

SENATE No. 2106

Senate, June 29, 2017 -- Text of amendment (14) (offered by Senators Chang-Diaz and Forry) to the proposed Rules amendment (Senate, No. 2092) to prevent driver distraction and motor vehicle fatalities.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

1 by inserting at the end thereof the following 2 sections:-

2 "SECTION XX. The General Laws as appearing in the 2014 Official Edition are hereby
3 amended by inserting after chapter 22E the following new chapter:

4 Chapter 22F.

5 Section 1. For the purposes of this section, the following words shall have the following
6 meanings unless the context clearly requires otherwise:

7 (1) "Racial profiling" and other "profiling" by a law enforcement entity means
8 differential treatment based on actual or perceived race, color, ethnicity, national origin,
9 immigration or citizenship status, religion, gender, gender identity, or sexual orientation in
10 conducting any law enforcement action. Differential treatment may be demonstrated by a
11 showing of intentional discrimination or statistically significant evidence of disparate treatment.
12 Profiling does not include the use of such characteristics, in combination with other factors, to
13 apprehend a specific suspect based on a description that is individualized, timely and reliable.

14 (2) "Law enforcement entity" means any state, municipal, college or university law
15 enforcement officer or state, municipal, college or university police department or a police
16 officer acting on behalf of such state, municipal, college or university police department.

17 (3) "Receipt" means a contemporaneous record of any traffic stop, to be provided to the
18 subject of the stop. A receipt shall at a minimum include the following data: the reason for the
19 stop; the date, time, and duration of the encounter; the street address or approximate location of
20 the encounter; and the name and badge number of the officer initiating the stop. The receipt shall
21 also include information about how to register commendations or complaints regarding the
22 encounter.

23 (4) "Driver" means an operator of a motor vehicle, motorized bicycle, or motorized
24 scooter under this chapter, or a bicycle, scooter, or other vehicle traveling on a way.

25 (5) "Frisk" means a pat-down to locate a weapon.

26 (6) "Executive office", the executive office of public safety and security.

27 (7) "Secretary", the secretary of public safety and security.

28 Section 2. Ban on racial and other profiling.

29 (1) No law enforcement entity shall engage in racial or other profiling. Evidence of
30 profiling may include differential treatment as demonstrated by evidence of intentional
31 discrimination or by statistical evidence of disparate treatment.

32 Section 3. Data Collection

33 (1) The Secretary shall create and update as may be appropriate an instrument to record
34 statistical data for the police-civilian contacts covered by this Act. This instrument shall, at
35 minimum, include the data required to be collected under paragraph 2 of this section. The
36 Secretary shall give due regard to census figures when setting forth the race and ethnicity
37 categories in the instrument and shall consider providing guidance about the manner in which
38 race and ethnicity information is identified and designated and collected, including by
39 individuals' self-reporting of such categories; provided that, in all cases, the method of
40 identification of such data specified by the Secretary must be the same across all law
41 enforcement entities and among different stop scenarios. The Massachusetts State Police shall
42 use this instrument to collect data. Other law enforcement entities shall have the authority to
43 create such data collection instruments for their own use, provided that any such instrument (a)
44 includes the data required to be collected pursuant to paragraph 2 of section 3 and (b) is
45 submitted to and approved by the Secretary as meeting the requirements of this Act.

46 (2) Whenever an individual is stopped, frisked, or searched by any state, municipal,
47 college or university law enforcement officer, including any time a frisk or search is consensual,
48 the officer shall record the following data:

49 (a) reason for any stop;

50 (b) date, time, and duration of the encounter;

51 (c) street address or approximate location of the encounter;

52 (d) the number of occupants of the vehicle, if stop was a vehicle;

53 (e) race, ethnicity, gender, and approximate age of the driver and any person searched as
54 part of that stop, which shall be based on the officer's observation and perception and shall not
55 be requested of the person unless otherwise required by law or regulation;

56 (f) whether the driver, and any person searched, has limited English language
57 proficiency, based on the officer's observation and perception.

58 (g) whether any investigatory action was initiated, including a frisk or a search of an
59 individual or vehicle, and whether any such investigatory action was conducted with consent;

60 (h) whether contraband was found or any materials were seized;

61 (i) whether the stop resulted in a warning, citation, arrest, or no subsequent action;

62 (j) the name and badge number of the officer initiating the stop.

63 (3) For any stop that does not result in the issuance of a citation, the officer shall provide
64 a receipt to the subject at the conclusion of the stop.

65 (4) Each police department, not less frequently than quarterly, shall review each officer's
66 stop and search documentation to ensure compliance with this Act, review the entire
67 department's stop and search data, examine and analyze any racial or other disparities, and
68 formulate and implement an appropriate response.

