Members of the Committee, thank you for allowing me to submit testimony for this hearing. I write on the behalf of the Brennan Center for Justice at NYU School of Law in support of HB 3482, An Act to Improve the Collection and Analysis of Data Relative to Traffic Stops.

**Introduction**

The Brennan Center for Justice at New York University School of Law was founded in 1995 as a living tribute to the late Supreme Court Associate Justice, William J. Brennan, Jr. The Center is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. The Justice Project at the Brennan Center is dedicated to securing the nation’s promise of equal justice, and focuses much of its work on ensuring fairness in the criminal justice system, including through addressing unwarranted racial and ethnic disparities in the criminal justice system.

The Brennan Center believes that a comprehensive approach to address and eliminate racial profiling must include: 1) a ban on the practice of racial profiling, 2) robust data collection, and 3) a mechanism for creating and implementing strategies to address racial profiling patterns that may be unearthed. The Brennan Center has been involved in promoting these efforts...
working with local partners in Massachusetts on the passage of HB 3482. If enacted, the bill would deliver on these three important objectives.

**Racial Profiling: A Persistent Problem**

Racial profiling, the reliance by law enforcement agents or agencies on race, ethnicity, or national origin, without more particularized information, to select who to subject to investigatory or other law enforcement action, is humiliating and degrading to the individuals that experience it. It is also a practice that squanders police resources, given the number of studies showing that minorities targeted by law enforcement are no more, and in many instances are less, likely to be found with contraband than whites who are stopped.² As the Department of Justice has observed “Racial profiling in law enforcement is not merely wrong, but also ineffective. Race-based assumptions in law enforcement perpetuate negative racial stereotypes that are harmful to our rich and diverse democracy, and materially impair our efforts to maintain a fair and just society.”³

The majority of Americans think that the practice of racial profiling is wrong.⁴ Yet, the practice persists. Studies from around the country confirm that African Americans and Latinos continue to be stopped at rates disproportionate to their population.⁵ The widespread perception, particularly among minority communities, that these disparities are the result of racial and ethnic bias undermines the legitimacy of our

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⁴ See Darren K. Carlson, Racial Profiling Seen as Pervasive Unjust, Gallop, Jul.20, 2004, available at http://www.gallup.com/poll/12406/Racial-Profiling-Seen-Pervasive-Unjust.aspx (reporting that 67% of Americans think it is never justified for police to use racial or ethnic profiling when stopping motorists on roads and highways).
criminal justice system, and hampers police efforts to work effectively in the very communities that are typically most harmed by crime.\(^6\)

Without reliable information about what is happening on the ground, law enforcement will be unable to dispel the presumption that officers’ actions are biased and unfair, and where in fact unlawful practices persist, those problems will remain unaddressed.

The Current Law

HB 3482 improves upon the earlier, “Act Providing for the Collection of Data Relative to Traffic Stops,” special law, Chapter 228 of the Acts of 2000, passed nine years ago. The original law required that all state and local police departments collect demographic data on drivers for traffic stops where a citation was issued. Police were also required to record whether a search was initiated as a result of the stop. The 2004 Northeastern University Institute for Race and Justice analyzed 27 months worth of data, and found that over 80% of law enforcement agencies had stopped a disproportionately high number of minorities compared to their representation in the population. While Chapter 228 required a second phase of data collection for those agencies for all traffic stops, there was no requirement that agencies analyze the data they collected, or take any remedial measures to address stop patterns indicative of racial profiling, if found to exist. The result, by all accounts, has been inconsistent compliance with the data collection requirements and the complete absence of meaningful analysis of data that is being collected.\(^7\)

The new bill, HB 3482, fixes these deficiencies by requiring that law enforcement agencies collect data on all stops, not only those that result in citation, and that the data is published and analyzed on an annual basis. The act establishes a ban on racial profiling, and creates an advisory board structure to create a mechanism for stakeholder input on law enforcement policies that can help eliminate unwarranted disparities.

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\(^6\) See Jack Ludwig, *Americans See Racial Profiling as Widespread*, Gallop, May 13, 2003, available at http://www.gallup.com/poll/8389/americans-see-racial-profiling-widespread.aspx (finding that a majority of Americans considered racial profiling to be widespread (59%), although the percentage of blacks who felt that way was substantially greater than the percent of whites, 85% and 54% respectively).

