

HOUSE BILL NO. 2273

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DOGAN.

5893H.021

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 590.650, RSMo, and to enact in lieu thereof ten new sections relating to fair and impartial policing.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 590.650, RSMo, is repealed and ten new sections enacted in lieu thereof, to be known as sections 590.1050, 590.1052, 590.1054, 590.1056, 590.1058, 590.1060, 590.1062, 590.1064, 590.1066, and 590.1068 to read as follows:

590.1050. The provisions of sections 590.1050 to 590.1068 shall be known and may be cited as the "Fair and Impartial Policing Act". As used in sections 590.1050 to 590.1068, the following terms mean:

(1) "Benchmark," the percentage of a given population within a larger population, including residential, driving, or some other measured population;

(2) "Biased policing," occurs in circumstances where police actions are substantially based on the race or ethnicity of a person rather than upon lawful and appropriate police procedures based on observed behavior or facts. This does not include investigations of alleged crimes where law enforcement must seek out suspects who match a specifically delineated description;

(3) "Contraband," illegal drugs, guns, or some other object that may warrant an arrest;

(4) "Disparity index," the rate of any given activity such as stops, searches, or arrests for a given population as compared to the benchmark for that population;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (5) "Hit rate," the rate of searches in which law enforcement finds contraband.
16 The hit rate is calculated by dividing the number of searches that yield contraband by the
17 total number of searches;

18 (6) "Law enforcement activity," the following activities by law enforcement:

19 (a) Traffic stops;

20 (b) Pedestrian stops;

21 (c) Consensual or nonconsensual frisks or pat-downs;

22 (d) Consensual or nonconsensual searches of persons, property, or possessions,
23 including vehicles;

24 (7) "Law enforcement officer," a peace officer as defined in this chapter who is
25 employed by the state of Missouri or any county or locality within the state of Missouri;

26 (8) "Minority group," individuals of Black or African American, Hispanic or
27 Latino, American Indian or Alaskan Native, Asian, or Multiracial descent;

28 (9) "Pedestrian stops", any stops of individuals in public spaces where a law
29 enforcement officer stops, frisks, or questions a person based upon a claim by law
30 enforcement of reasonable suspicion of unlawful activity.

590.1052. Every person employed by a law enforcement agency within the state of
2 Missouri, including civilian employees and parties contracted by a law enforcement agency,
3 is prohibited from engaging in biased policing as defined in section 590.1050.

590.1054. 1. Each time a law enforcement officer stops a driver of a motor vehicle
2 or completes a pedestrian stop, that officer shall report the following information to the
3 law enforcement agency that employs the officer:

4 (1) The age, gender, and race or minority group of the individual stopped;

5 (2) The time, date, location, and duration of the stop;

6 (3) Whether the person stopped resides in the jurisdiction in which such person was
7 stopped;

8 (4) The violations alleged to have been committed that led to the stop;

9 (5) Whether a search was conducted as a result of the stop and the probable cause
10 or authority for the search including, but not limited to, consent, inventory, drug or alcohol
11 odor, incident to arrest for an outstanding warrant, incident to arrest for another charge,
12 plain-view contraband, reasonable suspicion-weapon, drug-dog alert, or advanced
13 technology;

14 (6) Whether a frisk or pat-down was conducted as a result of the stop;

15 (7) If a search was conducted, whether the individual consented to the search, the
16 probable cause for the search, whether the person was searched, whether the person's
17 property was searched, and the duration of the search;

18 **(8) If a search was of a passenger in the vehicle, the perceived race or ethnicity of**
19 **the passenger;**

20 **(9) Whether any contraband was discovered in the course of the search, the type**
21 **of any contraband discovered, and the amount;**

22 **(10) Whether canine units or advanced technology were involved in the search;**

23 **(11) Whether any warning or citation was issued as a result of the stop;**

24 **(12) If a warning or citation was issued, the violation charged or warning provided;**

25 **(13) Whether any physical force was used by and against law enforcement officer**
26 **or officers and, if so, to what extent;**

27 **(14) Whether an arrest was made as a result of either the stop or the search; and**

28 **(15) If an arrest was made, the crime charged.**

29 **2. Law enforcement officers shall report to their agency the information from**
30 **subsection 1 of this section using a format determined by the Missouri Department of**
31 **Public Safety.**

32 **3. Law enforcement agencies shall:**

33 **(1) Compile data on the standardized form determined by the Missouri Attorney**
34 **General and submit the form to the attorney general's office by March first of each year;**

