



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-3345/1  
PJH:wlj

## 2015 ASSEMBLY BILL 937

February 18, 2016 – Introduced by Representative YOUNG, cosponsored by Senator L. TAYLOR. Referred to Committee on Criminal Justice and Public Safety.

1     **AN ACT to amend** 66.0511 (title), 165.85 (4) (a) 1. and 814.04 (intro.); and **to**  
2             **create** 15.257 (3), 66.0511 (2m), 165.10, 165.842, 165.847, 893.995 and 895.44  
3             of the statutes; **relating to:** racial profiling and other discriminatory policing  
4             practices and granting rule-making authority.

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### *Analysis by the Legislative Reference Bureau*

This bill addresses racial profiling and other discriminatory policing practices as a violation of an individual's rights and allows for the Department of Justice (DOJ) and an individual to pursue a civil action if an individual's civil rights are violated.

#### **CONSTITUTIONAL RIGHTS AND CIVIL ACTIONS**

Article I of the Wisconsin Constitution guarantees certain rights, including the right to life, liberty, and the pursuit of happiness; to freedom of speech, assembly, and religion; to petition the government; to a trial by jury; to a remedy for all wrongs; to be treated with fairness, dignity, and respect if a crime victim; to be secure from unreasonable searches and seizures; to keep and bear arms; and to fish, hunt, trap, and take game. Article I also guarantees a criminal defendant the rights to counsel, to confront his or her accusers, to a speedy and public trial, to due process of law, to reasonable bail, and to habeas corpus and prohibits double jeopardy, self-incrimination, and cruel and unusual punishment. In addition, Article I prohibits ex post facto laws, laws impairing the obligation of contract, and the taking of property for public use without just compensation (Article I rights).

This bill permits a person to bring a civil action in circuit court for violation of his or her Article I rights against any person that caused the injury, including the

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state or any political subdivision of the state, within six years after the alleged Article I rights violation. Under the bill, the circuit court may issue an injunction or restraining order and may order any other relief the court considers appropriate, including compensatory and punitive damages and reasonable costs, expert witness fees, and attorney fees. This civil action remedy is in addition to any other remedy under current law.

The bill also creates a council within DOJ that is charged with investigating claims of racial profiling and other discriminatory policing practices. Under the bill, racial profiling and other discriminatory practices include any action taken by a law enforcement officer, against or toward an individual that relies, to any degree, on the individual's actual or perceived race, color, ethnicity, religion, gender identity or expression, sexual orientation, immigration or citizenship status, language spoken, disability or illness, housing status, occupation or employment status, or socioeconomic status. However, it is not racial profiling or a discriminatory policing practice for a law enforcement officer to rely on any of those factors if the factor links the individual to a specific, reliable description of an individual suspected of committing a crime.

Under the bill, if the council finds probable cause that an act of racial profiling or other discriminatory policing practice occurred, it may refer the matter to the law enforcement agency that employs the offending officer for disciplinary action against the officer and may refer the matter to DOJ for civil action as a violation of the individual's Article I rights. The bill authorizes DOJ to bring an action in court to obtain equitable or injunctive relief in order to protect the civil rights of individuals.

**DATA COLLECTION**

Under current law, a law enforcement agency must collect information concerning each person whom 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 DOJ, which maintains the information for various law enforcement and reporting purposes.

The bill requires a law enforcement agency to collect the following information concerning motor vehicle stops made on or after January 1, 2017: 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

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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. Under the bill, DOJ must prepare an annual report that summarizes the information submitted to it by law enforcement agencies and that describes the methods and conclusions of its analysis of the information.

**LAW ENFORCEMENT TRAINING AND 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. The bill requires LESB to ensure that its law enforcement training program include instruction 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.

Under current law, state and local law enforcement agencies must have a written policy or standard regulating the use of force by law enforcement officers in the performance of their duties. State and local law enforcement agencies must also establish a specific procedure for processing and resolving complaints by any person regarding the conduct of a law enforcement officer employed by the agency.

The bill requires state and local law enforcement agencies also to adopt, by January 1, 2017, a written policy that prohibits a law enforcement officer employed by the agency from stopping, detaining, searching, or arresting a person based solely on any of the following: 1) the person's race; 2) a racial stereotype; 3) a profile of persons who commit or are suspected of committing crimes, or a category of crimes, if the profile is based solely or primarily on the race of those persons; or 4) any other method of racially discriminatory or racially selective enforcement.

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

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

1           **SECTION 1.** 15.257 (3) of the statutes is created to read:

2           15.257 (3) COUNCIL ON RACIAL PROFILING AND OTHER DISCRIMINATORY POLICING  
3 PRACTICES. There is created in the department of justice a council on racial profiling  
4 and other discriminatory policing practices, as defined in s. 165.847 (1) (d), that shall  
5 have the duties set forth in s. 165.847. The chairperson of the council shall be the  
6 governor or his or her designee. Additionally, the council shall consist of the following  
7 members, appointed by the governor or his designee, who shall serve for 2-year  
8 terms and may be appointed for a maximum of 2 consecutive terms:

9           (a) A person representing the interests of each of the following communities:

- 10           1. Persons of color.
- 11           2. Persons who are gay, lesbian, bisexual, transsexual, or queer.
- 12           3. Persons who are homeless.
- 13           4. Persons who are Muslim.
- 14           5. Persons who are not legally present in the United States.
- 15           6. Women.
- 16           7. Persons with disabilities.

