YOU DON’T LOOK LIKE YOU BELONG HERE

The High Cost of Profiling & Recommendations for the Workgroup On the Prevention of Profiling by Law Enforcement
**Profiling Comes at a High Cost**

A black mother waits at home for her two teenagers, fearing they were arrested again for loitering in a neighborhood where in the past they had been told, “You don’t look like you belong here.”

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**Profiling Causes Daily Stress in Our Community Members’ Lives**

An Hispanic man is stopped for a tail light that isn’t even out and sent to ICE detention, losing his job in the time he is detained.

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**Profiling Can Unnecessarily Elevate Violence**

An individual with mental health issues has increased panic attacks, after being faced with rapid questions in a tense situation.

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**Profiling Creates Distrust Between Community & Law Enforcement**

An Iraqi immigrant is stopped on the street for looking suspicious; he is embarrassed and fears similar treatment of his wife.

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**Profiling Has Financial Repercussions for Individuals & Businesses**

A transgender woman of color is arrested for “lying to the police” when her ID does not list her as female; she remains silent fearing harassment by the police.

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**Profiling Violates Our Civil Liberites**

A Muslim man is pulled over and asked, “Why are you in my city?”

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**Profiling Is Traumatic & Has Long-Term Effects On Individuals & Their Families**

A young activist takes down her post on social media, aware of the potential repercussions of hashtagging a political group.
OVERVIEW

Our justice system is flawed; once activated, it sets off a series of inequitable policies and practices that have ultimately catalyzed the exponential growth of people of color caught up in the criminal justice system. Profiling is a first point of entry into this biased system. Oregon can no longer afford the high cost of profiling to our health or economy. It plays out in law enforcement, schools, the courts, jails, prisons and reentry policy, through over criminalization, implicit bias, abuse of power, excessive use of force, and poor community policing. It not only creates persistent stress and impacts the well-being of individuals and their families, but also promotes poor policing practices, diverts resources, destroys trust between law enforcement and the people they are meant to protect, and ultimately creates further economic and social instability in our communities.

Transforming Oregon’s approach to community safety requires dismantling patterns and practices of profiling in law enforcement. This means enacting a comprehensive strategy, including high-level community oversight and transparency, expanded data collection, reformed and mandated training, robust accountability mechanisms, and investment.

2015’s HB 2002, which prohibits the practice of profiling, calls for law enforcement to fulfill their responsibility to the communities they serve. HB 2002 also created the Workgroup on the Prevention of Profiling by Law Enforcement (WPPLE), which now has the opportunity to truly make progress in ending profiling by advocating for reform that will hold law enforcement accountable, slow the growth of a broken justice system, and save money and lives.

This brief will highlight a set of recommendations to the WPPLE, including the creation of a Community Oversight Committee (COC) to oversee four core areas of reform: Data Collection, Analysis and Reporting; Accountability Mechanisms; Training; and Procedural Justice.
WHAT IS PROFILING?

Have I been profiled? - “Profiling” happens when a police officer or agency uses race, ethnicity, color, national origin, language, sex, gender identity, sexual orientation, political affiliation, religion, houselessness/homelessness or disability in deciding whether to stop an individual and which law enforcement activities to take after the initial stop occurs.

HB 2002’s currently definition of profiling requires several changes, most importantly removing the word ‘solely’ from the statute. Removing the word ‘solely’ helps to protect against ‘pretext stops,’ where a law enforcement officer finds an otherwise-valid or after-the-fact justification to profile and stop an individual. ‘Gender identity’ should be included to ensure protections for people treated differently based on their gender expression and perception and who are at a higher risk of being profiled. The definition should also expand the definition of “homeless” to include “houseless,” as it is the preferred term within that population.

We propose that HB 2002 definition of profiling read as follows:

“Profiling” is, with respect to the actions of a law enforcement agency or a law enforcement officer, targeting an individual for suspicion of violating a provision of law based on the real or perceived factor of age, race, ethnicity, color, national origin, language, sex, gender identity, sexual orientation, political affiliation, religion, homelessness/houselessness or disability.”

WHY COMMUNITY OVERSIGHT?

Community oversight is fundamental to meaningful law enforcement reform. When independent, community-informed oversight is well-structured, adequately funded and staffed, it creates a checks and balances system that ensures transparency and accountability.

In order to advance the goals set out in HB 2002, a formalized Community Oversight Committee (COC) should be created with independent oversight authority over law enforcement agencies. Housed in and supported by the Attorney General’s office, the COC will oversee and review data collection and analysis, and investigations; corrective actions; the overhaul of law enforcement training, and procedural justice reform. It is also imperative that community oversight is given appropriate authority to inform systems change.