35 **(2) Update the compiled data and conspicuously publicize the data on the respective**
36 **law enforcement agency's website on a monthly basis;**

37 **(3) Maintain all data collected under sections 590.1050 to 590.1068 for not less than**
38 **four years;**

39 **(4) Provide for the protection of the privacy of individuals whose data is collected**
40 **by not providing to the public individual names and identifying information regarding the**
41 **particular law enforcement officers who made the stops and the pedestrians, drivers, and**
42 **passengers who were stopped.**

590.1056. 1. The attorney general shall analyze the annual reports of law
2 **enforcement agencies required under section 590.1054 and submit a report of the findings**
3 **to the governor, the general assembly, and each law enforcement agency no later than June**
4 **first of each year.**

5 **2. The data analysis shall be completed using best practices and include meaningful**
6 **benchmarks as appropriate for the type of population and appropriate for the geographic**
7 **areas being analyzed, against which data shall be measured, which may include:**

8 **(1) Using race-specific and ethnicity-specific data about the residential population;**

9 **(2) Using a race-specific and ethnicity-specific spatial weighting data analysis tool;**

10 **(3) Using race-specific and ethnicity-specific data about traffic accidents in which**
11 **the driver is not found to be at fault;**

12 **(4) Using race-specific and ethnicity-specific data from observational surveys of**
13 **motorists;**

14 **(5) Using information about the residency of individuals stopped gathered by**
15 **officers. This analysis shall be used only in addition to the one or more of the benchmarks**
16 **listed in this section; or**

17 **(6) Using a combination of the above listed benchmark measures.**

18 **3. The report of the attorney general shall include statewide and agency-specific**
19 **analyses of at least the following information:**

20 **(1) The total number of vehicles and pedestrians stopped by law enforcement**
21 **officers during the previous calendar year;**

22 **(2) The number of vehicle and pedestrian stops, broken down by the racial or**
23 **ethnic group, meaning White, Black or African American, Hispanic or Latino, American**
24 **Indian or Alaskan Native, Asian, Multiracial, or other or unknown;**

25 **(3) The number of vehicle stops that resulted in a search, broken down by the**
26 **probable cause or authority for the search and by the driver's racial or ethnic group;**

27 **(4) The number of pedestrian stops that resulted in either a frisk or pat-down or**
28 **search, broken down by racial or ethnic group;**

29 **(5) The disparity index regarding stopped pedestrians and drivers for each racial**
30 **or ethnic group, as determined using the benchmark measures listed in subsection 2 of this**
31 **section;**

32 **(6) The disparity indices regarding consensual and nonconsensual searches for**
33 **pedestrians and drivers subjected to stops for each racial or ethnic group, basing the**
34 **benchmarks on the populations of those stopped;**

35 **(7) The disparity indices for each category of arrest for each racial or ethnic group,**
36 **basing the benchmarks on the population of those stopped;**

37 **(8) The disparity indices in "pat-downs" for pedestrians subject to stops for each**
38 **racial or ethnic group, basing the benchmarks on the population of those stopped;**

39 **(9) A comparison of the racial or ethnic disparities in consent searches to the**
40 **consent search hit rate;**

41 **(10) The number and percentage of traffic stops by the type of violation cited, such**
42 **as moving, equipment, license, or investigatory, broken down by racial or ethnic group;**

43 **(11) A comparison of the racial or ethnic disparities in hit rates for all categories**
44 **of probable cause or authority to search listed in agency reports; and**

45 **(12) A compilation of the information reported by law enforcement agencies under**
46 **section 590.1054.**

590.1058. 1. Each law enforcement agency shall ensure that there is an annual review of the data collected by its officers under section 590.1054 and the annual report of the attorney general required under section 590.1056 of this section.

2. Such review shall determine whether individual officers in the agency or the agency as a whole have a pattern of stopping, searching, or arresting members of minority groups:

(1) In a number disproportionate to the population of minority groups residing, traveling, or being stopped within the jurisdiction of the law enforcement agency, using the benchmark measures described under section 590.1056;

(2) In a number disproportionate to similarly situated law enforcement officers; and

(3) Whether any peace officers of the law enforcement agency routinely stop members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law.

3. If the review reveals a pattern of disparity, either systemically or for individual officers, the agency shall require an investigation to determine whether the agency or any law enforcement officers of the agency routinely engage in biased policing. The review shall examine factors that might be a contributing factor to the disparity including, but not limited to:

(1) Situations in which matters of fact establish that the officers are acting in a bias-free manner, such as hit rates that confirm that officer suspicions were accurate, investigations in which suspects were clearly identified without regard to minority status before the stop as being involved in criminal activity, and radar stops on an interstate;

(2) Unclear or misunderstood policies;

(3) Unclear instructions from supervisors; and

(4) Training that has failed to teach the required skill.

