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To: Members of the Committee on Judiciary

From: Sandra J. Staub, ACLU-CT Legal Director

Written Testimony Supporting S. B. No. 364

An Act Concerning Traffic Stop Information

Good afternoon Senator Coleman, Representative Fox and distinguished members of the Judiciary Committee. My name is Sandra Staub and I am the Legal Director at the American Civil Liberties Union of Connecticut. The ACLU-CT supports measures to improve the effectiveness of the Penn Act's requirements to collect traffic stop data and prevent profiling statewide. Therefore, I am here today to support Senate Bill No. 364, An Act Concerning Traffic Stop Information, provided significant changes are made to meet the purported goal of "putting some teeth" into the Penn Act. The necessary changes are: 1. All conditional "if" clauses must be excised from the bill; 2. The bill must be effective upon passage; and, 3. Religion must be added as a prohibited category.

In this year of education reform we want to solve the problem of our separate but unequal schools, in part by expanding school choice. How do we expect our students of color to choose to make the drive from Hartford to Glastonbury or West Hartford, for example, when the state has done virtually nothing to prevent racial and ethnic profiling since passing the Penn Act in 1999?

Last year, in support of strengthening the data collection requirements and the prohibition on racial and ethnic profiling in the Penn Act, I talked to you about my teenage daughter, who was about to receive both the privilege to drive and the privilege to drive while white in the state of Connecticut. That the second privilege continues to exist in 2012 is unacceptable. I cannot help but think of the parents of Latino or African American teenagers who share my fears about teenage driving but whose fears are magnified by the real risk of their children being stopped for driving while black or brown. My daughter has never been stopped and I would like to think that this is because she does nothing wrong while driving. Yet I am convinced by investigations carried out by the press, the ACLU and the Justice Department, as well as by powerful stories from Connecticut residents, that teenagers of color around the state have been stopped, even when they, like my daughter, have committed no infractions.

The simple fact is that despite all of the investigations, reports and anecdotal evidence, and despite the indictments of East Haven police officers accused of biased policing and civil rights violations, nothing has changed. The state officials and police departments

responsible for enforcing the racial profiling prohibition and for collecting and analyzing the data have inexplicably failed and refused to comply with the Penn Act. And we need changes in the law primarily to hold them accountable and enforce their compliance. Much was made of the embarrassing and blatantly offensive remark made by the East Haven mayor in the aftermath of the indictments there. Yet the failure of state leaders to fix what has long been obviously broken in the Penn Act is just as offensive, equally embarrassing and clearly indicative of the racism and bias that is built into the threshold to our state justice system. Unless this legislative body and the current administration take immediate action to fix this law, the responsibility for the perpetuation of racism in the system falls here.

In 1999, the Connecticut legislature adopted one of the country's first racial profiling prohibitions, acting in the name of the late Senator Penn – who like too many people in this state had reported being stopped in traffic on the basis on his skin color. The Penn Act mandated that: 1. the Chief State's Attorney develop a form for use by departments all over the state to uniformly report data on traffic stops and to mandate use of the form; 2. each department record traffic stop data uniformly and report the data, from 1999 to 2003 to the Chief State's Attorney, and from 2003 to present to the African American Affairs Commission; and, 3. the Chief State's Attorney and subsequently the African American Affairs Commission compile, analyze and report on the traffic stop data in order to get a handle on the extent of racial profiling in this state and to determine what could be done to prevent it.

The ACLU-CT receives inquiries from around the country about Connecticut's progress in the thirteen years since this body passed the Penn Act. Our response to these inquiries is distressing, to say the least: The Chief State's Attorney to our knowledge never mandated use of a uniform reporting system for traffic stops; most police departments across the state have failed to collect and report traffic stops as required by the Penn Act; and, neither the Chief State's Attorney nor the African American Affairs Commission have compiled complete statewide data for analysis and report. The only report done under the Penn Act, back in 2001, appears to have been based on woefully incomplete data and with a method of analysis that the report itself acknowledges is not consistent with best practices. And even though many of the state's leaders have claimed that lack of money was in part the reason for the failure to comply with the law, it turns out federal transportation funds have been available, only no one bothered to spend them. And last year, when the legislature had an opportunity to fix the Penn Act, the widely supported 2011 bill, after passing Public Safety and this committee, was sent to yet another committee to die quietly and inexplicably.

