

SENATE BILL NO. 135

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAY.

1076S.011

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal section 590.650, RSMo, and to enact in lieu thereof one new section relating to prohibitions against discriminatory policing.

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

Section A. Section 590.650, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 590.650, to read as follows:

590.650. 1. **The provisions of this section shall be known and may be cited as the "Fourth Amendment Affirmation Act"**. As used in this section ["minority group" means individuals of African, Hispanic, Native American or Asian descent] **the following terms mean:**

(1) **"Benchmark", the number used as a basis of comparison in determining possible disproportions in law enforcement activities, including the following:**

(a) **The benchmark for measuring disproportions in vehicle stops shall be the proportions of drivers in racial or ethnic groups residing or traveling in a jurisdiction;**

(b) **The benchmark for measuring disproportions in post-stop activities shall be the racial or ethnic group's proportion of stops; and**

(c) **The benchmark used to measure disproportions in hit rates shall be the group proportions of drivers searched;**

(2) **"Consent search", a search authorized by the consent of the individual, not by probable cause;**

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 (3) "Discriminatory policing", circumstances in which
20 the peace officer's actions are based in whole or in part on
21 the real or perceived race, ethnicity, religious beliefs,
22 gender, English language proficiency, status as a person
23 with a disability, or a person's national origin rather than
24 upon specific and articulable facts which, taken together
25 with rational inferences from those facts, reasonably
26 indicate criminal activity. "Discriminatory policing" does
27 not include investigations of alleged crimes when law
28 enforcement must seek out suspects who match a specifically
29 delineated description;

30 (4) "Hit rate", the rate of searches in which
31 contraband is found. The hit rate is calculated by dividing
32 the number of searches that yield contraband by the total
33 number of searches. Hit rate may be calculated for
34 individual officers, agencies, or multiple agencies;

35 (5) "Investigative stop", any stop, by a peace
36 officer, of a motor vehicle involving at least in part an
37 investigation of a criminal violation other than a motor
38 vehicle violation. Investigative stops can involve calls for
39 service, stops conducted in support of an agency
40 investigation, stops conducted because of a peace officer's
41 observations, stops made at a sobriety checkpoint or other
42 road block, or other investigatory stops;

43 (6) "Minority group", individuals of African,
44 Hispanic, Native American, or Asian descent;

45 (7) "Ratio of disparity", the ratio of the rate of
46 stops or other peace officer activities for a non-white
47 group as compared to the rate for the white group. The
48 ratio of disparity for the white group shall be the white
49 group rate compared to the rate for non-white groups;

50 (8) "Significant disparity", a ratio of disparity that
51 is over one hundred twenty-five percent of the overall state
52 disparity for any minority group for that category of
53 officer activity after controlling for factors other than
54 discrimination that are contributing to the disparity;

55 (9) "Significant disproportion", a ratio of disparity
56 that is over one hundred twenty-five percent of the overall
57 state ratio of disparity for any minority group for that
58 category of peace officer activity.

59 2. Each time a peace officer stops a driver of a motor
60 vehicle, that officer shall report **at least** the following
61 information to the law enforcement agency that employs the
62 officer:

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

65 (2) **Whether the driver resides in the jurisdiction of**
66 **the stop;**

67 (3) The reasons for the stop. **Reasons for an**
68 **investigative stop include, but are not limited to, calls**
69 **for service, stops conducted in support of an agency**
70 **investigation, stops conducted because of a peace officer's**
71 **observations, and stops made at a sobriety checkpoint or**
72 **other road block;**

73 [(3)] (4) Whether a search was conducted as a result
74 of the stop;

75 [(4)] (5) If a search was conducted, whether the
76 individual consented to the search, **how the individual's**
77 **consent was documented**, the probable cause for the search,
78 whether the person was searched, whether the person's
79 property was searched, and the duration of the search;

80 [(5)] (6) Whether any contraband was discovered in the
81 course of the search and the type of any contraband
82 discovered;

83 [(6)] (7) Whether any warning or citation was issued
84 as a result of the stop;

85 [(7)] (8) If a warning or citation was issued, the
86 violation charged or warning provided;

87 [(8)] (9) Whether an arrest was made as a result of
88 either the stop or the search;

89 [(9)] (10) If an arrest was made, the crime charged;
90 and

91 [(10)] (11) The location of the stop.

92 Such information may be reported using a format determined
93 by the department of public safety which uses existing
94 citation and report forms.