4. The agency shall issue a report to the public explaining the results of the investigation, including whether some results establish that some disproportions are caused by factors other than officer bias.

5. The agency shall correct any problems revealed by the review and the investigation and provide for appropriate counseling and training of any law enforcement officer found to have engaged in biased policing within ninety days of the review. The officer shall be removed from patrol duties until completion of training and counseling.

6. Officers who persist in biased policing or show a pattern of biased policing shall be subject to discipline, which may include dismissal and loss of POST certification as provided under section 590.1064.

37 **7. For purposes of this section and section 590.1064, a pattern of disparity or a**
38 **pattern of biased policing may be established when:**

39 **(1) An individual officer's motor vehicle, pedestrian stop, or consent search**
40 **disparity index for any particular minority group is one standard deviation or more above**
41 **the corresponding statewide indices for that same minority group for a three-year period;**
42 **or**

43 **(2) An officer's employing agency reviews an officer's file and determines that an**
44 **excessive number of civilian complaints have been filed. Law enforcement agencies shall**
45 **determine if complaints are at a level constituting "excessive" on a case-by-case basis for**
46 **purposes of this assessment.**

590.1060. Each law enforcement agency or department shall promulgate internal
2 **policies, including:**

3 **(1) A stated prohibition of biased policing;**

4 **(2) Provisions for training on biased policing as provided under section 590.1064;**

5 **(3) Procedures aimed at decreasing bias in policing in the administration of consent**
6 **searches, which shall include the following provisions:**

7 **(a) A law enforcement officer shall only seek consent to search when he or she has**
8 **reasonable suspicion based on specific, articulated facts for conducting such search;**

9 **(b) The law enforcement officer shall document in writing such specific, articulable**
10 **facts about the individual involved for conducting a consent search;**

11 **(c) The written documentation shall also include the results of the search;**

12 **(d) Prior to conducting a consensual search of a person or the person's effects, a**
13 **law enforcement officer shall articulate in plain language that the person is being asked to**
14 **voluntarily consent to a search and the person has the right to refuse the request to search;**

15 **(e) After providing such advisement, a law enforcement officer shall request, in**
16 **plain language, that the person subject to the search provide voluntary written consent to**
17 **the search;**

18 **(f) Whether the person subject to search provides written consent, a law**
19 **enforcement officer may conduct the search if the person provided voluntary consent in**
20 **a form other than in writing;**

21 **(g) Any evidence obtained as a result of a search prohibited by this section shall be**
22 **inadmissible in any judicial proceeding; and**

23 **(h) Nothing contained in this subdivision shall be construed to preclude any search**
24 **otherwise based upon any legally sufficient cause;**

25 **(4) Procedures for requesting personal information from drivers or pedestrians**
26 **during a stop, including:**

27 **(a) When the motor vehicle has been stopped solely for a traffic violation, a law**
28 **enforcement officer may only request the following documentation from drivers of motor**
29 **vehicles:**

30 **a. A driver's license or other verifiable, government-issued identification, including**
31 **foreign-issued identification;**

32 **b. Motor vehicle registration; and**

33 **c. Proof of insurance, unless there exists reasonable suspicion or probable cause of**
34 **criminal activity;**

35 **(b) No passenger of a motor vehicle shall be requested to provide identification or**
36 **any other documentation by a law enforcement officer when the motor vehicle has been**
37 **stopped solely for a traffic violation, unless there exists reasonable suspicion or probable**
38 **cause of criminal activity; and**

39 **(c) When a pedestrian has been stopped based on reasonable suspicion of criminal**
40 **activity, a law enforcement officer may only request for purposes of identification the first,**
41 **middle, and last name and address of the individual stopped.**

590.1062. Each law enforcement agency shall create a community and law
2 **enforcement partnership to create mutual understanding between law enforcement and**
3 **the community about biased policing and to provide a forum for each group to listen and**
4 **respond to the other's concerns. The partnership:**

5 **(1) Shall include no less than five participants composed of representatives of law**
6 **enforcement, community leaders, and educational leaders who reflect the diversity of the**
7 **local community;**

8 **(2) Shall facilitate workshops and public meetings in the community on racial and**
9 **other biases;**

10 **(3) May advise and assist in policy development and the training and education of**
11 **law enforcement agencies on biased policing;**

