

**LEGISLATIVE STUDY: ELIMINATING RACIAL PROFILING
IN MINNESOTA**

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I. INTRODUCTION

Racial profiling is one of the most pressing issues facing law enforcement and civil rights advocates.¹ Confronted with

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1. When the discussion of racial profiling initially began in Minnesota and

disturbing anecdotal and statistical evidence, the Minnesota Legislature set out to define racial profiling and to eliminate the practice in 2001.² Through months of hearings and extensive debate, the legislature discovered that this was a difficult, frustrating, emotional and controversial task.

This study was written with three goals in mind. First, it will focus in detail on the legislative history of Minnesota's anti-racial profiling law, which the Legislature passed during the First Special Legislative Session of 2001.³ Second, it will compare Minnesota's racial profiling law to the varied approaches that other states have

across the nation, it focused largely on whether African Americans were being unfairly targeted by law enforcement. Since September 11, however, a new element has been added to this discussion. There has been a great deal of discussion recently on the treatment of Arab Americans by law enforcement. While neither the terrorist attacks of September 11, nor our nation's response to those attacks were a part of Minnesota's discussion, the plan to prevent racial profiling adopted by the Minnesota Legislature applies to racial profiling of any kind. While this study will focus mainly on the discussion by the Minnesota Legislature which occurred in a pre-September 11 world, it is important to note that many of the same thoughts, ideas, and concerns are just as relevant and are just as important in our post-September 11 society.

2. The Minnesota State Legislature, during the 2001 Special Legislative Session defined "racial profiling" as:

[a]ny action initiated by law enforcement that relies upon the race, ethnicity, or national origin of an individual rather than: (1) the behavior of that individual; or (2) information that leads law enforcement to a particular individual who has been identified as being engaged in or having been engaged in criminal activity. Racial profiling includes use of racial or ethnic stereotypes as factors in selecting whom to stop and search. Racial profiling does not include law enforcement's use of race or ethnicity to determine whether a person matches a specific description of a particular subject.

MINN. STAT. § 626.8471, subd. 2 (2001).

When referring to racial profiling in the pages that follow, this study will adhere to this definition created by the Legislature.

3. MINN. STAT. § 626.8471, subd. 2 (2001). The heavy focus on legislative history is extremely important to this study because the fundamental constitutional rights of so many in our society were affected by the legislation that the Legislature passed. As this racial profiling bill moved through the Legislature, there was a constant struggle to pass a bill that not only recognized that racial profiling existed, but also one that would eliminate it. This struggle that legislators faced involved balancing the constitutional rights of community members against the integrity of law enforcement. Very significant action often came out of every committee hearing and floor debate on this bill. Without closely following the actions taken, one cannot fully comprehend the thoughts, arguments, and conflicts that were involved in this process and which eventually led to the agreement that was passed by the Legislature and signed into law by the Governor of Minnesota.

taken to combat this problem. Third, this study will focus on conclusions that can be made from the passage of Minnesota's racial profiling law as well as what can be expected from Minnesota's legislators in the future.

II. THE DEVELOPMENT OF THE ISSUE OF RACIAL PROFILING

There is a great deal of debate about how and when racial profiling began. Some suggest that the war on drugs specifically targets communities of color and has made racial profiling more common.⁴ Many argue that the emergence of crack cocaine in 1986 and the press coverage that followed helped to reinforce the perception that illegal drug use was primarily a problem for minorities. In waging the "war on drugs," many police departments began to create drug courier profiles, which may have been the source of what we commonly refer to as racial profiling.⁵

Racial profiling has received a great deal of attention in the media and from our elected officials, particularly in the late 1990s. In 1999, allegations were brought that the New Jersey State Police used race to make traffic stops along the New Jersey Turnpike, which brought racial profiling to the national forefront.⁶ These racially biased actions resulted in the termination of the Superintendent of State Police, the institution of a federal consent decree in the State of New Jersey, and the initiation of a national discussion among members of law enforcement, legislatures, and civil rights and civil liberties groups.⁷ Many racial profiling allegations involving driving began receiving attention, and communities of color labeled the phenomenon "driving while black."⁸ News stories and editorials in the local and national press illustrated the individual and societal costs of racial profiling.⁹

In a Gallup Poll released on December 9, 1999, more than

4. David A. Harris, *Driving While Black: Racial Profiling On Our Nation's Highways*, AMERICAN CIVIL LIBERTIES UNION at <http://www.archive.aclu.org/profiling/report/index.html> (last visited January 12, 2002).

5. *Id.*

6. *St. Paul Police Department Implements Partnership With Communities of Color*, at <http://www.stpaul.gov/depts/police/naacp.htm> (last visited January 12, 2002).

7. *Id.*

8. DEBORAH RAMIREZ ET AL., U.S. DEP'T OF JUSTICE, A RESOURCE GUIDE ON RACIAL PROFILING DATA COLLECTION SYSTEMS: PROMISING PRACTICES AND LESSONS LEARNED 4 (2000).

9. *Id.*

one-half of Americans believed that police actively engage in racial profiling and (more significantly) 81% of Americans disapproved of the practice.¹⁰ Around 59% of adults believed that racial profiling was widespread.¹¹ When responses were broken down by race, 56% of whites and 77% of African-Americans felt that racial profiling was pervasive.¹²

As a result of this national attention, Congress and a large number of state legislatures began to take action to eliminate racial profiling. The Minnesota Legislature acted on this issue during the 2001 Legislative Session.

III. ACTIONS TAKEN BY THE MINNESOTA LEGISLATURE DURING THE 2001 LEGISLATIVE SESSION TO ADDRESS RACIAL PROFILING

A. *Introduction of Bills*

As a result of community meetings and extensive media coverage of racial profiling, several legislators introduced bills during the 2001 Legislative Session to eliminate racial profiling in Minnesota. Three bills were introduced in the Minnesota House of Representatives. They were similar in some respects but differed greatly on the issue of data collection for traffic stops. Identical companion bills were introduced in the Senate.

1. *House File 737 / Senate File 386*

House File 737 and Senate File 386 included several provisions that took a comprehensive approach to the elimination of racial profiling. The bills' definitions of racial profiling were similar to the definition in the other two racial profiling bills.¹³ They also

10. *RACIAL PROFILING IS SEEN AS WIDESPREAD, PARTICULARLY AMONG YOUNG BLACK MEN*, Princeton, N.J.: Gallup Poll Org., (December 9, 1999).

11. *Id.*

12. *Id.*

13. S.F. 386 82nd Leg., 1st Reg. Sess. (Minn. 2001) (as introduced). The bill defined racial profiling as:

[a]ny law enforcement officer-initiated action that relies on the race, ethnicity, or national origin of an individual, rather than on the behavior of that individual or on information that leads the officer to a particular individual who has been identified as being engaged in or having been engaged in criminal activity.

Id.

There are only technical differences between the definition used in Senate File

required that all law enforcement agencies in Minnesota collect certain data for two years, beginning on September 1, 2001.¹⁴ Law enforcement would forward this data to the Department of Public Safety, which would hire an outside expert to analyze the results.¹⁵ This expert would then issue a report to the Legislature by February 1, 2004.¹⁶

House File 737 and Senate File 386 also provided for articulated law enforcement policies against racial profiling. The bill required the Peace Officers Standards and Training (POST) Board to develop a model policy by September 15, 2001. All local law enforcement agencies would then use the model policy to develop their own policy by November 1, 2001. This bill also provided for law enforcement training and required the POST Board to conduct statewide racial profiling elimination conferences.¹⁷

While House File 737 failed to pass out of the House Crime Prevention Committee, the Senate Crime Prevention Committee passed its Senate companion. Senator Jane Ranum, the chair of the Senate Crime Prevention Committee, decided early on in the 2001 Legislative Session that this bill would be the vehicle for racial profiling legislation in the Senate.

