

SECOND REGULAR SESSION

# SENATE BILL NO. 828

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NASHEED.

Pre-filed December 28, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4542S.05I

## AN ACT

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Section A. Section 590.650, RSMo, is repealed and one new section  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

590.650. 1. As used in this section **the following terms shall mean:**

2 **(1) "Benchmark", the number used as a basis of comparison in**  
3 **determining possible disproportions in law enforcement activities;**

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

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

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

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

13 **(3) "Discriminatory policing", occurs in circumstances in which**  
14 **the peace officer's actions are based in whole or in part on the real or**  
15 **perceived race, ethnicity, religious beliefs, gender, English language**  
16 **proficiency, status as a person with a disability, or national origin of**  
17 **a person, rather than upon specific and articulable facts which taken**  
18 **with rational inferences from those facts reasonably indicate criminal**  
19 **activity. "Discriminatory policing" does not include investigations of**

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

20 alleged crimes when law enforcement must seek out suspects who  
21 match a specifically delineated description;

22 (4) "Hit rate", the rate of searches in which contraband is  
23 found. The hit rate is calculated by dividing the number of searches  
24 that yield contraband by the total number of searches. The hit rate  
25 may be calculated for individual officers, agencies, or multiple  
26 agencies;

27 (5) "Investigative stop", any stop by a peace officer of a motor  
28 vehicle involving at least in part an investigation of a criminal  
29 violation other than a motor vehicle violation. Investigative stops can  
30 involve calls for service, stops conducted in support of any agency  
31 investigation, stops conducted because of a peace officer's observations,  
32 stops made at a sobriety check point or other roadblock, or other  
33 investigatory stops;

34 (6) "Minority group" [means], individuals of African, Hispanic, Native  
35 American, or Asian descent;

36 (7) "Ratio of disparity", the ratio of the rate of stops or other  
37 peace officer activities for a non-white group as compared to the rate  
38 for the white group. The ratio of disparity for the white group shall be  
39 the white group rate compared to the rate for non-white groups;

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

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

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

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

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

52 (3) The reasons for the stop, **including an investigative stop;**

53 [(3)] (4) Whether a search was conducted as a result of the stop;

54 [(4)] (5) If a search was conducted, whether the individual consented to  
55 the search, **how the individual's consent was documented**, the probable  
56 cause for the search, whether the person was searched, whether the person's

57 property was searched, and the duration of the search;

58        [(5)] **(6)** Whether any contraband was discovered in the course of the  
59 search and the type of any contraband discovered;

60        [(6)] **(7)** Whether any warning or citation was issued as a result of the  
61 stop;

62        [(7)] **(8)** If a warning or citation was issued, the violation charged or  
63 warning provided;

64        [(8)] **(9)** Whether an arrest was made as a result of either the stop or the  
65 search;

66        [(9)] **(10)** If an arrest was made, the crime charged; [and]

67        [(10)] **(11)** The location of the stop; **and**

68        **(12) If an investigative stop was made, the peace officer will note**  
69 **if that stop resulted from a call for service, agency investigation,**  
70 **sobriety checkpoint, officer observation, or other cause.**

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

73        3. (1) Each law enforcement agency shall compile the data described in  
74 subsection 2 of this section for the calendar year into a report to the attorney  
75 general.

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

78        (3) The attorney general shall determine the format that all law  
79 enforcement agencies shall use to submit the report. **The attorney general**  
80 **may allow the department of public safety to extract the data from**  
81 **other reports filed by law enforcement agencies.**

82        4. (1) The attorney general shall analyze the annual reports of law  
83 enforcement agencies required by this section and submit a report of the findings  
84 to the governor, the general assembly and each law enforcement agency no later  
85 than June first of each year.

86        (2) **The report shall identify situations in which the data**  
87 **submitted by law enforcement agencies indicates that racial and ethnic**  
88 **groups are disproportionately affected by law enforcement activity so**  
89 **that further analysis may be conducted to determine whether peace**  
90 **officers are committing discriminatory policing.**

91        (3) **The report shall provide group ratios of disparity for all**  
92 **categories of stops, post-stop activities, searches, and contraband found**

93 **using appropriate benchmarks as defined in subsection 1 of this**  
94 **section.**

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

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

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

101 (c) [A comparison of the percentage of stopped motor vehicles driven by  
102 each minority group and the percentage of the state's population that each  
103 minority group comprises] **Ratios of disparity for all categories of stops,**  
104 **post-stop activities, searches, and contraband using appropriate**  
105 **benchmarks;** and

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

108 5. Each law enforcement agency shall adopt a policy on [race-based traffic  
109 stops] **discriminatory policing** that:

110 (1) Prohibits [the practice of routinely stopping members of minority  
111 groups for violations of vehicle laws as a pretext for investigating other violations  
112 of criminal law] **discriminatory policing;**

113 (2) Provides for [periodic] **annual** reviews by the law enforcement agency  
114 of the annual report of the attorney general required by subsection 4 of this  
115 section that:

116 (a) Determine whether any peace officers of the law enforcement agency  
117 have a pattern of stopping members of minority groups for violations of vehicle  
118 laws in a number disproportionate to the population of minority groups residing  
119 or traveling within the jurisdiction of the law enforcement agency; [and]