12 **(4) Shall annually and formally recognize law enforcement agencies and individual**
13 **officers who have demonstrated strong commitment to addressing issues of biased policing**
14 **and working with the local community.**

590.1064. 1. Every person employed by a law enforcement agency within the state
2 **of Missouri, including civilian employees and parties contracted by a law enforcement**
3 **agency, shall be trained on issues related to the prohibition of biased policing practices, on**
4 **data collection and reporting methods, and on the policies mandated under section**
5 **590.1060.**

6 **2. The Missouri Peace Officers Standards and Training (POST) Commission or its**
7 **equivalent shall develop and disseminate guidelines and training on the subjects mandated**

8 in subsection 1 of this section for all law enforcement officers. All law enforcement officers
9 shall adhere to the standards approved by the Missouri POST Commission and the license
10 of any officer who shows a pattern of biased policing, as defined in subsection 7 of section
11 590.1050, may be subject to discipline under section 590.050.

12 3. The course or courses of instruction and the guidelines shall stress development
13 of effective, noncombative methods of carrying out law enforcement duties in a diverse
14 environment.

15 4. The course of basic training for law enforcement officers shall include adequate
16 instruction on diverse communities in order to foster mutual respect and cooperation
17 between law enforcement and members of all diverse communities.

18 5. Every law enforcement officer in the state shall participate in expanded training
19 as prescribed and certified by the Missouri POST Commission. This training shall
20 prescribe patterns, practices, and protocols that prevent biased policing. In developing and
21 establishing criteria for the training, the Missouri POST Commission shall consult with
22 appropriate groups and individuals having an interest and expertise in the field of biased
23 policing. The course of instruction shall include, but not be limited to, adequate
24 consideration of each of the following subjects:

25 (1) Identification of key indices and perspectives that make up differences among
26 residents in a local community;

27 (2) Negative impact of implicit and explicit biases, prejudices, and stereotyping on
28 effective law enforcement, including examination of how historical perceptions of
29 discriminatory enforcement practices have harmed police or community relations;

30 (3) The history and the role of the civil rights movement and its impact on law
31 enforcement;

32 (4) Specific obligations of officers in preventing, reporting, and responding to
33 discriminatory or biased practices by fellow officers; and

34 (5) Perspectives of diverse local constituency groups and experts on particular
35 cultural and police-community relations issues in a local area.

36 6. Once the initial expanded training is completed, each law enforcement officer in
37 the state shall be required to complete a continuing education course annually.

590.1066. 1. If an agency does not report or submits significantly incomplete
2 reports in any year, the governor shall withhold any state funds appropriated to that
3 agency.

4 2. If a law enforcement agency reports a motor vehicle, pedestrian stop, or consent
5 search disparity index for any particular minority group that is one standard deviation or

6 more above the corresponding statewide indices for that same minority group for three
7 consecutive years, the agency shall be subject to review for a period of three years.

8 3. During the time an agency is subject to review, the agency shall provide
9 semiannual reports on biased policing to the attorney general, which shall include the same
10 information required under section 590.1054 and a narrative form describing what effort
11 or action, if any, has been taken to address any disparities in stops and searches. The
12 report shall be a public record.

13 4. If a law enforcement agency reports a motor vehicle, pedestrian stop, or consent
14 search disparity index for any particular minority group that is one standard deviation or
15 more above the statewide indices in its second year of review, the attorney general shall
16 require changes in the agency's policies and practices, including techniques for identifying
17 problem officers, requirements that an officer's profiling statistics be a part of the record
18 used to evaluate promotions and reassignments, training of supervisors in the skills
19 necessary to eliminate biased policing, and increasing the quality and quantity of officer
20 training related to biased policing. The attorney general's office shall work with other
21 state agencies to provide financial assistance and expertise to facilitate these changes.

22 5. If a law enforcement agency reports a motor vehicle, pedestrian stop, or consent
23 search disparity index for any particular minority group that is one standard deviation or
24 more above the statewide indices and search rates in its third year of review, in addition
25 to loss of state funds, the attorney general's office shall review the record of the law
26 enforcement agency during the review period to determine if the pattern of disparities is
27 the result of low samples of statistical data or if it indicates a systemic bias or a failure to
28 supervise of such magnitude that the law enforcement agency should be sanctioned or
29 disciplined. The attorney general's office shall take into account whether the agency is
30 making a good faith effort to reform. If not sanctioned or disciplined, the agency shall
31 remain under review with periodic oversight by the attorney general's office until such
32 time as the agency's stop and consent search disparity indices are no longer one standard
33 deviation or more above the statewide indices.