With the wholesale failure to fulfill the mandate of the Penn Act, there is no good faith basis to claim that racial profiling is not a problem in Connecticut. Whole communities in this state know, unfortunately from experience, that stops based on perceptions of race, ethnicity and religion are rampant. And whether it is from experienced reality or public perception, racial profiling alienates people from law enforcement and hinders community policing, eroding the trust in and credibility of police officers among the people they are sworn to protect and serve.

The people of this state greatly appreciate the hard work and dedication of law enforcement agents in protecting public safety. The good name of these agents should not be tarnished by those who commit unlawfully discriminatory practices or by a failure and

refusal by state leaders to assume immediately their responsibility to analyze the problem so that efforts can be undertaken to prevent and prohibit profiling. As the Justice Department stated in its investigative report on East Haven, good police practices require developing a system to detect and prevent profiling.

In, short, racial profiling presents a great danger to the fundamental principles of our Constitution and is abhorrent and cannot be tolerated. This legislature meant to do something about this serious issue in 1999. In 13 years, it never worked. And we know now that the law needs to be improved in order to have its intended effect.

No Ifs:

The conditional "if" clauses in this bill must simply be removed. There is no reason these forms and systems cannot be developed and implemented. There is no reason for the Penn Act to include any reservation that developing the system of data collection might still not happen. Therefore, the statute should not expressly provide escape clauses or invitations to excuse any failure to comply with the law.

No More Delay:

Given their pending project to unify data systems for law enforcement across the state, the Office of Policy and Management and the Criminal Justice Information System Governing Board are well situated to take the lead on enforcing this act now. There is simply no excuse for waiting any longer. With respect to a uniform, mandatory mechanism to collect and report the data, experts in the field have already invented this wheel and, in fact, the tried and revised version used by Rhode Island police had been given to OPM as a model as early as January 2011. The Director of Northeastern University's Institute on Race and Justice, who has conducted numerous traffic stop studies, including the one in Rhode Island, has indicated that most if not all the information systems in use by police departments have such a data collection tool as a system option. And even if the uniform mechanism cannot yet be integrated into the Criminal Justice Information System plans, there is no reason not to manually collect the required data until then.

No Religious Profiling:

In the past two months, there have been alarming reports of violations of civil rights of law-abiding Connecticut residents who have been subject to unlawful racial and religious profiling by the New York Police Department. On February 2, 2012, and again on February 18, 2012, the Associated Press reported that the NYPD had targeted the Muslim community in Connecticut, including the Islamic Institute in West Hartford and the Muslim Student Association at Yale University, for investigation based solely on religious affiliation. This targeting of Muslims is consistent with reports we have heard of residents being stopped by police in this state simply because of indicators of their religion. This religious profiling is not only Connecticut's problem. In a widely reported incident in the Boston airport, an ACLU attorney was stopped seemingly for being a tall man with a long beard. Adding religion as a prohibited profiling category will appropriately acknowledge that police may not initiate a traffic stop based solely on an officer's perception of the religion of a driver and that to do so is an infringement on protected First Amendment activities.

As things stand, a person who has been racially profiled can bring an action under 42 U.S.C. Sec. 1983 if she can show that a person acting under color of law deprived her of constitutional rights. Passing an amended version of this bill will ultimately cost much less than waiting for someone like the ACLU or the Justice Department or students at Yale Law School to bring more claims to enforce compliance. In the end, no one will benefit from allowing racial profiling to continue unmonitored and unchecked for one more day than is necessary to pass this legislation and make it immediately effective.The ACLU-CT urges this committee to act favorably on S.B. 364, provided the necessary amendments are included.