National Momentum

Passage of the HB 3482 would bring Massachusetts in line with the states around the country who have taken bold and necessary steps to address the persistent problem of racial and ethnic profiling.

At least half of the 50 states have some form of racial profiling related legislation. At least half of the 50 states have some form of racial profiling related legislation.8 13 states require or have required some form of mandatory data collection of demographic data of motorists for traffic stops.9 12 states have written express prohibitions of racial profiling into their state codes,10 and seven have established oversight or advisory boards to help devise solutions to recurring problems.11 Missouri and Illinois are two states that have enacted legislation that serves as a model of the type of comprehensive efforts needed to effectively assess and address racial profiling.

In 2000, in response to citizen concerns, the Missouri legislature passed a bill that requires the 71512 law enforcement agencies across the state to collect motorist demographic data for all automobile stops. The Attorney General performs an annual analysis of the data and this report is submitted to the governor, general assembly and every law enforcement agency.13 The Missouri legislation goes further than HB 3482 in that it contains an enforcement mechanism to punish agencies that do not comply with the data requirements. It also requires law enforcement agencies to adopt procedures for determining whether any officers have a pattern of disproportionately stopping people of color, and to provide counseling and training to any such officers.

In 2002, then Missouri Attorney General Jeremiah Nixon, who was tasked with implementing Missouri’s racial profiling law, convened an advisory group consisting of law enforcement representatives, community leaders and activists. Attorney General Nixon remarked,

10 See THE PERSISTENCE OF RACIAL AND ETHNIC PROFILING, supra, (listing Arkansas, California, Connecticut, Kansas, Kentucky, Nebraska, Nevada, New Mexico, Oklahoma, Rhode Island, Texas, and West Virginia).
11 See THE PERSISTENCE OF RACIAL AND ETHNIC PROFILING, supra, (listing Illinois, Kansas, Minnesota, Missouri, Nebraska, New Mexico, and Rhode Island).
12 Based on 2008 data.
13 Missouri Revised Statutes s. 590.650 (2000).
Needless to say, this was a group that did not always see eye-to-eye on issues. Racial profiling is not a visible problem to most whites; thus, there has been a tendency for many to dismiss or belittle such claims. Police have defended their practices as practical, calculated crime-stopping techniques. Through the year, however, we found that people of good will--despite differing affiliations and views on an issue--can find common ground and learn from one another.¹⁴

The dialogue occasioned by Missouri’s efforts to squarely assess traffic stop patterns of law enforcement agencies has led to meaningful reform. The legislature has passed subsequent laws to require additional law enforcement training on the prohibition of racial profiling, respect for racial and cultural differences, and the use of effective, non-combative methods for carrying out law enforcement duties in a racially diverse environment.

Illinois has similarly enacted comprehensive racial profiling legislation. In 2003, the state passed the Illinois Traffic Stops Statistic Act, sponsored by then state senator Barack Obama, which required every state and local law officer to collect data on the race of drivers for citations and stops, and annually analyze the data for a three year period.¹⁵ Subsequent legislation has extended the data collection period, increased the frequency of data compilation from once to twice a year, and expanded the scope of data to be collected to include information on consent searches, and whether contraband was discovered in the searched vehicle.

In both Illinois and Missouri, the state’s ability to confront disparities in the number and types of police stops has laid the groundwork for a fairer system of justice and is helping to restore public confidence in the law enforcement community.

**Conclusion**

Without reliable standards in place, the current events (and underlying practices) that can periodically inflame conversation over racial profiling become far more difficult to resolve than would otherwise be the case.¹⁶ Massachusetts is, in fact, unable to participate in dialogue on the issue alongside other states because the data most relevant

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to illuminating bias in law enforcement practices in Massachusetts is haphazardly tracked, or not tracked at all. HB 3482 is an important next step for the Commonwealth toward identifying and addressing unwarranted racial and ethnic disparities in our criminal justice system. We urge you to pass HB 3482.

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Thank you for your consideration of this important bill. Please feel free to contact me at 212-992-8639 or melanca.clark@nyu.edu if you have any questions.