable

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cause to believe that a violation has occurred. However, under the bill, a person who qualifies as a disabled driver may operate a vehicle without wearing a safety belt. The bill also increases the penalty for violating this state's laws requiring the use of safety belts from \$10 to \$25 for a first offense and to not less than \$50 nor more than \$75 for the second and each later offense committed within three years. As under current law, violators pay no additional costs, fees, or assessments.

Collection of information regarding motor vehicle stops

Under Currently, a ^{law} law enforcement agency must collect information concerning each person that the law enforcement agency arrests or takes into custody, if the person has committed certain offenses or is a fugitive from justice. The information that the law enforcement agency must collect includes the person's fingerprints, photographs of the person's face and profile, and other available identifying data. The information collected must be forwarded to the Department of Justice (DOJ), which maintains the information for various law enforcement and reporting purposes.

This bill requires a law enforcement agency to collect the following information concerning motor vehicle stops made on or after January 1, 2007: 1) the name, address, gender, and race of the operator of the motor vehicle (with the officer subjectively determining the person's race as being Caucasian, African American, Hispanic, American Indian or Alaska Native, or Asian or Pacific Islander); 2) the reason for the motor vehicle stop; 3) the make and year of the motor vehicle; 4) the date, time, and location of the motor vehicle stop; 5) whether or not a law enforcement officer conducted a search of the motor vehicle, the operator, or any passenger and, if so, whether the search was with consent or by other means; 6) the name, address, gender, and race of any person searched; and 7) the name and badge number of the officer making the motor vehicle stop.

The information that is collected under the bill concerning motor vehicle stops is not subject to inspection or copying as a public record. The information, however, must be forwarded to DOJ, which must then compile and analyze it, along with any other relevant information, to determine, both for the state as a whole and for each law enforcement agency, whether the number of stops and searches involving motor vehicles operated or occupied by members of a racial minority are disproportionate compared to the number of stops and searches involving motor vehicles operated or occupied solely by persons who are not members of a racial minority. The determination of whether the number of stops and searches involving racial minorities is disproportionate must be based on an estimate of the population and characteristics of all persons traveling on state highways, on an estimate of the populations and characteristics of persons traveling on state highways who are violating a law or ordinance, or on some other relevant population estimate. If DOJ finds that the number of stops and searches involving racial minorities is disproportionate compared to the number of stops and searches involving nonminorities, DOJ must then determine whether that disproportion is the result of racial profiling, racial stereotyping, or other race-based discrimination or selective enforcement.

DOJ must prepare an annual report that summarizes the information submitted to it by law enforcement agencies and that describes the methods and

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conclusions of its analysis of the information. DOJ must also promulgate rules to implement the information collection requirement created in the bill, including rules prescribing a form for use in obtaining the information and establishing a schedule for forwarding the information obtained to DOJ.

Law enforcement training standards

Under current law, no person may be appointed as a law enforcement officer unless the person has been certified by the Law Enforcement Standards Board (LESB) after completing a training program approved by LESB. Currently, LESB must establish minimum educational and training standards for law enforcement officers and minimum curriculum requirements for law enforcement officer training programs. Current law also contains specific requirements for law enforcement training programs, including the requirements that the programs provide training to enable officers to deal effectively with domestic abuse incidents and training on police pursuit standards.

This bill requires law enforcement training programs to provide training concerning cultural diversity, including sensitivity toward racial and ethnic differences. The training must be designed to prevent the use of race, racial profiling, racial stereotyping, or other race-based discrimination or selection as a basis for detaining, searching, or arresting a person or for otherwise treating a person differently from persons of other races and must emphasize the fact that the primary purposes of enforcement of traffic regulations are safety and equal and uniform enforcement under the law.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 165.842 of the statutes is created to read:
- 2 **165.842 Motor vehicle stops; collection and analysis of information;**
- 3 **annual report. (1) DEFINITIONS.** In this section:
- 4 (a) “Department” means the department of justice.
- 5 (b) “Law enforcement agency” has the meaning given in s. 165.77 (1) (b).
- 6 (c) “Law enforcement officer” means a person who is employed by a law
- 7 enforcement agency for the purpose of detecting and preventing crime and enforcing
- 8 laws or ordinances and who is authorized to make arrests for violations of the laws

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1 or ordinances that the person is employed to enforce, whether that enforcement
2 authority extends to all laws or ordinances or is limited to specific laws or ordinances.

3 (d) "Motor vehicle stop" means the stop or detention of a motor vehicle that is
4 traveling in any public or private place, or the detention of an occupied motor vehicle
5 that is already stopped in any public or private place, for the purpose of investigating
6 any alleged or suspected violation of a state or federal law or city, village, town, or
7 county ordinance.

8 (2) INFORMATION COLLECTION REQUIRED. All persons in charge of law
9 enforcement agencies shall obtain, or cause to be obtained, all of the following
10 information with respect to each motor vehicle stop made on or after January 1, 2007,
11 by a law enforcement officer employed by the law enforcement agency:

12 (a) The name, address, gender, and race of the operator of the motor vehicle.

13 The officer shall subjectively select the operator's race from the following list:

14 1. Caucasian.

15 2. African American.

16 3. Hispanic.

17 4. American Indian or Alaska Native.

18 5. Asian or Pacific Islander.

19 (b) The reason that the officer stopped or detained the motor vehicle.

20 (c) The make and year of the motor vehicle.

21 (d) The date, time, and location of the motor vehicle stop.