386 and the definition used in Senate File 903. There are a number of differences, however, between the definition used in Senate File 386 and the definition used in House File 505.

14. S.F. 386 82nd Leg., 1st Reg. Sess. (Minn. 2001) (as introduced). As introduced, Senate File 386 required all law enforcement agencies to collect nine different types of data. This data includes:

- (1) the location of the traffic stop; (2) the date and time of the stop;
- (3) the age, race/ethnicity, and gender of the driver; (4) the traffic violation or reason that led to the stop; (5) the disposition of the stop, arrest, citation, warning, or no action; (6) whether a search was conducted, (7) if a search was conducted, the authority for the search;
- (8) whether the officer knew the race/ethnicity of the driver before the stop; and (9) the law enforcement agency's code.

Id.

This list of data is similar to that required in House File 505, except that House File 505 includes the officer's perception of these items, not what each item actually was. The list in Senate File 386 does not include the expanded list of data that appears in Senate File 903.

15. S.F. 386 82nd Leg., 1st Reg. Sess. (Minn. 2001) (as introduced).

16. *Id.*

17. *Id.*

2. *House File 1029 / Senate File 903*

Neither House File 1029 nor Senate File 903 passed out of the Crime Prevention Committees. These bills were similar to House File 737 and Senate File 386, but some considered them more comprehensive in their approach to prevent racial profiling in Minnesota. House File 1029 and Senate File 903 included a statement of purpose, which was to determine whether racial profiling was occurring, and if so, to eliminate it and to hold people accountable for their actions.¹⁸ The bills' definitions of racial profiling were substantially similar to the definition in Senate File 386.¹⁹ The bill also prohibited a peace officer from issuing a citation for a violation unless the officer lawfully stopped or detained a driver for a moving violation. The bill created a Traffic Stop Statistics Advisory Committee and provided for hiring an outside expert to help evaluate data collected by law enforcement.²⁰

18. S.F. 903, 82nd Leg., 1st Reg. Sess. (Minn. 2001). The bill specifically provided that:

[t]he purpose of this act is to require the collection of data on traffic stops conducted by law enforcement officers throughout the state to: (1) determine whether racial profiling is occurring; (2) hold law enforcement agencies accountable if racial profiling is occurring; (3) require that law enforcement agencies prohibit racial profiling and develop proactive measures to improve practices and protocols relating to traffic stops; and (4) increase the trust between law enforcement agencies and communities of color.

Id.

19. *Id.* The bill defined racial profiling as:

[a]ny law enforcement officer-initiated action that relies in whole or in part on the race, ethnicity, or national origin of an individual, rather than on the behavior of that individual or on information that leads the officer to a particular individual who has been identified as being engaged in or having been engaged in criminal activity.

Id. There are only technical differences between this definition and the definition used in Senate File 386. There are a number of differences between the definition used in Senate File 903 and the definition used in House File 505.

20. S.F. 903, 82nd Leg., 1st Reg. Sess. (Minn. 2001). The Traffic Stop Statistics Advisory Committee would consist of the following members:

(1) two members from the Minnesota House; (2) two members from the Minnesota Senate; (3) the Governor; (4) the Attorney General; (5) the directors of the Chiefs of Police Association, the Police and Peace Officers Association, the State Troopers Association, and the Sheriffs Association; (6) the directors of the councils on Asian-Pacific Minnesotans, Black Minnesotans, Indian Affairs, and Chicano-Latino People Affairs; (7) the director of the Urban League Chapter; (8) the director of the NAACP branch; (9) a representative from the ACLU; and (10) a professor of statistics at a Minnesota college or university.

House File 1029 and Senate File 903 also required all law enforcement officers who conduct traffic stops to collect eighteen types of data about the stop.²¹ These bills also provided that the Attorney General would help monitor law enforcement agencies and would store the data that would eventually be analyzed by an outside expert.²²

Similar to House File 737 and Senate File 386, these bills required the POST Board to develop a model policy regarding elimination of racial profiling. Local agencies would use this model policy to develop their own policy. In addition, these bills called for law enforcement training on racial profiling.²³

3. *House File 505 / Senate File 982*

As chair of the House Judiciary Finance Committee, Representative Rich Stanek designated his bill to be the main vehicle for racial profiling legislation in the House of Representatives. House File 505 and Senate File 982, as introduced, were similar to the other racial profiling bills, with one major exception: they did not require data collection for all law enforcement agencies.

House File 505 and Senate File 982 provided for a racial

Id.

21. *Id.* The data collected by the officer would include:

(1) the date and time of the stop; (2) the location of the stop; (3) the traffic violation or reason that led to the stop; (4) the date of birth, race, and gender of the driver; (5) the driver's license number of the driver of the vehicle; (6) the year and make of the vehicle; (7) the vehicle's license plate number; (8) the number of passengers in the vehicle and their race; (9) whether the driver was asked to exit the vehicle; (10) whether a search was conducted of the driver, passengers, or vehicle; (11) the authority for the search; consent or probable cause; (12) whether the driver and passengers were advised of their constitutional rights under the Fourth Amendment to be free from unreasonable search and seizure; (13) whether any contraband was discovered or seized in the course of the search and the nature of the contraband; (14) whether the officer encountered any resistance or used force during the stop; (15) whether any injuries resulted from the stop; (16) the duration of the stop; (17) the outcome of the stop: release, warning, violation, arrest, or charge; and (18) the officer's badge number.

Id.

This list of data is an expanded version of what exists in either Senate File 982 or House File 505. *Id.*

22. S.F. 903, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

23. *Id.*

profiling study that involved the voluntary collection of data by law enforcement agencies. Law enforcement agencies would have the option of joining the study and collecting various types of data for each traffic stop.²⁴ The Commissioner of Public Safety, who would contract with a consultant to conduct the study, would oversee the racial profiling process. To encourage involvement in the study, House File 505 and Senate File 982 established a grant program to provide funds for participating law enforcement agencies.²⁵ These bills also provided for a statewide conference and regional seminars to discuss racial profiling and to increase awareness of the issue. These bills appropriated more than \$1.3 million for the racial profiling study and other efforts to eliminate racial profiling in Minnesota.²⁶

24. H.F. 505, as introduced, 82nd Leg., 1st Reg. Sess. (Minn. 2001). The data that would be collected by agencies that decided to participate included the following:

- (1) the location of the stop;
- (2) the date and time of the stop;
- (3) the officer's perception of the age of the driver;
- (4) the officer's perception of the race, ethnicity, or national origin of the driver;
- (5) the officer's perception of the gender of the driver;
- (6) whether the peace officer knew the driver's race, ethnicity, or national origin before the stop;
- (7) the reason for the stop;
- (8) the disposition of the stop;
- (9) the law enforcement agency's identification code; and
- (10) except as provided in this paragraph, any other data the commissioner of public safety deems it advisable and reasonable to collect.

Id.

This data was similar to the data that would be collected in Senate File 386, except that this data includes the officer's perception of these various items. *Id.* In addition, the list of data in House File 505 does not include the expanded list of data that was included in Senate File 903.