17           (b) A person representing a police union.

18           (c) A representative of the Wisconsin Bar Association.

19           **SECTION 2.** 66.0511 (title) of the statutes is amended to read:

20           **66.0511 (title) Law enforcement agency policies on use of force,**  
21 **race-based law enforcement, and citizen complaint procedures.**

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1           **SECTION 3.** 66.0511 (2m) of the statutes is created to read:

2           **66.0511 (2m) POLICY PROHIBITING RACE-BASED LAW ENFORCEMENT ACTIVITY.** Each  
3 person in charge of a law enforcement agency shall, not later than January 1, 2017,  
4 adopt a written policy that prohibits a law enforcement officer employed by the  
5 agency from stopping, detaining, searching, or arresting a person based solely or  
6 primarily on the person's actual or perceived race or ethnicity; on a racial stereotype;  
7 on a profile of persons who commit or are suspected of committing crimes, or a  
8 category of crimes, if the profile is based solely or primarily on the race of those  
9 persons; or on any other method of racially discriminatory or racially selective  
10 enforcement.

11           **SECTION 4.** 165.10 of the statutes is created to read:

12           **165.10 Civil rights enforcement.** If any person, whether or not acting under  
13 color of law, interferes with the exercise or enjoyment by any individual of a right  
14 secured by the constitution or laws of the United States, or of a right secured by the  
15 constitution or laws of this state, the attorney general may bring an action for  
16 injunction or other appropriate equitable relief to protect the peaceable exercise or  
17 enjoyment of the right secured.

18           **SECTION 5.** 165.842 of the statutes is created to read:

19           **165.842 Motor vehicle stops; collection and analysis of information;**  
20 **annual report. (1) DEFINITIONS.** In this section:

21           (a) "Department" means the department of justice.

22           (b) "Law enforcement agency" has the meaning given in s. 165.77 (1) (b).

23           (c) "Law enforcement officer" means a person who is employed by a law  
24 enforcement agency for the purpose of detecting and preventing crime and enforcing  
25 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, 2017,  
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 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.** All persons in charge of law  
5 enforcement agencies 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, 2018, 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 to the commission established under s. 165.847, 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 to the  
9 department the information obtained. The department shall make the form  
10 available to law enforcement agencies. The department may, by rule, require the  
11 collection of information in addition to that specified in sub. (2) (a) to (g) if the  
12 department determines that the information will help to make the determinations  
13 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 6.** 165.847 of the statutes is created to read:

17 **165.847 Council on racial profiling and other discriminatory policing**  
18 **practices. (1)** In this section:

19 (a) "Law enforcement agency" has the meaning given in s. 165.842 (1) (b).

20 (b) "Law enforcement officer" has the meaning given in s. 165.842 (1) (c).

21 (c) "Motor vehicle stop" has the meaning given in s. 165.842 (1) (d).

22 (d) "Racial profiling and other discriminatory policing practices" includes any  
23 of the following:

24 1. Any action taken by a law enforcement officer against or toward an  
25 individual that relies, to any degree, on the individual's actual or perceived race,



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1 color, ethnicity, religion, gender identity or expression, sexual orientation,  
2 immigration or citizenship status, language spoken, disability or illness, housing  
3 status, occupation or employment status, or socioeconomic status. It is not racial  
4 profiling or a discriminatory policing practice for a law enforcement officer to rely on  
5 any of the factors listed in this subdivision if the law enforcement officer is relying  
6 on the factor because it links the individual to a specific, reliable description of a  
7 personally identifying characteristic, location, or behavior of an individual suspected  
8 of committing a crime.

9 2. Any action taken, or any formal or informal rule or policy established or  
10 enforced by a law enforcement agency, that encourages, allows, or ignores an action  
11 described as racial profiling or other discriminatory policing practice in subd. 1.

12 (2) The council on racial profiling and other discriminatory policing practices  
13 shall do all of the following:

14 (a) Establish a model policy for law enforcement agencies that prohibits racial  
15 profiling and other discriminatory policing practices, including disciplinary action  
16 it recommends for a law enforcement officer who engages in racial profiling and other  
17 discriminatory policing practices.

18 (b) Develop and distribute to law enforcement agencies a complaint form that  
19 law enforcement agencies shall make available to individuals. An individual may  
20 use a complaint form developed and distributed under this paragraph to file a  
21 written complaint with the council if the individual suspects he or she has been a  
22 victim of racial profiling or other discriminatory policing practice.

23 (c) Investigate written complaints filed by individuals who allege that a law  
24 enforcement officer or law enforcement agency committed an act of racial profiling  
25 or other discriminatory policing practice.

