

**COMMENTS ON 13-H 5140,
THE PRIMARY SEAT BELT BILL**

April 23, 2013

The RI ACLU opposes repeal of the sunset clause for the primary seat belt law. We have long opposed adoption of such a law that is not tied to legislation that addresses the problem of racial profiling, and we continue to do so. Although some people may question the connection between the two issues, or in trying to tie one to the other, many people in the minority community fully understand the connection.

Even with a primary law, data from other states show that a significant percentage of cars – more than 1 in 10 – will still be in violation. A law like this thus significantly expands police discretion to pull cars over – even as three years of traffic stop statistics for Rhode Island demonstrated that black and Latino drivers are much more likely than whites to be pulled over by police for minor traffic violations, and also twice as likely as whites to be searched by police once pulled over.

This latter statistic is particularly worth emphasizing. Thus, even if we accepted the argument we have often heard from police officials that they have no idea of a driver's race before the car has been pulled over,¹ and thus assume that cars would be stopped in a race-neutral fashion in enforcing a primary seat belt law, racial minorities remain more than twice as likely as whites to then be subjected to an intrusive *search* by police as a result of the stop.² In other words, even if stops under the law are conducted in a non-discriminatory manner, the statistics demonstrate that more intrusive police conduct that can flow from the effects of a traffic stop *will still* adversely affect racial minorities.

Unfortunately, despite all the traffic stop data available in Rhode Island that prove otherwise, many police officials continue to deny that racial profiling even exists. Under those circumstances, we trust legislators can appreciate why we continue to oppose a law that only gives police an additional, and broadly discretionary, reason to stop cars and subject racial minorities to unequal enforcement of the laws.

We note that, two years ago, when this statute was first approved by legislators, the DOT testified that data would be collected to demonstrate its non-discriminatory enforcement. Yet none of that data has been provided nor, we have been told, is any likely

¹ It has always remained unclear to us how police who cannot tell the race of the driver are nonetheless able to see that the driver is not wearing a seatbelt.

² It is worth pointing out that the statistics also consistently demonstrated that, despite the disproportionate searches of racial minorities, it is whites who are more likely to be found with contraband when searched.

to be available until the end of the year. That in and of itself should be reason to reject this bill.

In response to these concerns, we recognize that NHTSA has testified that data from a handful of other states shows no evidence of racial profiling when they have enforced primary seat belt laws. If true, this is a very curious finding. The U.S. Department of Justice has acknowledged, consistent with the previous data collected in Rhode Island, that: “Research has verified that people of color are more often stopped than whites.”³ In addition, both the DOJ and NHTSA have noted that seatbelt usage is chronically lower among black drivers.⁴ In fact, that is one of the reasons NHTSA cites for promoting the passage of primary seat belt laws. But as the DOJ logically notes: “If a law enforcement agency aggressively enforces seatbelt violations, police will stop more black drivers.”⁵ We thus seriously question the validity of the statistics from other states that purport to show no racial profiling in the enforcement of these laws. It would seem to require an affirmative effort by police *not* to pull over minority drivers for this particular infraction, while overcompensating by pulling them over more often for other types of motor vehicle violations. Such a scenario is, to put it mildly, puzzling.⁶

Although we recognize that passage of a primary law tends to lead to an increase in seat belt use, it is important to note the general improvement in seat belt use that has occurred over the years in Rhode Island without the presence of such a law. The NHTSA statistics for 2010, for example, showed Rhode Island’s seat belt use rate at 78%, up from 63.2% less than a decade earlier. Although this has not been a consistently steady increase, it appears clear that, looking more broadly at a decade of generally improving statistics, educational and other non-punitive efforts to encourage seat belt use by Rhode Island can and do have a constructive effect.

For all these reasons, the ACLU of Rhode Island continues to strongly oppose a primary seat belt law, in the absence of a strong anti-racial profiling law. We urge the Committee to reject repeal of the sunset clause.

³ “Racial Profiling and Traffic Stops,” National Institute of Justice, U.S. Department of Justice. Created January 10, 2013. <http://www.nij.gov/topics/law-enforcement/legitimacy/traffic-stops.htm>

⁴ Id. See also, e.g., “Seat Belt Use in 2008 – Demographic Results,” Traffic Safety Fact, NHTSA, August 2009. <http://www-nrd.nhtsa.dot.gov/Pubs/811183.PDF>

⁵ Id.

⁶ If, as a summary of the data reviewed by NHTSA declares, the statistics from other states “reveal no real change in pattern of citations across races before and after the law change,” this provides little comfort. This does not mean racial profiling isn’t occurring – only that the change from secondary to primary enforcement didn’t exacerbate it. But if a primary law has given police an additional reason to pull drivers over, and resulted in many more traffic stops, then it has in fact increased the total number of minority drivers being subjected to racial profiling if such profiling is taking place.