

**ASSEMBLY BILL**

**No. 788**

---

---

**Introduced by Assembly Member Firebaugh**

February 22, 2001

---

---

An act to amend Section 13519.4 of, and to add Section 13024 to, the Penal Code, and to add and repeal Sections 2400.4 and 2400.5 of the Vehicle Code, relating to crime prevention.

LEGISLATIVE COUNSEL'S DIGEST

AB 788, as introduced, Firebaugh. Crime prevention.

Existing law prohibits law enforcement officers from engaging in “racial profiling,” which is defined as the practice of detaining a suspect based on a broad set of criteria that casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped. Under existing law, law enforcement officers must participate in racial profiling training, with the curriculum developed by the Commission on Peace Officer Standards and Training, in collaboration with a 5-person panel, as specified. Existing law also requires the Legislative Analyst to present a report to the Legislature regarding data collection in connection with racial profiling, as specified.

This bill would change the definition of racial profiling to mean a consideration in any fashion and to any degree the race or national or ethnic origin of drivers or passengers in deciding which vehicles to subject to any motor vehicle stop or in deciding upon the scope or substance of any enforcement action or procedure in connection with or during the course of a motor vehicle stop. This bill would permit law enforcement officers to rely in part on race or national or ethnic origin with other physically descriptive characteristics in determining whether

reasonable suspicion exists that a given individual who has been identified or described in part by race or national or ethnic origin is a suspect.

This bill would provide that law enforcement officers and public entities are liable to a party injured by violation of these provisions, as specified. This bill would provide that whoever violates these provisions would be liable for actual damages suffered by the victim of the violation but in no case less than \$5,000, and any attorney's fees as determined by the court.

This bill would provide that law enforcement agencies shall only be eligible to receive grants for the cost of voluntarily collecting racial profiling data if they agree to publish annual data, as specified. This bill would require members of the California Highway Patrol and city and county law enforcement agencies to report to the Legislative Analyst, in the manner prescribed by the Legislative Analyst, as to the number of motor vehicle drivers stopped by law enforcement, whether or not a citation or warning was issued, and, for each stop, certain specified information. The bill would require the Legislative Analyst to collect this information and to report to the Governor and Legislature, as specified. The bill also would require that data collected pursuant to these provisions be used only for research and statistical purposes and not contain any information that would reveal the identity of any individual who is stopped for a traffic violation or the identity of any law enforcement officer. By imposing reporting and other requirements on city and county law enforcement agencies, this bill would impose a state-mandated local program.

The bill also would provide that its provisions relating to reports would be repealed on January 1, 2011, unless a later enacted statute that is enacted prior to January 1, 2011, deletes or extends that date.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.



Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 13024 is added to the Penal Code, to  
2 read:

3 13024. (a) The members of the California Highway Patrol  
4 and law enforcement agencies described in Section 2400.5 of the  
5 Vehicle Code shall report to the Legislative Analyst, in the manner  
6 that he or she prescribes, as to the number of motor vehicle drivers  
7 stopped by members and law enforcement agencies, whether or  
8 not a citation or warning was issued, and, for each stop, the  
9 information listed in Section 2400.5 of the Vehicle Code.

10 (b) Data required pursuant to subdivision (a) shall be used only  
11 for research or statistical purposes and shall not contain any  
12 information that may reveal the identity of any individual who is  
13 stopped or any peace officer.

14 (c) This section shall remain in effect only until January 1,  
15 2011, and as of that date is repealed, unless a later enacted statute,  
16 that is enacted before January 1, 2011, deletes or extends that date.

17 SEC. 2. Section 13519.4 of the Penal Code is amended to  
18 read:

19 13519.4. (a) On or before August 1, 1993, the commission  
20 shall develop and disseminate guidelines and training for all law  
21 enforcement officers in California as described in subdivision (a)  
22 of Section 13510 and who adhere to the standards approved by the  
23 commission, on the racial and cultural differences among the  
24 residents of this state. The course or courses of instruction and the  
25 guidelines shall stress understanding and respect for racial and  
26 cultural differences, and development of effective, noncombative  
27 methods of carrying out law enforcement duties in a racially and  
28 culturally diverse environment.