Police contact happens in many ways, but police contact involving a “stop” or “law enforcement activities” means any of the following:

- Non-custodial questioning
- Interviews and other custodial questioning
- Traffic stops
- Checkpoint or roadblock stops
- Pedestrian stops
- Frisks and other types of body searches
- Consensual or nonconsensual searches of the persons, property, or possessions (including vehicles) of individuals
- Home searches
- Contact with potential victims of and witnesses to crimes
- Such other types of law enforcement encounters

LEARNING FROM MODEL POLICIES

Other states and cities have demonstrated model policies in data collection, analysis, training, independent oversight and procedural justice. Connecticut, North Carolina, and Maryland all have policies worth reviewing and incorporating into Oregon’s law enforcement practice. They provide examples of the breadth of data that can be collected, legislative mechanisms for oversight, and corrective measures. Additionally, Oregon’s Jackson County recently enacted new “end profiling” policies that other Oregon cities can lift up and replicate.

INVESTMENT & STAFFING

Investing in the prevention of profiling will ultimately save money and resources. This requires identifying funding for all four core areas presented below, including the expansion of the Law Enforcement Contacts Policy & Data Review Committee (LECC) and sufficient staffing for both LECC and the Department of Justice Civil Rights Division.

In addition, state and local funding must be allotted for community education, including Know Your Rights programs and trainings. Fulfilling the obligations of HB 2002 requires adequate capacity to educate the community.
DATA COLLECTION, ANALYSIS & REPORTING

In order to identify patterns of profiling, improved data collection is required on multiple levels. Independent oversight will ensure transparency and accountability, but first there should be a robust data system that outlines what data is collected and how and when it is collected. This includes, but is not limited to, pedestrian and vehicle stops, searches (including consent searches, probable cause, etc.), house calls, and complaints.

RECOMMENDATIONS TO TASK FORCE

Expanding data collection will provide the foundation needed to accurately identify trends. Data is particularly important because individual profiling complaints are difficult to prove and many people don’t feel comfortable filing complaints. While it is critical to have uniformity among data collection principles and data, departments should have access to different model collection systems to more easily select a method that fits their department’s needs. Connecticut and North Carolina both utilize robust data collection systems worth modeling.

1 EXPAND STOP DATA COLLECTION

- Increase stop data collection and analysis statewide, including circumstance, time of stop, consent, geography (GPS recordings of location when possible) of vehicle and pedestrian stops by law enforcement;
- Increase dispatcher-collected data on community initiated stops;
- Assign individual officers a number so data collection is anonymous, but the information can later be disaggregated if a trend is established and an officer needs to be identified by their department.

2 IMPROVED COMPLAINT DATA COLLECTION

- Increase LECC’s capacity to collect complaint data;
- Improve language access.

3 ANNUAL REPORTING

- LECC should be required to publish an in-depth data and analysis report yearly, including:
  - top and complaints data
  - analysis and identified trends
- A copy of report should be sent to COC, legislature, Attorney General and Governor’s office.

4 IMPROVED ANALYSIS

- Investigate model practices and ensure an independent body oversees analysis;
- Daytime vs. nighttime analysis, using time of stop data, to understand how visibility of person affects stops;
- Use of a variety of types of analysis to better identify whether profiling is occurring;
- LECC requires expanded capacity to be able to adequately perform trend analysis to identify when additional investigation is required.

ROLE OF COMMUNITY OVERSIGHT COMMITTEE

The COC should inform data collection in the following ways:

1. Ensure COC has authority to inform and update data collection standards;
2. Review of LECC’s regular reporting to Attorney General’s Office;
3. Ensure COC has access to raw data;
4. Oversee and ensure public reporting and transparency measures are taken;
5. Ensure data is released in a way that is easily accessible to the public.
ACCOUNTABILITY MECHANISMS

Once identified, a pattern of profiling requires response systems that span discipline of officers/departments, training and corrective measures, procedural justice and reporting. Specifically, systems should be in place once a pattern of profiling is established.

RECOMMENDATIONS TO TASK FORCE

1. Establish a formal complaint action system, so that once a complaint is received by law enforcement, they must:
   - Confirm receipt of complaint to the complainant;
   - Share the complaint’s substantive details with the LECC and COC;
   - Establish criteria for what initiates an internal investigation;
   - Begin a formal, internal investigation;
   - Report the disposition of the complaint to the LECC and complainant;
   - Along with the disposition, the agency must indicate to the LECC that they have followed a minimum checklist.