25. H.F. 505, as introduced, 82nd Leg., 1st Reg. Sess. (Minn. 2001). The grant program would have provided the following funds to law enforcement agencies who participated:

- (1) up to \$10,000 for agencies with zero to nine full-time sworn peace officers;
- (2) up to \$20,000 for agencies with ten to 25 full-time sworn peace officers;
- (3) up to \$30,000 for agencies with 26 to 50 full-time sworn peace officers;
- (4) up to \$40,000 for agencies with 51 to 100 full-time sworn peace officers;
- (5) up to \$50,000 for agencies with 101 to 250 full-time sworn peace officers; and
- (6) up to \$75,000 for agencies with over 250 full-time sworn peace officers.

Id.

26. *Id.* The bill appropriated a total of \$1,305,000 from the General Fund. Of this amount, \$1,150,000 was appropriated to the Department of Public Safety, \$50,000 to the Bureau of Criminal Apprehension, \$75,000 to the Minnesota State Patrol, and \$30,000 to the Metropolitan Council. *Id.*

B. *Legislative Action in the Minnesota House
Addressing Racial Profiling*

1. *Action Taken in the Crime Prevention Committee*

a. *Public Hearing on February 13, 2001*

On February 13 2001, the House Crime Prevention Committee held a public hearing on racial profiling to hear concerns from communities of color and local leaders.²⁷ Minneapolis Mayor Sharon Sayles Belton voiced her belief “that racial profiling does occur.”²⁸ She supported mandatory statewide data collection on traffic stops and stated, “[e]liminating racial profiling is at the top of our agenda in Minneapolis. We want the same in the state.”²⁹

Public Safety Commissioner Charlie Weaver testified that the Governor was opposed to statewide mandatory data collection of traffic stops and felt that racial profiling is a local issue and that the state should let local officials attempt to eliminate the problem.³⁰ In his 2002-2003 Biennial Budget to the Legislature, the Governor did indicate that a limited study on racial profiling could be beneficial.³¹ Governor Jesse Ventura recommended a one-time appropriation of \$280,000 to the Department of Public Safety,

27. *Racial Profiling Elimination: Public Hearing Before the House Comm. on Crime Prevention*, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

28. *Id.*

29. *Id.*

30. *Id.*

31. GOVERNOR JESSE VENTURA, 2002-2003 MINNESOTA BIENNIAL BUDGET, PRESENTED TO THE 82ND LEG. H-323 (2001). The Governor’s budget proposal for a racial profiling study stated:

[t]he issue of racial profiling continues to receive increased attention both in Minnesota and nationally. The perception and/or reality of racial profiling is a divisive issue that can adversely affect the relationships between various law enforcement agencies and community members. Discussions of racial profiling, while often including denials that profiling exists, generally also include the acknowledgment that collection of statistical data would be beneficial in ascertaining a pattern of police stops. The collection of race related data: (1) provides information necessary to deal with allegations of profiling, (2) sends a strong message that police decisions must be race-neutral, and (3) provides encouragement to communities of color that their concerns are being appropriately addressed.

Id.

which the Department would use for a study based on voluntary data collection by law enforcement.³²

There was a great deal of discussion during this committee hearing about whether the elimination of racial profiling should come from state or local government. Both Representative Gregory Gray and Mayor Sayles Belton voiced support for a statewide plan that would include mandatory data collection for all law enforcement agencies.³³ Representative Gray commented, “[t]his is a major civil rights issue. Eliminating racial profiling is not something we can pawn off to the mayors or police chiefs. This is something we as a state need to come to grips with.”³⁴

b. Committee Hearing on House File 505 on March 6, 2001

At the House Crime Prevention Committee hearing on March 6, 2001,³⁵ Representative Stanek moved to eliminate the voluntary data collection provision from House File 505.³⁶ Representative Stanek agreed that racial profiling needs to be eliminated, but asserted that it is a purely local issue for local law enforcement to solve.³⁷

In general, law enforcement supported eliminating racial profiling and the approach taken in House File 505 as amended.³⁸ Representatives from counties and cities in Minnesota also spoke in favor of eliminating racial profiling and the approach taken in the

32. *Id.*

33. *Racial Profiling Elimination: Public Hearing Before the House Comm. on Crime Prevention*, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

34. *Id.*

35. *Racial Profiling Elimination*, *supra* note 33.

36. H505DE4 Amendment to H.F. 505, 82nd Leg., 1st Reg. Sess. (Minn. 2001). The DE4 Amendment to House File 505 removed from the bill the racial profiling study which would have been based on voluntarily collection of data on traffic stops. It also removed the Commissioner of Public Safety from overseeing the study. Under this amendment, there was also no need to keep the consultant to look at the data, nor was there a need to keep the grant program which would have provided incentives for law enforcement agencies to participate. The DE4 Amendment did provide that the chief law enforcement officer and supervisors would be in charge of detecting and responding to racial profiling within their departments. The POST Board would be in charge of ensuring compliance. The \$500,000 appropriation would have been divided as follows: \$400,000 would have been appropriated to the POST Board to conduct training seminars and to prepare training guidelines; and \$100,000 would have been appropriated to the Commissioner of Public Safety to increase public awareness about racial profiling.

Id.

37. *Racial Profiling Elimination*, *supra*, note 33.

38. *Id.*

amended version of House File 505.³⁹ The Crime Prevention Committee passed the bill on to the Judiciary Finance Committee.⁴⁰

2. *Action Taken in Judiciary Finance Committee on March 29, 2001*

The Judiciary Finance Committee focused on the bill's appropriations for training and public awareness.⁴¹ An amendment was adopted that required jurisdictions to report the number of racial profiling complaints filed and the disposition of each complaint.⁴² Representative Stanek indicated that adoption of the amendment would provide a key evaluation piece to the bill.⁴³ After the amendment was adopted, House File 505 was laid over for inclusion in the Omnibus Judiciary Finance Bill, which would later become House File 351.⁴⁴

3. *Action in Ways and Means Committee on April 26, 2001*

After the Judiciary Finance Committee passed House File 351 on April 24, 2001,⁴⁵ the House Ways and Means Committee, chaired by Representative Dave Bishop, considered House File 351. The committee discussion focused mainly on budgetary matters and did not amend the profiling language.⁴⁶ The House Ways and Means Committee amended the bill and passed it to the floor of the House for consideration.⁴⁷

39. *Id.*

40. *Id.*

41. *Racial Profiling Elimination: Hearing on H.F. 505 Before the House Comm. on Judiciary Fin.*, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

42. H505A3 Amendment to H.F. 505, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

43. *Racial Profiling Elimination: Hearing on H.F. 505 Before the House Comm. on Judiciary Fin.*, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

44. H.F. 351, 82nd Leg., 1st Reg. Sess. (Minn. 2001). In the Legislature, the chairman of a finance division will often choose a bill that has previously been introduced as the omnibus finance bill for that committee. In this case, Rep. Stanek chose House File 351 to be the Omnibus Judiciary Finance Bill. It would later contain a number of criminal justice items, including the language on racial profiling elimination. *Id.*

45. *Omnibus Crime Prevention, Judiciary Finance, and Family Law Appropriations: Hearing on H.F. 351 Before the House Comm. on Judiciary Finance*, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

46. H.F. 351, 3rd Engrossment, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

47. *Omnibus Crime Prevention, Judiciary Finance, and Family Law Appropriations: Hearing on H.F. 351 Before the House Comm. on Ways and Means*, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

4. Action Taken on House Floor on April 30, 2001

The House of Representatives debated House File 351 on April 30, 2001. The floor debate proved that the discussion on racial profiling was not completed.

