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**Joint Committee on the Judiciary
October 6, 2015**

**Testimony in Support of H.1575, S.829, S.1263, and S.736
An Act to Improve the Collection and Analysis of Data Relative to Traffic Stops**

The American Civil Liberties Union of Massachusetts strongly supports H.1575, S.829, S.1263, and S.736 because these bills offer a data-driven approach to improving the management and integrity of police-civilian encounters in the Commonwealth. The time has come for Massachusetts to bring an end to racial profiling. We can no longer be comfortable with not knowing the full breadth of a problem that impacts the residents of this Commonwealth. We can no longer be comfortable with the anecdotal accounts of those who have been pulled over by police, stopped by police, or mistreated by police, without having the empirical data to declare whether or not these anecdotes are a few isolated incidents or a systemic problem.

Fifteen years ago Chapter 228 of the Acts of 2000¹ - special law that led to a two-year study of racial disparities in police stops of motorists - was enacted to mandate the collection of data about the race and gender of all drivers given written citations. As a result, 366 law enforcement agencies, including state and municipal police departments as well as a number of special police units, collected this data for 1.6 million traffic citations, which was then rigorously analyzed by the Northeastern University Institute on Race and Justice. In 2004, the Institute published a report finding that the data collected by 249 of those 366 law enforcement agencies – a full 2/3 – demonstrated racial

¹ Ch. 228 of the Acts of 2000, “An Act providing for the collection of data relative to traffic stops” (Aug. 10, 2000).

disparities by one or more measures.² We learned then that racial profiling was not just anecdotal. It was a systemic problem.

As a result of the initial information published in the report, the 249 law enforcement agencies were encouraged, but not required, to collect an additional two years of information. Some of the law enforcement agencies collected the data and some did not. There are only a few law enforcement agencies that still continue to collect race and gender data on police-civilian traffic encounters. The dearth of reliable data prevents us from implementing evidence-based and data-driven practices that will transform policing in Massachusetts.

It's now time for a comprehensive approach to help law enforcement understand and fix racial disparities in police-civilian encounters. Collecting and analyzing data—routinely, consistently, and professionally—can provide the necessary foundation for fair treatment and effective policing. This collection and analysis is particularly necessary when it comes to police encounters with pedestrians, for which data has *never* been regularly disclosed to the Commonwealth's civilians or policy makers.

The ACLU of Massachusetts has learned first-hand that real, positive change can come from data collection. Several years ago, in response to a request from our office, the Boston Police Department agreed to support a study of police-civilian encounters described in documents that the BPD calls Field Interrogation, Observation, Frisk, and/or Search Reports. This study led to a report, issued by academic researchers in June 2015 (and entitled *Final Report[:] An Analysis of Race and Ethnicity Patterns in Boston Police Department Field Interrogation, Observation, Frisk, and/or Search Reports*)³, which made the following findings:

² Dr. Amy Farrell and Jack McDevitt, et al., Massachusetts Racial and Gender Profiling Final Report, Northeastern University Institute on Race and Justice, (May 4, 2004), available at <http://www.mass.gov/eopss/docs/eops/racial-and-gender-profiling-study.pdf>

³ Available at <https://assets.documentcloud.org/documents/2158964/full-boston-police-analysis-on-race-and-ethnicity.pdf>.

- 63% of police-civilian encounters from 2007-2010 targeted Blacks, even though Blacks made up only 25% of the city's population.
- Even after controlling for crime, a neighborhood's concentration of Black or Hispanic residents influenced the overall number of police encounters that the neighborhood could expect. A neighborhood with a higher percentage of Blacks or Hispanics would be subjected to more police encounters than a neighborhood with a higher percentage of whites, even if the white neighborhood had exactly the same crime rate as the Black or Hispanic neighborhoods.
- Similarly, even after controlling for crime, Blacks and Hispanics were more likely than otherwise identical whites to be frisked or searched during an encounter.
- Officers gave no justification for 75% of these encounters, simply listing their reason as "investigate person."

Because the ACLU and the BPD were briefed in advance on the findings contained in this June 2015 report, the ACLU issued a series of recommendations in October 2014, in a report we called *Black, Brown and Targeted*⁴. Among other things, we called for training on implicit bias, regular publication of data, and body cameras. And, to its credit, the Boston Police Department has recently announced that it will in fact make several changes. It has announced training on implicit bias, a requirement for officers to state the reasons for stopping people, and a forthcoming body-camera pilot program.

Those are promising developments, but here's the problem. Our initial request for data came in 2009. The BPD agreed to the study in 2011. A final report was not completed until June 2015. And so policy changes, in response to data from 2007 to 2010, are just now being implemented. In addition, our office had to file a lawsuit to get data from after 2010, although BPD has been cooperative in working to resolve the suit.

⁴ Available at <https://aclum.org/app/uploads/2015/06/reports-black-brown-and-targeted.pdf>.

Data-driven reform should not take 6 years and a lawsuit. That's not a workable model for a single police department, and it certainly cannot work for the entire Commonwealth. After all, once we obtain and analyze new data from the Boston Police Department, we still won't know whether racial disparities in police-civilian pedestrian encounters exist in other departments. Similarly, we still will not know the extent to which racial or gender disparities in police-civilian traffic encounters exist in other departments.

That is why it is vitally important for the legislature to pass bills requiring the statewide collection, analysis, and publication of data on police-civilian pedestrian and traffic stops. We can no longer be comfortable with a handful of municipalities doing the work. Boston, Cambridge, Brookline and the Massachusetts State Police should not be the only law enforcement agencies collecting and analyzing data, and implementing implicit bias training. Making data collection routine and uniform will not only enable citizens of the Commonwealth to address and reform potentially unconstitutional practices. It will also enable us to acknowledge the departments and agencies that are getting it right. We urge the Committee to give this legislation a favorable report. Thank you.

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