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## HOUSE JOINT RESOLUTION NO. 687

Offered January 21, 1999

*Establishing a joint subcommittee to study the use of racial profiling in pretextual traffic stops of minority drivers, referred to as "driving while black" (DWB).*

Patrons—Robinson, Baskerville, Christian, Crittenden, Grayson, Jones, J.C., McEachin, Melvin and Spruill; Senators: Gartlan, Lambert and Maxwell

Referred to Committee on Rules

WHEREAS, drug abuse affects persons of all racial groups and social and economic levels and is not a problem only of minorities, the poor and inner-city residents; and

WHEREAS, drug abuse and drug trafficking result in serious consequences and repercussions on the individual, his family and the community; contribute to the escalating costs of health care, public safety, social programs, prison construction, and national and international drug interdiction; and cause violent crime, domestic violence and abuse, and child abuse and neglect; and

WHEREAS, many people believe that society has declared war on drugs at the sacrifice of personal rights and freedom, having extended to federal, state, and local law-enforcement officers the authority to seize personal property under civil forfeiture laws and to make pretextual traffic stops and arrests, which have been affirmed in Whren v. United States, 116 S. Ct. 1769 (1996); and

WHEREAS, although race is not an inherently suspicious characteristic, research studies reveal that race is a factor in probable cause and reasonable suspicion for pretextual traffic stops, arrests and civil seizures involving thousands of African-Americans and other minorities; and

WHEREAS, African-Americans and other minorities have been stopped and searched on the pretext of failing to signal a lane change, switching lanes suddenly, following too close, driving too slow or too fast, driving with one tail light, acting nervous, looking suspicious, having an air freshener or remnant thereof on the rear view mirror, or violating some other arcane law; and

WHEREAS, due to their concept of justice, and generally positive experience with law-enforcement officers, many members of the majority population dispute the existence of race-based traffic stops because they cannot conceive or accept the fact that police officers may engage in selective enforcement of the law, particularly when race is involved; and

WHEREAS, however, nearly every adult African-American male—whether young or old, rich or poor, famous or infamous, professional or unskilled, privileged or common—can relate frightening, embarrassing, degrading, and dehumanizing experiences that include being stopped by police without cause and forced to suffer the humiliation of an unwarranted and illegal body search, the dismantling of vehicles along the roadside, the forfeiture of property, clothing and possessions strewn about the highway and ruined by canine units allowed to relieve themselves on his belongings, and being detained and subsequently released without any charges ever being filed, simply because he fits the racial profile of a drug dealer or courier; and

WHEREAS, young male African-Americans and Hispanics are especially vulnerable to such traffic stops due to certain racial profiling characteristics, such as driving late model or expensive cars, traveling at night and especially in the wrong part of town or in an affluent neighborhood, driving with two or more minority males in the car, "leaning," wearing gold jewelry, expensive clothing and dark glasses, having gold or diamond-studded teeth, sporting vogue or cultural hairstyles, listening to "hip-hop" and other loud music, and carrying beepers or in possession of telephone numbers; and

WHEREAS, recent empirical studies and information regarding national arrest data indicate that African-Americans and other minorities are disproportionately selected for traffic stops where the attendant circumstances would not otherwise justify the stop, while white motorists under similar circumstances are allowed to travel undisturbed; and

WHEREAS, law-enforcement officers increasingly use pretextual traffic stops to interdict drug traffickers along the nation's interstate highways known as high volume connectors in the drug trade, such as along the Interstate 95 corridor from New England to Florida; and

WHEREAS, according to the American Civil Liberties Union, research conducted relative to Wilkins v. Maryland State Police, Civil Action No. CCB-93-483, by Dr. John Lamberth, a recognized expert witness in statistics, surveying, and social psychology in the United States District Courts for New Jersey and Virginia and state courts in New Jersey, Pennsylvania and Virginia, found that on the stretch of I-95 in Maryland, black drivers accounted for only 14 percent of the drivers but represented 73 percent of those stopped and searched; and

WHEREAS, the Lamberth findings were confirmed by Maryland State Police Department traffic stop

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60 records, which revealed that between 1995 and 1997, on the section of I-95 in question in Wilkins, 75  
61 percent of the drivers were white and 17 percent were black, yet state troopers stopped and searched 23  
62 percent of white drivers, in comparison to 70 percent of black drivers who were stopped and searched;  
63 and

64 WHEREAS, these traffic stops occur with such regularity that they are known in minority  
65 communities as a moving violation for "driving while black" (DWB); and