Representative Gray, along with Representative Carlos Mariani and Representative Neva Walker proposed an amendment that would have required all law enforcement agencies to collect data for traffic stops. Major components of the amendment included: a two year racial profiling study based on statewide, mandatory data collection by all law enforcement agencies, collection of nine types of data, and training requirements.⁴⁸ Gray, Mariani, and Walker stressed the importance of a statewide approach, which included data collection, to eliminate racial profiling.⁴⁹

Representative Stanek countered that the focus should be on eliminating racial profiling rather than studying it.⁵⁰ The House took a roll call vote on the amendment, which failed by a vote of 52-78.⁵¹ The House then passed House File 351 with a vote of 107-21.⁵² Almost all Republicans and a few Democrats supported the Minnesota House of Representatives solution to eliminating racial profiling, which included training and better supervision but no data collection or studies on racial profiling for traffic stops.

C. Legislative Action in the Minnesota Senate Addressing Racial Profiling

1. Action Taken in the Crime Prevention Committee

a. Public Hearing and Discussion on March 7, 2001

Though Senator Ranum had designated her bill as the vehicle for racial profiling legislation in the Senate, Senator Thomas Neuville and Senator Linda Berglin also presented their bills to the

48. Gray, Mariani, and Walker Floor Amendment to H.F. 351, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

49. *Omnibus Crime Prevention, Judiciary Finance, and Family Law Appropriations: Debate on H.F. 351 Before the House of Representatives*, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

50. *Id.*

51. ST. OF MINN. J. OF THE HOUSE,, FORTY-THIRD DAY, April 30, 2001, 82nd Leg., 1st Reg. Sess. 3383 (Minn. 2001).

52. *Id.* at 3387.

Crime Prevention Committee on March 7, 2001.⁵³ Representatives from law enforcement and from communities of color testified as well.⁵⁴

The first bill introduced at this hearing was Senate File 982. As the companion bill to House File 505, this bill provided for studying racial profiling in traffic stop data voluntarily collected by law enforcement officers.⁵⁵ Commissioner of Public Safety Charlie Weaver testified, “[t]raining and supervision are really important. I strongly believe that [data collection] should not be mandated because data collection takes time away from other police duties.”⁵⁶ Anoka County Sheriff Larry Podany, who represented the Minnesota County Sheriff’s Association, indicated that the Legislature should allow local jurisdictions to make their own decisions about data collection.⁵⁷

Senate File 902 was also presented to the committee and proposed an ongoing racial profiling study based on mandatory statewide data collection on traffic stops. Representatives from communities of color strongly supported mandatory statewide data collection as a solution to eliminating racial profiling. Both Nathaniel Khaliq, who represented the St. Paul NAACP, and Jason Brown, who represented the Minneapolis NAACP, testified in favor of Senate File 902 and statewide mandatory data collection.⁵⁸ They testified that studying the issue was integral to eliminating racial profiling.⁵⁹

Senator Ranum also introduced her bill, Senate File 386, to the committee. As the companion to House File 737, Senate File 386 included a racial profiling study based on the statewide

53. *Traffic Stops Racial Profiling Elimination: Hearing Before the Senate Comm. on Crime Prevention*, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

54. *Id.*

55. S.F. 982, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

56. *Traffic Stops Racial Profiling Elimination: Hearing on S.F. 982 Before the Senate Comm. on Crime Prevention*, 82nd Leg., 1st Reg. Sess. (Minn. 2001). Commissioner Weaver testified that 4500 people are stopped every day in the State of Minnesota. By mandating the collection of data for each traffic stop, a great deal of time and money will be spent on collecting data rather than patrolling our streets and highways. Commissioner Weaver argued that since the budgets for law enforcement agencies are already tight, mandating this collection of data will only make the budgetary situations worse. *Id.*

57. *Id.*

58. *Traffic Stops Racial Profiling Elimination: Hearing on S.F. 903 Before the Senate Comm. on Crime Prevention*, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

59. *Id.*

mandatory data collection of nine specified reporting elements.⁶⁰ Representatives from communities of color also supported this bill. Minnesota District Court Judge Lynn Olson, who testified on behalf of Senate File 386, said that data collection is extremely important because the state did not want to prejudge the police officers. She cautioned that legislators needed to examine the issue and see if racial profiling truly exists.⁶¹

b. Public Hearing and Discussion on March 14, 2001

Senator Ranum again invited the public to testify on the three racial profiling bills on March 14, 2001.⁶² Many witnesses spoke for and against mandatory data collection.

Since Representative Stanek stripped the voluntary data collection from House File 505, Senator Neuville wanted the companion bill, Senate File 982, to remain consistent with the House version. As a result, he offered the A-11 amendment to Senate File 386 that focused on training rather than data collection.⁶³ The amendment recognized that racial profiling exists, defined it, and provided a mechanism to eliminate it.⁶⁴

After the committee discussed the amendment at length, the vote was tied 6-6.⁶⁵ The committee adjourned for the day because time had run out and the committee failed to reach an agreement.⁶⁶

c. Committee Discussion on March 16, 2001

The Senate Crime Prevention Committee held its final meeting on racial profiling on March 16, 2001. The Committee made another attempt to amend the bill to coincide with the

60. S.F. 386, *supra* note 14.

61. *Traffic Stops Racial Profiling Elimination: Hearing on S.F. 386 Before the Senate Comm. on Crime Prevention*, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

62. *Id.*

63. SCSO386A11 Amendment to S.F. 386, 82nd Leg., 1st Reg. Sess. (Minn. 2001). This amendment was very similar to what had passed out of the House Crime Prevention Committee. This amendment took out all of the voluntary data collection provisions and replaced them with training. *Id.* See also H.F. 505, 1st Engrossment, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

64. SCSO386A11 Amendment to S.F. 386, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

65. *Traffic Stops Racial Profiling Elimination: Hearing on S.F. 386 Before the Senate Comm. on Crime Prevention*, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

66. *Id.*

House bill with a motion to adopt the A-11 Amendment that had previously been offered.⁶⁷ Before a vote was taken on the A-11 Amendment, a motion for another amendment was made, which would appropriate money for installing video cameras in police vehicles.⁶⁸ The amendment was adopted as part of the A-11 Amendment,⁶⁹ but the A-11 Amendment failed with a ties vote of 6-6.⁷⁰

The committee appeared deadlocked again. The point of contention was data collection. A proposal was made to make data collection voluntary.⁷¹ A formal motion was made to amend Senate File 386 to make the racial profiling study based on voluntary data collection.⁷² This amendment would also include a toll free phone number for complaints, and a grant program for installing video cameras in police cars. The Senate Crime Prevention Committee adopted the amendment by a voice vote and passed the bill to the Senate Judiciary Committee.⁷³ As a result of this committee hearing, the Senate position, embedded into the First Engrossment of Senate File 286, became a racial profiling study based on voluntary data collection on traffic stops.⁷⁴

2. Action Taken in the Judiciary Committee on March 28, 2001

On March 28, 2001, the Senate Judiciary Committee considered Senate File 386.⁷⁵ An amendment was offered to replace the voluntary data collection provision with a mandatory data collection provision.⁷⁶ This amendment surprised many committee members who had presumed that the voluntary data collection piece was a crime prevention issue that the Crime Prevention Committee had settled.⁷⁷