2. Establish a formal investigation and corrective action system when a pattern or practice has been identified, including the following actions:
   - Analyze data and complaints to identify law enforcement agencies that appear to show significant statistical deviation from jurisdictional demographics;
   - AG’s office then works with the department to look further into the data and determine what is occurring;
   - AG’s office provides the department with suggested corrective actions, including, but not limited to, additional training or changes to department practices;
   - Create consequences for failure to act, such as:
     - potential decertification by DPSST for profiling violations;
     - partnering with Community Oversight Committee partners and the Attorney General’s office to issue a letter calling out the department to the jurisdiction’s elected officials, the legislature, media, and the public;
     - mandating funding reallocation to address violation.

ROLE OF COMMUNITY OVERSIGHT COMMITTEE

We propose that the COC inform accountability mechanisms through the following measures:

- Inform the creation of response systems based on model policies and practices, including criteria for what initiates internal and external investigations;
- Partner with law enforcement agencies in investigation of stop and search data to assist in providing a deeper understanding of disparities and what policies, practices, or department culture may have contributed to these disparities;
- Be delegated proper authority to review data reports and make recommendations on corrective measures, including:
  - additional training
  - drilling down of data
- Oversee AG investigations to ensure independent oversight;
- Partner with Attorney General’s office in public media campaigns;
- Respond to lack of corrective action by communicating with relevant elected offices, like city council, or calling on the federal Department of Justice to investigate potential civil rights violations.
Changing the culture of law enforcement requires multiple approaches. The content and legitimacy of training can shift the relationship between law enforcement and the community it serves. DPPST’s training, which has not been updated in 15 years, currently requires a complete overhaul. This includes tying a model anti-profiling policy to criteria and guiding principles of training. Training provides a point of intervention where law enforcement can both address the underlying causes of profiling, including implicit bias, as well as educate and enforce effective, trauma-informed, and safe law enforcement.

The following steps should be taken to improve the quality of training.

**RECOMMENDATIONS TO TASK FORCE**

1. **COMPREHENSIVE REFORM & TRAINING**
   - Legislate mandatory training for law enforcement with funding and capacity;
   - Perform assessment of current trainings, based on model training policies, to outline a comprehensive training directly tied to an anti-profiling policy, that expands hours/class requirements for cadet/officer/manager training;
   - Design specific training for dispatchers;
   - Require cultural competency training that is updated to include all new populations included in the definition of profiling, including transgender women, people with disabilities, and houseless individuals;
   - Incorporate trauma-informed approaches and implicit-biased training;
   - Incorporate training to address profiling based on political affiliation and religion (including additional prohibitions on these types of profiling under ORS 181.575);
   - Seek out federal dollars for increased training capacity of DPPST and LECC.

2. **COMMUNITY ENGAGEMENT**
   - Community outreach and education that includes direct contact with members of affected communities;
   - Requirement that police departments have community listening sessions.

**ROLE OF COMMUNITY OVERSIGHT COMMITTEE**

Law enforcement practices have a significant impact on the health and long-term wellbeing of our communities. The COC should work closely with DPSST and LECC in the following areas:

1. Inform curriculum development and training, specifically around trauma-informed approaches;
2. Community outreach and facilitation of community listening sessions;
3. Serve on hiring committee of trainers.
PROCEDURAL JUSTICE

Procedural justice can help to improve fairness and the relationship between law enforcement and communities. Just as improved data collection, analysis, corrective measures and improved training are all critical to improved service, a set of procedural justice reforms are also necessary for breaking down barriers. The CCC should also lift up model policies and practices and inform innovative solutions that will work here in Oregon.

**RECOMMENDATIONS TO TASK FORCE**

1. **CONSENT SEARCH FORM**
   - Ban consent searches of juveniles, who are more easily traumatized and negatively impacted by profiling and excessive interaction with law enforcement; Youth are also less likely to understand and assert their rights or to complain when they are treated improperly by authority;
   - Require documentation of consent to search (adults and youth) with notification of right not to give consent;
   - Require issuance of receipts after a search, indicating whether the search was based on probable cause (including the basis for probable cause), or whether consent was given.

2. **STOP RECEIPTS WITH PROFILING INFORMATION**
   - Similar to Connecticut’s laws, require officers to give people they have stopped a form with information about Oregon’s anti-profiling laws and how to file a profiling complaint;
   - Require officers to provide their business cards;

3. **EVIDENCE SUPPRESSION IN CRIMINAL TRIALS**
   - Create a procedure by which criminal defendants can move to suppress evidence when profiling is proven to have occurred.

**ROLE OF COMMUNITY OVERSIGHT COMMITTEE**

1. Inform and support community education, including a Know Your Rights training available.
2. Inform youth-specific Know Your Rights education rights.

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