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1 (d) If the council finds that there is probable cause to believe that a law  
2 enforcement officer or law enforcement agency committed an act of racial profiling  
3 or other discriminatory policing practice, it shall:

4 1. Refer the matter to the law enforcement agency that employs the law  
5 enforcement officer for disciplinary action against the officer.

6 2. Refer the matter to the attorney general for possible action pursuant to s.  
7 165.10 on behalf of the individual against the law enforcement officer or law  
8 enforcement agency.

9 **SECTION 7.** 165.85 (4) (a) 1. of the statutes is amended to read:

10 165.85 (4) (a) 1. The board shall establish a preparatory program of law  
11 enforcement and tribal law enforcement officer training, which shall include not less  
12 than 600 hours of training. The board shall establish criteria for the general program  
13 outcomes for the preparatory program. Specifics of the training curriculum,  
14 competencies, student learning and performance objectives, particular subjects, and  
15 the minimum number of hours for each subject shall be established by written policy  
16 of the board. In establishing the preparatory training program, the board shall give  
17 due consideration to recommendations made by the curriculum advisory committee,  
18 but shall ensure that the program includes training designed to prevent the use of  
19 race, racial profiling, racial stereotyping, or other race-based discrimination or  
20 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 that  
22 the primary purposes of enforcement of traffic regulations are safety and equal and  
23 uniform enforcement under the law. The board may amend the criteria and policies  
24 governing the preparatory training program as needed to respond to technological  
25 changes affecting law enforcement, additional recommendations made by the

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1 curriculum advisory committee, or other conditions affecting the public interest in  
2 maintaining training standards of a proper professional character. Notwithstanding  
3 s. 227.10 (1), the criteria and policies established under this paragraph need not be  
4 promulgated as rules under ch. 227.

5 **SECTION 8.** 814.04 (intro.) of the statutes is amended to read:

6 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)  
7 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 115.80 (9), 767.553 (4) (d), 769.313,  
8 802.05, 814.245, 895.035 (4), 895.044, 895.44 (3), 895.443 (3), 895.444 (2), 895.445  
9 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and 995.10 (3),  
10 when allowed costs shall be as follows:

11 **SECTION 9.** 893.995 of the statutes is created to read:

12 **893.995 Constitutional rights violations; civil remedies.** Any civil action  
13 arising under s. 895.44 is subject to the limitations of s. 895.44 (1).

14 **SECTION 10.** 895.44 of the statutes is created to read:

15 **895.44 Constitutional rights violation; action for.** (1) CIVIL CAUSE OF  
16 ACTION. Subject to sub. (2), in lieu of or in addition to obtaining any remedy available  
17 under any other law or the Wisconsin constitution, a person who is injured by an act  
18 of racial profiling and other discriminatory policing practices, as defined in s. 165.847  
19 (1) (d), or by another violation of article I of the Wisconsin constitution may bring an  
20 action against any person that caused the injury, including the state or any political  
21 subdivision of the state, for appropriate injunctive relief, compensatory and punitive  
22 damages, and reasonable costs, expert witness fees, and attorney fees. An action  
23 under this subsection shall be commenced within 6 years after the violation occurred  
24 or within the time specified in sub. (2), if applicable, or be barred.

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1           **(2) ELECTION OF REMEDIES.** If an action is commenced under sub. (1), the person  
2 commencing the action may not pursue an administrative remedy for the same  
3 injury. If a person pursues an administrative remedy for an injury described in sub.  
4 (1), he or she may not elect to commence an action under sub. (1) for the same injury  
5 unless the action is commenced not less than 24 hours before the scheduled final  
6 administrative hearing on the matter and the person notifies the administrative  
7 agency conducting the hearing of that action within that period. On receipt of that  
8 notification, the administrative agency shall dismiss the person's administrative  
9 complaint without prejudice.

10           **(3) REMEDIES.** In an action under sub. (1), the court may issue a permanent or  
11 temporary injunction or restraining order restraining any person from violating  
12 article I of the Wisconsin constitution and may order any other relief that the court  
13 considers appropriate, including compensatory and punitive damages and  
14 reasonable costs, expert witness fees, and attorney fees.

**SECTION 11. Nonstatutory provisions.**

16           **(1) COUNCIL ON RACIAL PROFILING AND OTHER DISCRIMINATORY POLICING PRACTICES;**  
17 **INITIAL TERMS.** Notwithstanding the length of terms specified under section 15.257  
18 **(3) (intro.)** of the statutes, as created by this act, the governor shall appoint initial  
19 members of the council on racial profiling and other discriminatory policing practices  
20 as follows:

21           **(a)** The members under section 15.257 **(3) (a) 1., 3., 5., and 7. and (c)** of the  
22 statutes, as created by this act, for terms expiring on July 1, 2018.

23           **(b)** The members under section 15.257 **(3) (a) 2., 4., and 6. and (b)** of the statutes,  
24 as created by this act, for terms expiring on July 1, 2019.

**SECTION 12. Initial applicability.**