 590.1068. The director of the department of public safety may promulgate all
2 necessary rules and regulations for the administration of sections 590.1050 to 590.1068.
3 Any rule or portion of a rule, as that term is defined in section 536.010, that is created
4 under the authority delegated in this section shall become effective only if it complies with
5 and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.
6 This section and chapter 536 are nonseverable, and if any of the powers vested with the
7 general assembly pursuant to chapter 536 to review, to delay the effective date, or to
8 disapprove and annul a rule are subsequently held unconstitutional, then the grant of

9 **rulemaking authority and any rule proposed or adopted after August 28, 2016, shall be**
10 **invalid and void.**

[590.650. 1. As used in this section "minority group" means individuals
2 of African, Hispanic, Native American or Asian descent.

3 2. Each time a peace officer stops a driver of a motor vehicle, that officer
4 shall report the following information to the law enforcement agency that
5 employs the officer:

6 (1) The age, gender and race or minority group of the individual stopped;

7 (2) The reasons for the stop;

8 (3) Whether a search was conducted as a result of the stop;

9 (4) If a search was conducted, whether the individual consented to the
10 search, the probable cause for the search, whether the person was searched,
11 whether the person's property was searched, and the duration of the search;

12 (5) Whether any contraband was discovered in the course of the search
13 and the type of any contraband discovered;

14 (6) Whether any warning or citation was issued as a result of the stop;

15 (7) If a warning or citation was issued, the violation charged or warning
16 provided;

17 (8) Whether an arrest was made as a result of either the stop or the
18 search;

19 (9) If an arrest was made, the crime charged; and

20 (10) The location of the stop. Such information may be reported using a
21 format determined by the department of public safety which uses existing citation
22 and report forms.

23 3. (1) Each law enforcement agency shall compile the data described in
24 subsection 2 of this section for the calendar year into a report to the attorney
25 general.

26 (2) Each law enforcement agency shall submit the report to the attorney
27 general no later than March first of the following calendar year.

28 (3) The attorney general shall determine the format that all law
29 enforcement agencies shall use to submit the report.

30 4. (1) The attorney general shall analyze the annual reports of law
31 enforcement agencies required by this section and submit a report of the findings
32 to the governor, the general assembly and each law enforcement agency no later
33 than June first of each year.

34 (2) The report of the attorney general shall include at least the following
35 information for each agency:

36 (a) The total number of vehicles stopped by peace officers during the
37 previous calendar year;

38 (b) The number and percentage of stopped motor vehicles that were
39 driven by members of each particular minority group;

40 (c) A comparison of the percentage of stopped motor vehicles driven by
41 each minority group and the percentage of the state's population that each
42 minority group comprises; and

43 (d) A compilation of the information reported by law enforcement
44 agencies pursuant to subsection 2 of this section.

45 5. Each law enforcement agency shall adopt a policy on race-based traffic
46 stops that:

47 (1) Prohibits the practice of routinely stopping members of minority
48 groups for violations of vehicle laws as a pretext for investigating other violations
49 of criminal law;

50 (2) Provides for periodic reviews by the law enforcement agency of the
51 annual report of the attorney general required by subsection 4 of this section that:

52 (a) Determine whether any peace officers of the law enforcement agency
53 have a pattern of stopping members of minority groups for violations of vehicle
54 laws in a number disproportionate to the population of minority groups residing
55 or traveling within the jurisdiction of the law enforcement agency; and

56 (b) If the review reveals a pattern, require an investigation to determine
57 whether any peace officers of the law enforcement agency routinely stop
58 members of minority groups for violations of vehicle laws as a pretext for
59 investigating other violations of criminal law; and

60 (3) Provides for appropriate counseling and training of any peace officer
61 found to have engaged in race-based traffic stops within ninety days of the
62 review. The course or courses of instruction and the guidelines shall stress
63 understanding and respect for racial and cultural differences, and development
64 of effective, noncombative methods of carrying out law enforcement duties in a
65 racially and culturally diverse environment.

66 6. If a law enforcement agency fails to comply with the provisions of this
67 section, the governor may withhold any state funds appropriated to the
68 noncompliant law enforcement agency.

69 7. Each law enforcement agency in this state may utilize federal funds
70 from community-oriented policing services grants or any other federal sources
71 to equip each vehicle used for traffic stops with a video camera and
72 voice-activated microphone.

73 8. A peace officer who stops a driver of a motor vehicle pursuant to a
74 lawfully conducted sobriety check point or road block shall be exempt from the
75 reporting requirements of subsection 2 of this section.]

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