69 Section 4. Electronic Data Systems

70 Subsequent to passage of this act, any electronic systems developed for law enforcement
71 entities to issue citations, or to gather, record, report, and study information concerning vehicle
72 accidents, violations, traffic or pedestrian stops, or citations, shall be designed to:

- 73 (i) collect the data described in Section 3;
- 74 (ii) automatically transmit such data to the Executive Office of Public Safety and Security
75 as required by this section;
- 76 (iii) electronically generate citations and police encounter receipts.

77 Upon the adoption of such an electronic system by any police department, the department
78 shall record the data set forth in section 3 for all traffic and pedestrian stops. The department
79 shall transmit all such data by electronic means to the Executive Office of Public Safety and
80 Security, at intervals to be determined by the Secretary but not less than semi-annually.

81 Section 5. Data Analysis

82 (1) The Secretary of Public Safety and Security shall maintain all data described in
83 section 3 in an electronically accessible database, shall issue an annual summary report of said
84 data which shall be submitted to the Attorney General and the Criminal Justice Commission
85 established pursuant to Chapter 68 of the Acts of 2011; and filed with the clerks of the House
86 and Senate. The report shall include statistical data for each police department, setting out the
87 following information for traffic and pedestrian stops separately in a month-by-month format:
88 the number of stops made; the reason for the stops; the number of warnings, citations, and
89 arrests; the number of, race, ethnicity, gender, and age of the drivers or pedestrians stopped; the
90 number of, race, ethnicity, gender, and age of the persons frisked; the number of, race, ethnicity,
91 gender, and age of the persons searched; the number of stops and searches, of any duration and
92 of any scope, resulting in the seizure of contraband or any other item or material; and any other
93 information as may be requested by the Criminal Justice Commission. The annual reports
94 required by this subsection shall be submitted no later than April 1 each year and shall include

95 data collected during the preceding calendar year, regardless of whether complete data is
96 available for that period. No information revealing the identity of any individual shall be
97 contained in the reports. The reports submitted pursuant to this subsection shall be public records
98 and shall be published on the website of the Executive Office of Public Safety and Security,
99 along with a machine-readable version of the data summarized within the reports.

100 (2) On a biennial basis, the Secretary of Public Safety and Security shall transmit the data
101 collected by each police department in accordance with this act to an independent organization or
102 university in the Commonwealth with experience in the analysis of such data, and said
103 organization or university shall prepare an analysis and a report. Such analysis and report shall
104 be submitted to the Governor, the Attorney General, the Criminal Justice Commission
105 established pursuant to Chapter 68 of the Acts of 2011 and the clerks of the House and Senate
106 not more than 90 days after receipt of the data by the independent organization or university. The
107 analysis and report, and the collected data, shall be deemed a public record, and shall be
108 published on the website of the Executive Office of Public Safety and Security. The report shall
109 include a multivariate analysis of the collected data in accordance with generally accepted
110 statistical standards that seeks, to the extent possible, to measure the roles of race, ethnicity,
111 gender, and age as factors in law enforcement entities' interactions with civilians, including but
112 not limited to the frequency with which individuals are stopped, frisked, searched, cited, or
113 arrested. Such analysis shall include consideration of the demographics of the population
114 residing in or traveling through a particular locale, local crime rates, the frequency with which
115 encounters result in seizure of contraband or arrest, and comparisons among similarly-situated
116 officers.

117 Section 6. Data Availability

118 Any individual charged with a criminal offense based on evidence or statements obtained
119 as the result of a traffic or pedestrian stop shall have the right to obtain data collected pursuant to
120 this section concerning any officer who participated in the stop or the search that resulted in the
121 seizure of evidence, from the Executive Office of Public Safety and Security and from the police
122 department of the officer(s) involved in the stop or search; provided that information revealing
123 the name, street address, date of birth, and driver's license number of individuals involved in
124 stops who are not law enforcement officers or their agents shall not be disclosed; and provided
125 further that information revealing the home address, date of birth, personal telephone number or
126 any personal identifying information other than the name, badge number, and department of a
127 law enforcement officer shall not be disclosed. Requests for such data may specify a single or
128 multiple incidents, dates, locations or any other combination of data collected pursuant to section
129 3.

130 Section 7. Enforcement

131 The attorney general may bring a civil action in the superior court for injunctive or other
132 appropriate equitable relief to enforce the provisions of this section. Nothing in this Act shall be
133 construed to limit an individual's rights or remedies, including, but not limited to, a civil action
134 for a violation of constitutional rights under section 11I of chapter 12 of the General Laws or 42
135 U.S.C. section 1983 or motions for suppression or dismissal or other relief in a criminal case.

136 SECTION YY.

137 Section 3 of the newly created Chapter 22F shall take effect 12 months from the effective
138 date of this act, at which time Chapter 228 of the Acts of 2000 shall be repealed.

139 Section 5 of the newly created Chapter 22F shall take effect at such time as the Executive
140 Office of Public Safety and Security makes available to law enforcement agencies an electronic
141 system described in Section 4 of said Chapter 22F."