67. *Id.*

68. *Id.*

69. *Traffic Stops Racial Profiling Elimination: Hearing on S.F. 386 Before the Senate Comm. on Crime Prevention*, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. S.F. 386, 1st Engrossment, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

75. *Traffic Stops Racial Profiling Elimination: Hearing on S.F. 386 Before the Senate Comm. on the Judiciary*, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

76. SC386A12 Amendment to S.F. 386, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

77. *Traffic Stops Racial Profiling Elimination: Hearing on S.F. 386 Before the Senate Comm. on the Judiciary*, 82nd Leg., 1st Reg. Sess. (Minn. 2001). Senator Neuville,

The Senate Judiciary Committee discussed the amendment extensively. A few witnesses representing law enforcement testified against the amendment.⁷⁸ The Committee approved the amendment with a 5-4 vote.⁷⁹ The Committee then sent the bill to the Senate Full Finance Committee with mandatory data collection as the key piece to racial profiling elimination.⁸⁰

3. *Action Taken in the Transportation and Public Safety Budget Division*

The Transportation and Public Safety Budget Division considered Senate File 386 on April 24, 2001, and allowed additional public testimony on racial profiling.⁸¹ Commissioner Weaver commented on the State Patrol's involvement in the study and noted there had never been a sustained report of racial profiling in the State Patrol's history.⁸² Because the State Patrol makes 690,000 stops per year and because filling out one data form would take approximately two minutes, Weaver estimated that the State Patrol would dedicate 23,000 hours per year to data collection.⁸³

Mandatory versus voluntary data collection was a key issue at this hearing. An amendment was introduced to bring the bill back

who also sat on the Senate Crime Prevention Committee, indicated that this amendment came as a big surprise because the bill represented the agreement reached on a contentious crime prevention issue in the Crime Prevention Committee. The only way for that bill to pass out of the Crime Prevention Committee was for the committee members to compromise on the issue of voluntary data collection. *Id.*

78. *Id.* The three witnesses that testified on behalf of law enforcement were from the Minnesota Police and Peace Officers Association, the Minnesota Police Chiefs Association, and the Minnesota Sheriffs Association. All three witnesses testified against the amendment, which was offered by Senator Myron Orfield. *Id.*

79. *Id.* The vote that was taken on the Orfield A12 Amendment was not a recorded roll call, rather, division was called. The division resulted in the amendment prevailing with a 5-4 vote of the committee. A short while before the vote was taken, Senator Fischbach had to leave the committee hearing for personal reasons. If she would have been able to stay, it is likely that the amendment would have failed on a tie vote. Some have suggested that Senator Ranum delayed the vote was intentionally until after Senator Fischbach left the hearing in order for the amendment to prevail. *Id.*

80. S.F. 386, 2nd Engrossment, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

81. *Traffic Stops Racial Profiling Elimination: Hearing on S.F. 386 Before the Senate Comm. on Fin., Trans. and Pub. Safety Budget Div.*, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

82. *Id.*

83. *Id.*

to voluntary data collection by law enforcement agencies.⁸⁴ The amendment appropriated \$5 million for installing video cameras in police cars.⁸⁵ The Transportation and Public Safety Budget Division adopted the amendment with a 7-2 vote and referred the bill to the Full Finance Committee.⁸⁶ Senate File 386 thus included a racial profiling study based on data collected from law enforcement agencies that had chosen to participate.⁸⁷

4. Action Taken in the Full Finance Committee on May 10, 2001

The Full Finance Committee discussed Senate File 386 on May 10, 2001. An amendment was proposed that represented a compromised version of the bill.⁸⁸ This amendment included voluntary collection of data for traffic stops and other provisions that had previously been included in the bill.⁸⁹

One of the most important pieces of testimony from this hearing came from Nathaniel Khaliq of the St. Paul chapter of the NAACP. Khaliq was satisfied that a large number of police agencies would collect the data and participate in the study.⁹⁰ Though the general sentiment of communities of color would later sway in the opposite direction, Mr. Khaliq's testimony indicated that communities of color supported the approach taken in Senate File 386. The Senate Finance Committee passed the bill 25-1.⁹¹

5. Action Taken on Senate Floor on May 17, 2001

The full Senate debated racial profiling on May 17, 2001. Senator Ranum stressed that the committees had reached a delicate compromise and that it was important for the Senate to keep the bill in its then-current form.⁹² However, as with any bill that reaches the Senate floor, amendments could be offered by any

84. SCSO386A16 Amendment to S.F. 386, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

85. *Id.*

86. *Traffic Stops Racial Profiling Elimination*, *supra* note 81.

87. S.F. 386, 3rd Engrossment, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

88. SCSO386A23 Amendment to S.F. 386, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

89. *Id.*

90. *Traffic Stops Racial Profiling Elimination: Hearing on S.F. 386 Before the Senate Commission on Finance*, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

91. *Id.*

92. *Traffic Stops Racial Profiling Elimination: Debate on S.F. 386 Before the Senate*, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

Senator.

Senator Day proposed an amendment to exempt the State Patrol from the data collection requirement.⁹³ Senator Day felt the State Patrol was already underfunded and understaffed and the data collection provision would be extremely detrimental to rural Minnesota.⁹⁴ The Day amendment was defeated 24-39.⁹⁵

Other senators offered minor amendments. Senator Pat Pariseau offered an amendment to delete the requirement that officers distribute an informational card on each traffic stop.⁹⁶ The Senator felt that the card would invite too many frivolous complaints and would weigh down the system. The Pariseau amendment was defeated 31-33.⁹⁷

After the floor debate concluded, Senate File 386 was put before the Senate for a final vote. The Senate passed the bill 46-18.⁹⁸ The bill that passed included a two-year, voluntary racial profiling study that would collect at least ten different types of data.⁹⁹ Participating law enforcement agencies would be eligible for grants to install video cameras in squad cars.¹⁰⁰ The next stop

93. SCSO386A29 Amendment to S.F. 386, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

94. *Traffic Stops Racial Profiling Elimination: Debate on S.F. 386 Before the Senate*, 82nd Leg., 1st Reg. Sess. (Minn. 2001). Senator Day was referring to the testimony of Commissioner Charlie Weaver in the Senate Transportation and Public Safety Budget Division Meeting on April 24, 2001.

95. ST. OF MINN. JOURNAL OF THE SENATE, FIFTY-SIXTH DAY, May 17, 2001, 82nd Leg., 1st Reg. Sess. 3653 (Minn. 2001).

96. SCSO386A51 Amendment to S.F. 386, 82nd Leg., 1st Reg. Sess. (Minn. 2001).

97. ST. OF MINN., *supra* note 95 at 3654.

98. *Id.* at 3656.

99. S.F. 386, 4th Engrossment, 82nd Leg., 1st Reg. Sess. (Minn. 2001). The Fourth engrossment of Senate File 386 included many important provisions. One provision, which was a part of the agreement that had been reached with communities of color, sought to encourage more minority members to become police officers. There was also a definition of racial profiling and a racial profiling study based on voluntary collection of data where participating agencies would collect ten different types of data for each traffic stop. Participation in the study would also allow agencies to receive funds for the installation of video cameras. An outside expert would be hired to look at the data. A Racial Profiling Advisory Committee, consisting of law enforcement as well as minority representatives, would help to oversee the study. A toll-free number would be set up with the Attorney General, allowing people who feel that they have been victims of racial profiling could call to file a report. The bill also provided for a great deal of training for law enforcement officers regarding the elimination of racial profiling. *Id.*

100. *Id.*

for this bill would be the conference committee, where House and Senate members would hammer out the differences between the two bills.