29 (b) The course of basic training for law enforcement officers  
30 shall, no later than August 1, 1993, include adequate instruction on  
31 racial and cultural diversity in order to foster mutual respect and  
32 cooperation between law enforcement and members of all racial  
33 and cultural groups. In developing the training, the commission  
34 shall consult with appropriate groups and individuals having an



1 interest and expertise in the field of cultural awareness and  
2 diversity.

3 (c) For the purposes of this section, “culturally diverse” and  
4 “cultural diversity” include, but are not limited to, gender and  
5 sexual orientation issues. The Legislature finds and declares as  
6 follows:

7 (1) Racial profiling is a practice that presents a great danger to  
8 the fundamental principals of a democratic society. It is abhorrent  
9 and cannot be tolerated.

10 (2) Motorists who have been stopped by the police for no  
11 reason other than the color of their skin or their apparent  
12 nationality or ethnicity are the victims of discriminatory practices.

13 (3) It is the intent of the Legislature in enacting the changes to  
14 Section 13519.4 of the Penal Code made by the act that added this  
15 subdivision that more than additional training is required to  
16 address the pernicious practice of racial profiling and that  
17 enactment of this bill is in no way dispositive of the issue of how  
18 the state should deal with racial profiling.

19 (4) The working men and women in California law  
20 enforcement risk their lives every day. The people of California  
21 greatly appreciate the hard work and dedication of law  
22 enforcement officers in protecting public safety. The good name  
23 of these officers should not be tarnished by the actions of those few  
24 who commit discriminatory practices.

25 ~~(d) “Racial profiling,” for purposes of this section, is the~~  
26 ~~practice of detaining a suspect based on a broad set of criteria~~  
27 ~~which casts suspicion on an entire class of people without any~~  
28 ~~individualized suspicion of the particular person being stopped.~~

29 *(1) Except as provided in paragraph (2), ‘racial profiling’ for*  
30 *purposes of this section is the consideration in any fashion and to*  
31 *any degree the race or national or ethnic origin of drivers or*  
32 *passengers in deciding which vehicles to subject to any motor*  
33 *vehicle stop or in deciding upon the scope or substance of any*  
34 *enforcement action or procedure in connection with or during the*  
35 *course of a motor vehicle stop.*

36 *(2) In deciding to detain, apprehend, or otherwise be on the*  
37 *lookout for one or more suspects who have been identified or*  
38 *described in part by race or national or ethnic origin, law*  
39 *enforcement officers may rely in part on race or national or ethnic*  
40 *origin with other physically descriptive characteristics in*



1 *determining whether reasonable suspicion exists that a given*  
2 *individual is the person being sought.*

3 (e) A law enforcement officer shall not engage in racial  
4 profiling.

5 (f) *Law enforcement officers shall be liable to the party injured*  
6 *in an action at law, suit in equity, or other proper proceeding for*  
7 *redress for violations of subsection (e).*

8 (g) *Notwithstanding any other provision of law, a public entity*  
9 *shall be liable under this section for its violation by any of its*  
10 *agents or employees acting within the scope of or under the*  
11 *authority of, their agency or employment, and shall not be entitled*  
12 *to any immunity that would otherwise be applicable.*

13 (h) *Actions under this section shall be independent of any other*  
14 *remedies or procedures that may be available to an aggrieved*  
15 *person under any other provision of law.*

16 (i) *Whoever violates the provisions of this section is liable for*  
17 *each and every offense for the actual damages, but in no case less*  
18 *than five thousand dollars (\$5,000), and any attorney's fees that*  
19 *shall be determined by the court in addition thereto, suffered by*  
20 *any person denied the rights provided in this section.*