95 3. (1) Each law enforcement agency shall compile the
96 data described in subsection 2 of this section for the
97 calendar year into a report to the attorney general.

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

101 (3) The attorney general shall determine the format
102 that all law enforcement agencies shall use to submit the
103 report. **The attorney general may allow the department of
104 public safety to extract the data from other reports filed
105 by law enforcement agencies.**

106 4. (1) The attorney general shall analyze the annual
107 reports of law enforcement agencies required by this section
108 and submit a report of the findings to the governor, the
109 general assembly and each law enforcement agency no later
110 than June first of each year.

111 (2) **The report shall identify situations in which data**
112 **submitted by agencies indicate that racial and ethnic groups**
113 **are disproportionately affected by law enforcement activity**
114 **so that further analysis may be conducted to determine**
115 **whether peace officers are engaging in discriminatory**
116 **policing.**

117 (3) **The report shall provide group ratios of disparity**
118 **for all categories of stops, post-stop activities, searches,**
119 **and contraband found, using appropriate benchmarks as**
120 **defined in subsection 1 of this section.**

121 (4) The report of the attorney general shall include
122 at least the following information for each agency **and for**
123 **the state overall:**

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

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

129 (c) [A comparison of the percentage of stopped motor
130 vehicles driven by each minority group and the percentage of
131 the state's population that each minority group comprises]
132 **Ratios of disparity for all categories of stops, post-stop**
133 **activities, searches, and contraband using appropriate**
134 **benchmarks as defined in subsection 1 of this section; and**

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

138 5. **(1) Each law enforcement agency shall adopt a**
139 **policy on [race-based traffic stops] discriminatory policing**
140 **that:**

141 [(1)] **(a) Prohibits [the practice of routinely**
142 **stopping members of minority groups for violations of**

143 vehicle laws as a pretext for investigating other violations
144 of criminal law] **discriminatory policing;**

145 [(2)] **(b)** Provides for [periodic] **annual** reviews by
146 the law enforcement agency of the annual report of the
147 attorney general required by subsection 4 of this section
148 that:

149 [(a)] **a.** Determine whether any peace officers of the
150 law enforcement agency have a pattern of stopping members of
151 minority groups for violations of vehicle laws in a number
152 disproportionate to the population of minority groups
153 residing or traveling within the jurisdiction of the law
154 enforcement agency; and

155 [(b)] **b.** If the review reveals a pattern, require an
156 investigation to determine whether any peace officers of the
157 law enforcement agency [routinely stop members of minority
158 groups for violations of vehicle laws as a pretext for
159 investigating other violations of criminal law; and] **engaged**
160 **in discriminatory policing;**

161 **c.** Include a review of complaints received by the law
162 enforcement agency and a breakdown of which complaints were
163 verified, found to be unfounded, remain active, and what
164 steps were taken to address verified complaints. The review
165 of complaints shall indicate the number of complaints
166 alleging discriminatory policing that a law enforcement
167 agency received; and

168 **d.** The results of the review shall be made public,
169 however, no personnel information prohibited by law shall be
170 disclosed; and

171 [(3)] **(c)** Provides for appropriate **discipline, up to**
172 **and including dismissal,** counseling, and training of any
173 peace officer found to have engaged in [race-based traffic

174 stops] **discriminatory policing** within ninety days of the
175 review.

176 The course or courses of instruction and the guidelines
177 shall stress understanding and respect for racial and
178 cultural differences, **cultural competency**, and development
179 of effective, noncombative methods of carrying out law
180 enforcement duties in a racially and culturally diverse
181 environment.

182 (2) Each policy shall be in writing and accessible by
183 the public. The attorney general shall certify that the
184 **discriminatory policing policy** of each agency is
185 **substantially equivalent** to the requirements of this
186 subsection.

187 (3) Each policy shall put in place procedures to
188 eliminate discriminatory policing.

189 6. When a motor vehicle has been stopped solely for a
190 traffic violation, a peace officer shall request only the
191 following documentation from only the driver of the motor
192 vehicle:

193 (1) A driver's license or other verifiable government-
194 issued identification, including foreign-issued
195 identification;

196 (2) Motor vehicle registration; and

197 (3) Proof of insurance.