D. Conference Committee

1. Consideration of House File 351 by the Conference Committee

The conference committee that normally would have resolved the differences between the bills took little action because of severe budget disputes between the legislative and executive branches during that year. The disputes forced the conference committee to wait until leadership agreed on budget targets before taking further action.

2. 2001 Legislative Session Adjourned

At midnight on May 21, 2001, the Legislature adjourned the 2001 Legislative Session as required by the Minnesota Constitution.¹⁰¹ With no agreement on budgetary matters, almost all of the omnibus spending bills failed to pass during the 2001 Regular Session. House File 351 was temporarily on hold because the 2001 Session adjourned.¹⁰² On June 11, 2001, the Governor

101. MINN. CONST. art. IV, § 12.

The legislature shall meet at the seat of government in regular session in each biennium at the times prescribed by law for not exceeding a total of 120 legislative days. The legislature shall not meet in regular session, nor in any adjournment thereof, after the first Monday following the third Saturday in May of any year.

Id.

The first Monday after the third Saturday in May of 2001 was Monday, May 21, 2001. The Legislature was forced to adjourn by this date. *Id.*

102. Under the two-year legislative cycle in Minnesota, a bill introduced at any time during the two-year cycle is generally alive for the entire cycle. In 2001, which was the first year of the two-year legislative cycle, House File 351 was introduced and action was taken as described *supra* pages 104-08. However, when a special session is called, such as the 2001 First Special Session, all new bills need to be introduced and are alive only for the special session. For this reason, House File 351 was laid on the table and a new conference committee, or working group, was convened for Special Session Senate File 7.

Interestingly enough, this would not be the end of the road for House File 351. During the 2002 Legislative Session, House File 351 was taken from the table and became the bill representing the first phase of the two phase budget deficit reduction plan adopted by the Legislature. So, during the 2002 Session, a new conference committee was convened and the first phase of the budget agreement was reached. Both houses passed House File 351. The bill was then

called the Legislature back for the 2001 First Special Session.¹⁰³

3. *Continued Consideration by the Conference Working Group*

A conference working group was appointed because no formal conference committee could meet while the Legislature was not in session.¹⁰⁴ As a part of the working group, both Representative Stanek and Senator Ranum were deeply involved in the racial profiling discussions. During the working group meeting, Representative Stanek offered an amendment, JRC56, which included a one-year racial profiling study based on the voluntary collection of data.¹⁰⁵ Representative Stanek argued that the amendment represented 95% of the items included in the Senate bill and that the amendment should be adopted.¹⁰⁶

vetoed by the Governor but the veto was overridden by the Legislature. House File 351 became Chapter 220 of the 2002 Legislative Session.

103. MINN. CONST. art. IV, § 12. "A special session of the legislature may be called by the governor on extraordinary circumstances." *Id.*

104. This working group was created with five members from each house of the Legislature.

105. JRC56 Amendment to Omnibus Transportation, Public Safety and Criminal Justice Working Group Comm. Engrossment, 82nd Leg., 1st Spec. Sess. (Minn. 2001).

106. *Omnibus Transportation, Public Safety and Criminal Justice Appropriations: Discussion of S.F. 7 Before the Working Group on S.F. 7*, 82nd Leg., 1st Spec. Sess. (Minn. 2001). Rep. Stanek gave some introductory comments on this amendment which discussed the process and the amendment:

Mr. Chair and members, JRC56 has been passed out. JRC56 is the agreement on racial profiling. I say agreement, because this is a work of collaboration between a number of different groups. Mr. Chair and members, the racial profiling issue is one that is of great importance to Minnesotans both in terms of public safety, communities of color, and the Legislature should act and will act on JRC56. The profiling legislation before you builds on the House bill, which was passed early in session and provided training, a policy, a public awareness campaign, strong statement that racial profiling in the State of Minnesota will not be tolerated, and this goes to addressing that issue. In collaboration with the Senate, I looked at the Senate bill and worked with a number of different senators and other representatives and stakeholders that had purview in this and I have included in the House bill about 95% of the items that the Senate passed off the Senate Floor, including voluntary data collection for 12 months, you've seen on the spreadsheet that we've raised a little over \$3 million in revenue off of the fine surcharge to put video cameras in every squad car in Minnesota if those agencies participate in data collection, they will receive those cameras as well as cash incentives. Mr. Chair, I'm sure there is going to be some discussion on this and again I would move JRC56 for adoption.

Senator Ranum opposed the amendment and felt Representative Stanek's amendment omitted many important provisions, including the informational card that police officers would give to each driver who was stopped.¹⁰⁷ Senator Ranum also was concerned that representatives from communities of color were left out of the process.¹⁰⁸ Senator Ranum then made a motion to table the amendment, but the motion failed.¹⁰⁹ The working group passed the JRC56 Amendment with a voice vote.¹¹⁰

4. *Racial Profiling Language Adopted by Conference Committee as Part of Special Session Senate File 7*

The racial profiling language that the conference committee ultimately adopted as part of Special Session Senate File 7 included many of the provisions discussed during the entire session. Included was a provision increasing the criminal and traffic surcharge by \$3 as a way to fund the racial profiling study.¹¹¹ It also provided that no traffic stop would be made by a peace officer without a legitimate reason, and that race, ethnicity, or national origin alone were never sufficient reasons for a stop.¹¹² It included

Id.

107. *Id.*

108. *Id.* Senator Ranum made a statement that was very important to this racial profiling discussion. She said:

[i]t is my hope that this conference committee, in respect for communities, representatives who have given their best faith and are not, one of them is not in the state and we know that one is not here today. That we would not do anything today without them having the opportunity to participate. The worst thing we could do is to do something that just indicates that, there they go again, we don't care what you think. And, Mr. Chair, if you recall, I had to search my soul very deeply, to decide whether or not to take the Senate bill up on the Floor because I was very fearful that this might happen. And so, it is my, on behalf of the representatives of the communities of color, who bargained in good faith, I ask you, I plead with you not to take action on this today. And let's think how we would feel, if we had something being negotiated about us and we weren't there.

Id.

109. *Id.*

110. *Id.*

111. S.F. 7, 82nd Leg., 1st Spec. Sess. (Minn. 2001). Laws 8 (codified at MINN. STAT. § 626.8471, subd. 2 (2001)).

112. *Id.* While the Minnesota Legislature almost always rejects the use of a purpose statement in legislation that is passed, the conference committee decided to include this purpose statement to demonstrate the importance of eliminating racial profiling. The purpose statement reads as follows:

a definition of racial profiling similar to definitions previously considered by both houses.¹¹³

Senate File 7 focused heavily on training for law enforcement. It provided for the development of a model policy to prevent racial profiling and a requirement that all local agencies develop their own policy fashioned after the model policy.¹¹⁴ In addition, the POST Board would have the authority to investigate complaints.¹¹⁵

The most contentious issue throughout the session dealt with data collection. The agreement reached in Senate File 7 provided for a one-year study based on the voluntary collection of data on traffic stops.¹¹⁶ Participating agencies would be eligible for grants for video camera installation in police vehicles.¹¹⁷ The bill required that law enforcement collect ten types of data.¹¹⁸ Law enforcement

[t]he legislature finds that the reality or public perception of racial profiling alienates people from police, hinders community policing efforts, and causes law enforcement to lose credibility and trust among the people law enforcement is sworn to protect and serve. No stop initiated by a peace officer should be made without a legitimate reason; race, ethnicity, or national origin alone should never provide a sufficient reason. Law enforcement policies and training programs must emphasize the need to respect the balance between the rights of all persons to be free from unreasonable governmental intrusions and law enforcement's need to enforce the law.