22 (e) Whether or not a law enforcement officer conducted a search of the motor
23 vehicle, the operator, or any passenger and, if so, whether the search was with
24 consent or by other means.

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1 (f) The name, address, gender, and race of any person searched, with the officer
2 subjectively selecting the person's race from the list under par. (a).

3 (g) The name and badge number of the officer making the motor vehicle stop.

4 **(3) SUBMISSION OF INFORMATION COLLECTED.** The person in charge of a law
5 enforcement agency shall forward the information obtained under sub. (2) to the
6 department using the form prescribed by the rules promulgated under sub. (5) and
7 in accordance with the reporting schedule established under the rules promulgated
8 under sub. (5).

9 **(4) ANALYSIS AND REPORT BY DEPARTMENT.** (a) The department shall compile the
10 information submitted to it by law enforcement agencies under sub. (3) and shall
11 analyze the information, along with any other relevant information, to determine,
12 both for the state as a whole and for each law enforcement agency, all of the following:

13 1. Whether the number of motor vehicle stops and searches involving motor
14 vehicles operated or occupied by members of a racial minority compared to the
15 number of motor vehicle stops and searches involving motor vehicles operated or
16 occupied solely by persons who are not members of a racial minority is
17 disproportionate based on an estimate of the population and characteristics of all
18 persons traveling on state highways, on an estimate of the populations and
19 characteristics of persons traveling on state highways who are violating a law or
20 ordinance, or on some other relevant population estimate.

21 2. A determination as to whether any disproportion found under subd. 1. is the
22 result of racial profiling, racial stereotyping, or other race-based discrimination or
23 selective enforcement.

24 (b) For each year, the department shall prepare an annual report that
25 summarizes the information submitted to it by law enforcement agencies concerning

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1 motor vehicle stops made during the year and that describes the methods and
2 conclusions of its analysis of the information. On or before March 31, 2008, and on
3 or before each March 31 thereafter, the department shall submit the annual report
4 required under this paragraph to the legislature under s. 13.172 (2), to the governor,
5 and to the director of state courts.

6 (5) RULES. The department shall promulgate rules to implement the
7 requirements of this section, including rules prescribing a form for use in obtaining
8 information under sub. (2) and establishing a schedule for forwarding the
9 information obtained to the department. The department shall make the form
10 prescribed by its rules available to law enforcement agencies. The department may,
11 by rule, require the collection of information in addition to that specified in sub. (2)
12 (a) to (g) if the department determines that the information will help to make the
13 determinations required under sub. (4) (a).

14 (6) ACCESS TO RECORDS. Information collected under sub. (2) is not subject to
15 inspection or copying under s. 19.35 (1).

16 **SECTION 2.** 165.85 (4) (b) 1d. f. of the statutes is created to read:

17 165.85 (4) (b) 1d. f. Training concerning cultural diversity, including sensitivity
18 toward racial and ethnic differences. The training shall be designed to prevent the
19 use of race, racial profiling, racial stereotyping, or other race-based discrimination
20 or selection as a basis for detaining, searching, or arresting a person or for otherwise
21 treating a person differently from persons of other races and shall emphasize the fact
22 that the primary purposes of enforcement of traffic regulations are safety and equal
23 and uniform enforcement under the law.

24 **SECTION 3.** 347.48 (2m) (e) of the statutes is amended to read:

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1 347.48 (2m) (e) Paragraph (b) does not apply to a person who qualifies for
2 registration plates of a special design under s. 341.14 (1), (1a), (1m), or (1q) or for a
3 special identification card under s. 343.51. The department shall, by rule, exempt
4 from the requirements under pars. (b) to (c) and (d) persons who, because of a
5 physical or medical condition, cannot be properly restrained in a safety belt.

6 **SECTION 4.** 347.48 (2m) (gm) of the statutes is amended to read:

7 347.48 (2m) (gm) ~~Notwithstanding s. 349.02, a law enforcement officer may not~~
8 ~~stop or inspect a vehicle solely to determine compliance with this subsection or sub-~~
9 ~~(1) or (2) or a local ordinance in conformity with this subsection, sub. (1) or (2) or rules~~
10 ~~of the department. This paragraph does not limit the authority of a law enforcement~~
11 ~~officer to issue a citation for a violation of this subsection or sub. (1) or (2) or a local~~
12 ~~ordinance in conformity with this subsection, sub. (1) or (2) or rules of the department~~
13 ~~observed in the course of a stop or inspection made for other purposes, except that~~
14 ~~a~~ A law enforcement officer may not take a person into physical custody solely for
15 a violation of this subsection or sub. (1) or (2) or a local ordinance in conformity with
16 this subsection, sub. (1) or (2) or rules of the department.

17 **SECTION 5.** 347.50 (2m) (a) of the statutes is amended to read:

18 347.50 (2m) (a) Any person who violates s. 347.48 (2m) (b) or (c) and any person
19 16 years of age or older who violates s. 347.48 (2m) (d) may be required to forfeit \$10
20 \$25 for the first offense and not less than \$50 nor more than \$75 for the 2nd or any
21 later offense committed within 3 years.

22 **SECTION 6. Initial applicability.**

23 (1) The treatment of section 347.50 (2m) (a) of the statutes first applies to
24 violations committed on the effective date of this subsection, but does not preclude
25 the counting of other violations as prior violations for sentencing a person.

Basford, Sarah

From: Dsida, Michael
Sent: Tuesday, June 28, 2005 2:56 PM
To: LRB.Legal
Subject: please jacket 05-1761 for the Assembly

thanks!