21 (j) Every law enforcement officer in this state shall participate  
22 in expanded training as prescribed and certified by the  
23 Commission on Peace Officers Standards and Training. Training  
24 shall begin being offered no later than January 1, 2002. The  
25 curriculum shall be created by the commission in collaboration  
26 with a five-person panel, appointed no later than March 1, 2001,  
27 as follows: the Governor shall appoint three members and one  
28 member each shall be appointed by the Senate Committee on Rules  
29 and the Speaker of the Assembly. Each appointee shall be  
30 appointed from among prominent members of the following  
31 organizations:

- 32 (1) State Conference of the NAACP.
- 33 (2) Brotherhood Crusade.
- 34 (3) Mexican American Legal Defense and Education Fund.
- 35 (4) The League of United Latin American Citizens.
- 36 (5) American Civil Liberties Union.
- 37 (6) Anti-Defamation League.
- 38 (7) California NOW.
- 39 (8) Asian Pacific Bar of California.
- 40 (9) The Urban League.



1     ~~(g)~~  
 2     (k) Members of the panel shall not be compensated, except for  
 3 reasonable per diem expenses related to their work for panel  
 4 purposes.

5     ~~(h)~~  
 6     (l) The curriculum shall utilize the Tools for Tolerance for Law  
 7 Enforcement Professionals framework and shall include and  
 8 examine the patterns, practices, and protocols that make up racial  
 9 profiling. This training shall prescribe patterns, practices, and  
 10 protocols that prevent racial profiling. In developing the training,  
 11 the commission shall consult with appropriate groups and  
 12 individuals having an interest and expertise in the field of racial  
 13 profiling. The course of instruction shall include, but not be  
 14 limited to, adequate consideration of each of the following  
 15 subjects:

16     (1) Identification of key indices and perspectives that make up  
 17 cultural differences among residents in a local community.

18     (2) Negative impact of biases, prejudices, and stereotyping on  
 19 effective law enforcement, including examination of how  
 20 historical perceptions of discriminatory enforcement practices  
 21 have harmed police-community relations.

22     (3) The history and the role of the civil rights movement and  
 23 struggles and their impact on law enforcement.

24     (4) Specific obligations of officers in preventing, reporting,  
 25 and responding to discriminatory or biased practices by fellow  
 26 officers.

27     (5) Perspectives of diverse, local constituency groups and  
 28 experts on particular cultural and police-community relations  
 29 issues in a local area.

30     ~~(i)~~  
 31     (m) Once the initial basic training is completed, each law  
 32 enforcement officer in California as described in subdivision (a)  
 33 of Section 13510 who adheres to the standards approved by the  
 34 commission shall be required to complete a refresher course every  
 35 five years thereafter, or on a more frequent basis if deemed  
 36 necessary, in order to keep current with changing racial and  
 37 cultural trends.

38     ~~(j)~~  
 39     (n) The Legislative Analyst shall conduct a study of the data  
 40 being voluntarily collected by those jurisdictions that have



1 instituted a program of data collection with regard to racial  
2 profiling, including, but not limited to, the California Highway  
3 Patrol, the City of San Jose, and the City of San Diego, both to  
4 ascertain the incidence of racial profiling and whether data  
5 collection serves to address and prevent such practices, as well as  
6 to assess the value and efficacy of the training herein prescribed  
7 with respect to preventing local profiling. The Legislative Analyst  
8 may prescribe the manner in which the data is to be submitted and  
9 may request that police agencies collecting such data submit it in  
10 the requested manner. The Legislative Analyst shall provide to the  
11 Legislature a report and recommendations with regard to racial  
12 profiling by July 1, 2002.