Id.

113. *Id.* The bill defines racial profiling as:

[a]ny action initiated by law enforcement that relies upon the race, ethnicity, or national origin of an individual rather than: (1) the behavior of that individual; or (2) information that leads law enforcement to a particular individual who has been identified as being engaged in or having been engaged in criminal activity. Racial profiling includes use of racial or ethnic stereotypes as factors in selecting whom to stop and search. Racial profiling does not include law enforcement's use of race or ethnicity to determine whether a person matches a specific description of a particular subject.

Id.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.* The data that must be collected as part of this study include:

(1) the location of the stop; (2) the date and time of the stop; (3) the age, race/ethnicity, and gender of the driver; (4) the traffic violation or reason that led to the stop; (5) the disposition of the stop, arrest, citation, warning, or no action; (6) whether a search was conducted of the driver, passengers, or vehicle; (7) if a search was conducted, the authority for the search; (8) if a search was conducted, whether any contraband was discovered or seized and the nature of the contraband;

would then forward the data to the Commissioner of Public Safety and an outside expert for analysis.¹¹⁹ The outside expert would then report the findings to the Legislature by December 1, 2003.¹²⁰

Senate File 7 also established the Racial Profiling Advisory Committee. The committee would consist of thirteen different leaders who would advise the POST Board and Attorney General on their duties as they relate to eliminating racial profiling in Minnesota.¹²¹

(9) whether the officer knew the race/ethnicity of the driver before the stop; and (10) the law enforcement agency's code.

Id.

This data collection is similar to what was previously considered by the Legislature during the 2001 Session.

119. *Id.*

120. *Id.*

121. *Id.* The Racial Profiling Advisory Committee consists of the following individuals or their designees:

(1) the executive director of the Minnesota chiefs of police association; (2) the executive director of the Minnesota police and peace officers association; (3) the executive director of the Minnesota sheriffs association; (4) a chief of police, selected by the Minnesota chiefs of police association; (5) a member of the Minnesota police and peace officers association, selected by the association; (6) the executive director of the council on Asian-Pacific Minnesotans; (7) the executive director of the council on Black Minnesotans; (8) the executive director of the council on Indian affairs; (9) the executive director of the council on Chicano-Latino people affairs; (10) the executive director of an Urban League chapter, selected by agreement of the executive directors of the Urban League chapters within the state; (11) the president of a National Association for the Advancement of Colored People branch, selected by agreement of the presidents of the National Association for the Advancement of Colored People branches within the state; (12) one person appointed by the commissioner of public safety; and (13) one person appointed by the Black Ministers Alliance.

Id.

Also, Senate File 7 provided for four specific duties of this committee. These duties are as follows:

[t]he racial profiling advisory committee must: (1) advise the board of peace officer standards and training on the development of the statewide antiracial profiling model policy under section 626.8471, subdivision 3; (2) advise the board of peace officer standards and training on racial profiling training objectives, materials, and implementation; (3) advise the attorney general on the racial profiling public awareness campaign; and (4) advise the peace officer standards and training board on any other policies relating to racial profiling based on the review of summary data on racial profiling complaints.

Id.

The bill also created a toll-free telephone number for racial profiling complaints. The Attorney General would operate and maintain the telephone number, act as a clearinghouse for complaints, and forward the complaints to the POST Board.¹²²

Senate File 7 also included provisions to encourage more members from communities of color to become law enforcement officials. The bill provided that a person with a baccalaureate degree who has successfully completed a board-certified basic training course is eligible to take the peace officer licensing examination.¹²³ The bill also lowered the amount of military experience that was required for a person to be eligible to take the reciprocity examination.¹²⁴ Finally, the bill provided that the chief of the State Patrol would complete a study that would identify measures to recruit and increase minority representation in the State Patrol.¹²⁵

E. Passage of Special Session Senate File 7 by the Legislature

1. House Passage

On June 29, 2001, in the waning moments of the 2001 First Special Session, the House of Representatives passed Senate File 7,¹²⁶ which included the racial profiling agreement, along with all of the appropriations for transportation, public safety and the judiciary.¹²⁷ Senate File 7 passed the House 95-36.¹²⁸

2. Senate Passage

The Senate also debated Senate File 7 on June 29, 2001.¹²⁹ Senator Myron Orfield offered an amendment to delete the racial profiling section from the bill, because members of communities of

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Omnibus Transportation, Public Safety and Criminal Justice Appropriations: Debate on S.F. 7 Before the House of Representatives.*, 82nd Leg., 1st Spec. Sess. (Minn. 2001).

127. S.F. 7, 82nd Leg., 1st Spec. Sess. (Minn. 2001). Laws 8 (codified at MINN. STAT. § 626.8471, subd. 2 (2001)).

128. ST. OF MINN. J. OF THE HOUSE, NINTH DAY, June 29, 2001, 82nd Leg., 1st Spec. Sess. 601 (Minn. 2001).

129. *Omnibus Transportation, Public Safety and Criminal Justice Appropriations*, *supra*, note 126.

color felt they were left out of the process.¹³⁰ The Orfield amendment failed 17-38.¹³¹ Senate File 7 was then passed by the Senate with a vote of 46-15.¹³²

3. Governor Signs Special Session Senate File 7

Governor Ventura signed Special Session Senate File 7 into law on Saturday, June 30, 2001. The Governor vetoed an appropriation for several crime prevention initiatives but left the racial profiling legislation intact, and the bill became law. This bill became Chapter 8 of the 2001 First Special Legislative Session.¹³³

IV. ACTION TAKEN BY THE LEGISLATURE DURING THE 2002 LEGISLATIVE SESSION TO ADDRESS RACIAL PROFILING

The Minnesota State Legislature took virtually no action on racial profiling during the 2002 Legislative Session. The consensus had been that the Legislature took sufficient action to eliminate racial profiling during the 2001 Session.

The racial profiling study began on January 1, 2002 and ran through December 31, 2002. Eighty-eight law enforcement agencies applied for the racial profiling study and sixty-three of those agencies participated.¹³⁴ The Department of Public Safety

130. Orfield Amendment to the first Kelly Amendment to S.F. 7, 82nd Leg., 1st Spec. Sess. (Minn. 2001).

131. ST. OF MINN. *supra*, note 128.

132. *Id.* at 199.