198 7. Each law enforcement agency shall establish
199 policies to eliminate discriminatory policing in the
200 administration of consent searches. The procedures shall
201 include the following:

202 (1) A peace officer shall have specific and
203 articulable facts about the individual that, taken together

204 with rational inferences from those facts, lead the peace
205 officer to reasonably believe a search is needed;

206 (2) The peace officer shall document, in writing, such
207 specific articulable facts about the circumstances leading
208 to the request for consent in individual searches and if
209 multiple searches take place under the same circumstances at
210 or near the same time;

211 (3) Prior to requesting consent for a search, a peace
212 officer shall communicate orally or in writing, in a
213 language that the person being questioned clearly
214 understands, that the person's consent must be voluntary,
215 that the voluntary consent authorizes the search even if the
216 peace officer does not have probable cause to search, that
217 the lawfulness of the search cannot be challenged in court
218 if consent is given, and that the person has the right to
219 refuse the request to search;

220 (4) After providing such advisement, a peace officer
221 shall obtain voluntary written or recorded audio or video
222 consent to the search;

223 (5) The peace officer shall document whether the
224 person from whom the search was requested provided written
225 consent, if that consent was recorded by audio or video, or
226 whether consent was denied, and the law enforcement agency
227 will submit this data for compilation in the attorney
228 general's vehicle stop report;

229 (6) The peace officer shall not ask for consent when
230 he or she has probable cause to conduct a search;

231 (7) Any evidence obtained as a result of a search
232 prohibited by this section shall be inadmissible in any
233 judicial proceeding; and

234 (8) Nothing contained in this subsection shall be
235 construed to preclude a search based upon probable cause.

236 8. (1) If a law enforcement agency fails to comply
237 with the provisions of this section, the governor may
238 withhold any state funds appropriated to the noncompliant
239 law enforcement agency.

240 (2) If a law enforcement agency reports for three
241 consecutive years a significant disproportion, the attorney
242 general shall study the efforts of the law enforcement
243 agency to decrease its disproportion during the prior three
244 years. If the attorney general determines that a
245 significant disparity exists, the agency shall be subject to
246 review for a period of three additional years.

247 (3) If, in its second year of review, a law
248 enforcement agency reports a significant disproportion, and
249 the attorney general's study determines that a significant
250 disparity exists, and the law enforcement agency cannot show
251 good-faith efforts, as determined by the attorney general,
252 to remedy the disparity, the attorney general shall require
253 changes in the agency's policies and practices, including
254 techniques for identifying problem officers, requirements
255 that an officer's ratios of disparity along with any
256 mitigating circumstances be a part of the record used to
257 evaluate promotions and reassignments, training of
258 supervisors in the skills necessary to eliminate
259 discriminatory policing, and increasing the quality and
260 quantity of officer training related to discriminatory
261 policing. The attorney general's office shall work with
262 other state agencies to provide financial assistance and
263 expertise to facilitate these changes.

264 (4) If, in its third year of review, a law enforcement
265 agency reports a significant disproportion and the attorney
266 general's study determines a significant disparity exists,
267 the attorney general shall also study the record of the law

268 enforcement agency during the review period to determine if
269 the disparities are of such magnitude that the law
270 enforcement agency should be further penalized. The
271 attorney general shall take into account whether the agency
272 is making a good-faith effort to achieve nondiscriminatory
273 policing. As a minimum penalty, the agency shall remain
274 under review, with ongoing attorney general oversight, until
275 such time as the agency's annual report shows that a
276 significant disparity no longer exists or until such time as
277 the attorney general's study determines that discriminatory
278 policing is no longer a significant cause of the disparity.
279 As a maximum penalty, or after six years of review, the
280 attorney general shall order that the governing body or
281 jurisdiction that the law enforcement agency serves be
282 required, from that point forward, to forfeit twenty-five
283 percent of its annual general operating revenue received
284 from fines, bond forfeitures, and court costs for traffic
285 violations, including amended charges for any traffic
286 violations. The forfeited amount shall be paid to the
287 general revenue fund of the state of Missouri, to be
288 designated as additional funds for the peace officers
289 standards and training commission. This penalty shall
290 continue until such time as the law enforcement agency's
291 annual report shows that a significant disparity no longer
292 exists or until such time as the attorney general's study
293 determines discriminatory policing is no longer a
294 significant cause of the disparity.

295 [7.] 9. Each law enforcement agency in this state may
296 utilize federal funds from community-oriented policing
297 services grants or any other federal sources to equip each
298 vehicle used for traffic stops with a video camera and voice-
299 activated microphone or to purchase body cameras.

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

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