66 WHEREAS, discriminatory and unprofessional police conduct, such as allowing officers to impute  
67 criminal intent to citizens based solely on their race, denigrates such citizens as a group, perpetuates  
68 negative and false stereotypes, reinforces perceptions that such persons have an innate propensity toward  
69 crime, eviscerates their self respect and breeds resentment and contempt for American justice and the  
70 law-enforcement community; and

71 WHEREAS, the rule of law is threatened and respect for authority is undermined when a substantial  
72 segment of the population believes that police officers may enforce the law arbitrarily or capriciously  
73 with impunity, act with bias or prejudice and can circumvent constitutional protections and restraints;  
74 now, therefore, be it

75 RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be  
76 established to study racial profiling and pretextual traffic stops of minority drivers, referred to as  
77 "driving while black" (DWB). The joint subcommittee shall be composed of 11 members, which shall  
78 include sixmembers of the House of Delegates, to be appointed by the Speaker of the House in  
79 accordance with the principles of Rule 16 of the House Rules; and five members of the Senate, to be  
80 appointed by the Senate Committee on Privileges and Elections.

81 In conducting its study, the joint subcommittee shall (i) review the principles of the Fourth and  
82 Fourteenth Amendments, the Supreme Court decisions in Whren v. United States, 116 S. Ct. 1769  
83 (1996), and United States v. Armstrong, 116 S. Ct. 1480 (1996), the case law, and federal and state laws  
84 regarding the right to privacy, equal protection of the law, and search and seizure, particularly civil  
85 seizure; (ii) determine the efficacy of police civilian review boards; (iii) evaluate the cultural diversity  
86 education and training of law-enforcement officers; (iv) determine whether racial profiling or other  
87 characteristics are used by law-enforcement agencies in the Commonwealth to identify motorists for  
88 traffic stops; (v) develop a profile of motorists commonly identified for traffic stops; (vi) ascertain data  
89 regarding police traffic stops in the Commonwealth, particularly along I-95, and determine the extent to  
90 which African-American and other minority motorists are stopped, held, searched, or have property  
91 seized in comparison to white motorists; (vii) identify the reasons given by police for such stops and  
92 whether charges were filed; (viii) determine, based on traffic stops data for Virginia, whether  
93 African-American and other minority motorists are deprived of their Fourth Amendment right to be free  
94 from unreasonable searches and seizures and their right to be free from discrimination based on race  
95 under the Fourteenth Amendment; (ix) review and consider the proposed federal Traffic Stops Statistics  
96 Act and its applicability in developing guidelines to control the abuse of police powers; (x) evaluate the  
97 benefit of traffic stops on drug interdiction; (xi) review Wilkins v. Maryland State Police, Civil Action  
98 No. CCB-93-483, background materials on other traffic stops litigation in the nation, the report of Dr.  
99 John Lamberth for the American Civil Liberties Union in the Wilkins case and the settlement agreement  
100 in Wilkins and determine whether similar events occur in Virginia and whether any of the remedies  
101 ordered by the courts or settlement agreements reached by the litigants should be considered to prevent  
102 and remedy similar problems in the Commonwealth; (xii) provide opportunities for public comment;  
103 (xiii) assess whether the African-American and other minority populations are aware of their  
104 constitutional rights regarding search and seizure and recommend ways to notify or clarify, as the case  
105 may be, such populations of constitutional protections; and (xiv) consider such other matters as the joint  
106 subcommittee may deem appropriate.

107 The joint subcommittee may seek the assistance of legal experts and other knowledgeable persons in  
108 considering this matter.

109 The direct costs of this study shall not exceed \$10,250. An estimated \$2,000 is allocated for  
110 resources and materials. Such expenses shall be funded from the operational budget of the Clerk of the  
111 House.

112 The Division of Legislative Services shall provide staff support for the study. Technical assistance  
113 shall be provided by the Office of the Attorney General, the Department of State Police, the Department  
114 of Criminal Justice Services, and local law-enforcement agencies. All agencies of the Commonwealth  
115 shall provide assistance to the joint subcommittee, upon request.

116 The joint subcommittee shall complete its work in time to submit its findings and recommendations  
117 to the Governor and the 2000 Session of the General Assembly as provided in the procedures of the  
118 Division of Legislative Automated Systems for the processing of legislative documents.

119 Implementation of this resolution is subject to subsequent approval and certification by the Joint  
120 Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the  
121 study.