133. S.F. 7, 82nd Leg., 1st Spec. Sess. 2001 Minn. Laws 8 (codified at MINN. STAT. § 626.8471, subd. 2 (2001)).

134. Telephone Interview with Boyd Rasmussen, Office of Drug Policy and Violence Prevention in the Minnesota Department of Public Safety (June 14, 2001). The following 63 agencies were accepted into the racial profiling study and collected data on traffic stops: Akeley Police Department, Anoka County Sheriff's Office, Becker County Sheriff's Office, Beltrami County Sheriff's Office, Bemidji Police Department, Cass County Sheriff's Office, Cass Lake Police Department, Cloquet Police Department, Cook County Sheriff's Office, Crosby Police Department, Dakota County Sheriff's Office, Dodge County Sheriff's Office, Eagle Lake Police Department, Fairfax Police Department, Faribault Police Department, Fridley Police Department, Gibbon Police Department, Goodhue County Sheriff's Office, Granite Falls Police Department, Grant County Sheriff's Office, Henning Police Department, Houston County Sheriff's Office, International Falls Police Department, Jackson County Sheriff's Office, Kandiyohi County Sheriff's Office, Lac qui Parle County Sheriff's Office, Lake County Sheriff's Office, Leech Lake Department of Public Safety, Little Falls Police Department, Mahnomon County Sheriff's Office, Marshall County Sheriff's Office, Minneapolis Police Department, Minneota Police Department, Moorhead Police Department, Norman County Sheriff's Office, Olmsted County Sheriff's Office, Plymouth Police Department,

will analyze the data collected by the sixty-three agencies. The racial profiling law required an outside expert to analyze the data and to report the results of the analysis to the Legislature by December 1, 2003.¹³⁵ It is likely that the Legislature will then take further action during the 2004 Legislative Session.

V. MINNESOTA'S PLAN

A. *Acknowledges that Racial Profiling is Occurring*

At the beginning of the Minnesota Legislature's discussion regarding racial profiling, some argued that racial profiling simply did not exist in Minnesota. This attitude changed, however, by the time the Legislature adopted the final plan.

The most important catalyst in Minnesota's legislative process occurred when law enforcement began to admit that racial profiling existed. Most members of law enforcement and members of the community agree that racial profiling is an unacceptable, unconstitutional practice that must be eliminated.

B. *Provides for an Effective and Comprehensive Approach to Eliminating Racial Profiling*

Racial profiling was a controversial and partisan issue during the 2001 Legislative Session. Generally, Republicans supported the position advocated by law enforcement, which favored training over data collection. Democrats and members of communities of color supported data collection as a means to determine the prevalence of racial profiling. The plan the Legislature ultimately adopted was quite similar to the plan passed by the Democrat-

Pope County Sheriff's Office, Ramsey County Sheriff's Office, Red Lake County Sheriff's Office, Red Wing Police Department, Redwood County Sheriff's Office, Rochester Police Department, Sauk Rapids Police Department, Savage Police Department, Scott County Sheriff's Office, Sherburne County Sheriff's Office, Sibley County Sheriff's Office, Springfield Police Department, St. Cloud Police Department, Stevens County Sheriff's Office, Swift County Sheriff's Office, Todd County Sheriff's Office, Truman Police Department, Wadena County Sheriff's Office, Walker Police Department, Waseca County Sheriff's Office, Wilkin County Sheriff's Office, Willmar Police Department, Winnebago Department of Public Safety, Winthrop Police Department, Worthington Police Department, and Yellow Medicine County Sheriff's Office.

135. S.F. 7, 82nd Leg., 1st Spec. Sess. 2001 Minn. Laws 8 (codified at MINN. STAT. § 626.8471, subd. 2 (2001)).

controlled Senate.

One major item that was lacking in the final process adopted was support from communities of color. Based on public comments, it appears there are two main reasons why: the plan did not include mandatory data collection, as ten other states require; and people of color were not included when the Legislature adopted the final racial profiling plan. However, members of communities of color had many opportunities to voice concerns earlier in the process.

VI. COMPARING MINNESOTA'S RACIAL PROFILING STUDY TO OTHER STATES'

State legislatures have been to addressing racial profiling since 1999. As of October 2001, twenty states had enacted laws to address the issue.¹³⁶ Compared to approaches that other states have taken, the Minnesota Legislature took a comprehensive and thorough approach to eliminating racial profiling. Other states likely will look to Minnesota's statute as a model.

In a report analyzing different state racial profiling laws, the National Conference of State Legislatures focused on four components of state racial profiling plans: policies created to prohibit racial profiling, data collection on traffic stops, appropriate training for law enforcement, and mechanisms for improving the complaint process.¹³⁷ Thirteen of the twenty states (including Minnesota) provide for statewide anti-racial profiling policies.¹³⁸ Three states do not require data collection, three states (including Minnesota) provide for voluntary data collection, four mandate data collection for certain agencies, and ten mandate data

136. *State Laws Address "Racial Profiling"*, NATIONAL CONFERENCE OF STATE LEGISLATURES, 1 (October 2001). The 1999 legislation includes: Connecticut S 1282, and North Carolina S 76. The 2000 legislation includes: California S 1102, Kansas H 2683, Massachusetts S 2238, Missouri S 1053, Oklahoma S 1444, Rhode Island Substitute H 7164, Tennessee S 2415, and Washington S 6683. The 2001 legislation includes: Colorado HB 1114, Florida SB 84, Kentucky S 76, Louisiana H 1855, Maryland H 303, Minnesota S 7, Nebraska LB 593, Nevada AB 500, Oregon SB 415, and Texas S 1074. *Id.*

137. *Id.* at 2-4.

138. *Id.* The following states require the adoption of policies which prohibit the use of racial profiling by law enforcement officers: California, Connecticut, Florida, Kansas, Massachusetts, Oklahoma, Rhode Island, Tennessee, Kentucky, Maryland, Minnesota, Nebraska, and Texas. *Id.* It is possible, however, that law enforcement agencies across the nation have implemented such policies without a statewide mandate.

collection statewide.¹³⁹ Seven states call for specific training of law enforcement,¹⁴⁰ with Minnesota requiring pre-service, in-service and supervisory training for law enforcement officers.¹⁴¹ Finally, six states, including Minnesota, included provisions to improve the complaint process.¹⁴²

Thus, Minnesota's anti-racial profiling law includes all four components of a complete racial profiling plan. The only provision that may not be as comprehensive as other approaches is the voluntary data collection requirement. However, when compared to the rest of the country, the Minnesota data collection provision is a comprehensive and effective approach to eliminating racial profiling.

VII. CONCLUSION

It is clear that racial profiling is occurring across the nation, including in Minnesota. The state's comprehensive plan, which was enacted after many months of hearings, amendments and discussions, is a significant step toward eliminating racial profiling. However, the effort is not complete. After a report is delivered to the Legislature, it is likely that some people will recommend more data collection, others may want more training, and still others may argue that the current plan as adopted by the Legislature is sufficient. While we can only speculate about future action that the Legislature might take in 2004, it is important to note that the state took a large step toward eliminating racial profiling when Senate File 7 was signed into law.

139. *Id.* The laws passed by Florida, Kentucky, and Oklahoma do not require data collection on traffic stops by law enforcement. The laws that call for voluntary data collection include California, Minnesota, and Oregon. The law passed by Colorado require data collection from the Colorado State Patrol and the Denver Police Department. The Washington law requires data collection from the Washington State Patrol. The Maryland and Nevada laws require data collection from only certain agencies within the state. The following ten states passed laws requiring mandatory statewide data collection: Connecticut, Kansas, Louisiana, Massachusetts, Missouri, Nebraska, North Carolina, Rhode Island, Tennessee, and Texas. *Id.*

140. *Supra* note 136, 2-4 (October 2001). The following seven states adopted laws which required anti-racial profiling training for members of the law enforcement community: California, Colorado, Florida, Louisiana, Massachusetts, Minnesota, and Texas. *Id.*

141. MINN. STAT. § 626.8471, subd. 2 (2001).

142. *Id.* Six states adopted laws including provisions that improve the racial profiling complaint process. Those states include: Colorado, Massachusetts, Minnesota, Missouri, Nebraska, and Oklahoma. *Id.*