13 *(o) No local law enforcement agency shall be eligible to receive*  
14 *grants for the costs of voluntarily collecting racial profiling data*  
15 *for the Department of the California Highway Patrol or any other*  
16 *state agency unless it agrees to provide annual data as specified*  
17 *in Section 2400.5 of the Vehicle Code.*

18 SEC. 3. Section 2400.4 is added to the Vehicle Code, to read:

19 2400.4. (a) In accordance with Section 2400.5, law  
20 enforcement agencies shall report to the Legislative Analyst, at  
21 those times and in the manner that he or she prescribes, the number  
22 of motor vehicle drivers stopped for all traffic law enforcement,  
23 whether or not a citation or warning was issued, and for each stop,  
24 the information listed in Section 2400.5.

25 (b) This section shall remain in effect only until January 1,  
26 2011, and as of that date is repealed, unless a later enacted statute,  
27 that is enacted before January 1, 2011, deletes or extends that date.

28 SEC. 4. Section 2400.5 is added to the Vehicle Code, to read:

29 2400.5. (a) On July 1, 2006, July 1, 2007, July 1, 2008, July  
30 1, 2009, and July 1, 2010, the Legislative Analyst shall prepare an  
31 annual report that collects from members of the California  
32 Highway Patrol and peace officers of city and county law  
33 enforcement agencies all of the following:

34 (1) Information regarding the number of motor vehicle drivers  
35 stopped for all traffic law enforcement purposes.

36 (2) Whether or not a citation or warning was issued.

37 (3) Data on the following information for each stop:

38 (A) Based on visual observation, the race or ethnicity of the  
39 individual stopped.

40 (B) Whether the stop was based on any of the following:



- 1 (i) Violation of this code.
- 2 (ii) Violation of the Penal Code.
- 3 (iii) Violation of a local ordinance.
- 4 (iv) The appearance of the driver or the appearance of the
- 5 vehicle matches the description of a crime suspect or of a vehicle
- 6 involved in the commission of a crime or belonging to a crime
- 7 suspect.
- 8 (4) Whether a vehicle search was instituted.
- 9 (5) Whether any of the following items were discovered or
- 10 seized in the course of the search:
  - 11 (A) Weapons.
  - 12 (B) Controlled substances.
  - 13 (C) Cash.
  - 14 (D) Vehicles.
  - 15 (E) Other property believed to be unlawful or whose
  - 16 possession is unlawful.
- 17 (6) Whether one of the following resulted from the search or
- 18 stop:
  - 19 (A) A written citation was issued.
  - 20 (B) A warning was made.
  - 21 (C) An arrest was made.
- 22 (b) On July 1, 2006, July 1, 2007, July 1, 2008, July 1, 2009,
- 23 and July 1, 2010, each city and county law enforcement agency
- 24 statewide, shall report to the Legislative Analyst, in the manner
- 25 that he or she prescribes, the number of motor vehicle drivers
- 26 stopped by law enforcement, whether or not a citation or warning
- 27 was issued, and, for each stop, the information listed in subdivision
- 28 (a).
- 29 (c) Data acquired pursuant to this section shall be used only for
- 30 research or statistical purposes and shall not contain any
- 31 information that may reveal the identity of any individual who is
- 32 stopped or any law enforcement officer.
- 33 (d) The Legislative Analyst shall present to the Governor and
- 34 the Legislature, on or before July 1, 2006, a report containing the
- 35 information specified in this section and, on or before July 1, 2007,
- 36 July 1, 2008, July 1, 2009, and July 1, 2010, a report containing
- 37 the information specified in this section for the previous year.
- 38 (e) This section shall remain in effect only until January 1,
- 39 2011, and as of that date is repealed, unless a later enacted statute
- 40 that is enacted before January 1, 2011, deletes or extends that date.



1 SEC. 5. Notwithstanding Section 17610 of the Government  
2 Code, if the Commission on State Mandates determines that this  
3 act contains costs mandated by the state, reimbursement to local  
4 agencies and school districts for those costs shall be made pursuant  
5 to Part 7 (commencing with Section 17500) of Division 4 of Title  
6 2 of the Government Code. If the statewide cost of the claim for  
7 reimbursement does not exceed one million dollars (\$1,000,000),  
8 reimbursement shall be made from the State Mandates Claims  
9 Fund.

O