120 (b) If the review reveals a pattern, require an investigation to determine  
121 whether any peace officers of the law enforcement agency [routinely stop  
122 members of minority groups for violations of vehicle laws as a pretext for  
123 investigating other violations of criminal law; and] **conduct discriminatory**  
124 **policing;**

125 (c) **Review complaints received by the law enforcement agency**  
126 **and a breakdown of which complaints were verified, found to be**  
127 **unfounded, remain active, and what steps were taken to address**  
128 **verified complaints. The review of complaints shall indicate the**

129 **number of complaints a law enforcement agency received alleging**  
130 **discriminatory policing; and**

131 **(d) The results of the review shall be made public. No personnel**  
132 **information prohibited by law shall be disclosed; and**

133 **(3) Provides for appropriate discipline up to and including dismissal,**  
134 **counseling, and training of any peace officer found to have engaged in [race-based**  
135 **traffic stops] discriminatory policing within ninety days of the review.**

136 **The course or courses of instruction and the guidelines shall stress understanding**  
137 **and respect for racial and cultural differences, cultural competency, and**  
138 **development of effective, noncombative methods of carrying out law enforcement**  
139 **duties in a racially and culturally diverse environment.**

140 **6. Each member of a law enforcement agency, including any**  
141 **civilian employee or party contracted by the law enforcement agency,**  
142 **is prohibited from using discriminatory policing, and each law**  
143 **enforcement agency shall create a policy prohibiting discriminatory**  
144 **policing. This policy shall be a written and accessible to the**  
145 **public. The attorney general shall certify that the discriminatory**  
146 **policing policy of each agency is substantially equivalent to the**  
147 **requirements of this section.**

148 **7. Each policy prohibiting discriminatory policing shall establish**  
149 **procedures to eliminate discriminatory policing.**

150 **8. When a motor vehicle has been stopped solely for a traffic**  
151 **violation, a peace officer shall request only the following**  
152 **documentation from only the driver of the motor vehicle: a driver's**  
153 **license or other verifiable, government-issued identification, including**  
154 **foreign-issued identification; motor vehicle registration; and proof of**  
155 **insurance.**

156 **9. Each law enforcement agency shall establish procedures to**  
157 **eliminate discriminatory policing in the administration of consent**  
158 **searches. The procedures shall include the following:**

159 **(1) A peace officer shall have specific and articulable facts about**  
160 **the individual that, taken together with rational inferences from those**  
161 **facts, leads the peace officer to reasonably believe a search is needed;**

162 **(2) The peace officer shall document, in writing, such specific**  
163 **articulable facts about the circumstances leading to the request for**  
164 **consent in individual searches and if multiple searches take place**  
165 **under the same circumstances at or near the same time;**

166           **(3) Prior to requesting consent for a search, a peace officer shall**  
167 **communicate verbally or in writing, in a language that the person**  
168 **being questioned clearly understands, that the person's consent must**  
169 **be voluntary, that voluntary consent authorizes the search even if the**  
170 **peace officer does not have probable cause to search, that the**  
171 **lawfulness of the search cannot be challenged in court if consent is**  
172 **given, and that the person has the right to refuse the request to search;**

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

175           **(5) The peace officer shall document whether the person of whom**  
176 **the search was requested provided written consent, if that consent was**  
177 **recorded by audio or video, or whether consent was denied, and the**  
178 **law enforcement agency will submit this data for compilation in the**  
179 **Attorney General's Vehicle Stop Report;**

180           **(6) The peace officers shall not ask for consent when they have**  
181 **observed probable cause;**

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

184           **(8) Nothing contained in this subsection shall be construed to**  
185 **preclude any search based upon probable cause.**

186           **10. (1) If a law enforcement agency fails to comply with the provisions**  
187 **of this section, the governor may withhold any state funds appropriated to the**  
188 **noncompliant law enforcement agency.**

189           **(2) If a law enforcement agency reports for three consecutive**  
190 **years a significant disproportion, the attorney general shall study the**  
191 **efforts of the law enforcement agency to decrease its disproportion**  
192 **during the prior three years. If the attorney general determines that**  
193 **a significant disparity exists, the agency shall be subject to review for**  
194 **a period of three additional years.**

195           **(3) If, in its second year of review, a law enforcement agency**  
196 **reports a significant disproportion, and the attorney general's study**  
197 **determines that a significant disparity exists, and the law enforcement**  
198 **agency cannot show good faith efforts, as determined by the attorney**  
199 **general, to remedy the disparity, the attorney general shall require**  
200 **changes in the agency's policies and practices, including techniques for**  
201 **identifying problem officers, requirements that an officer's ratios of**  
202 **disparity along with any mitigating circumstances be a part of the**

203 record used to evaluate promotions and reassignments, training of  
204 supervisors in the skills necessary to eliminate discriminatory policing,  
205 and increasing the quality and quantity of officer training related to  
206 discriminatory policing. The attorney general's office shall work with  
207 other state agencies to provide financial assistance and expertise to  
208 facilitate these changes.

209 (4) If, in its third year of review, a law enforcement agency  
210 reports a significant disproportion and the attorney general's study  
211 determines a significant disparity exists, the attorney general shall also  
212 study the record of the law enforcement agency during the review  
213 period to determine if the disparities are of such magnitude that the  
214 law enforcement agency should be further penalized. The attorney  
215 general shall take into account whether the agency is making a good  
216 faith effort to achieve nondiscriminatory policing. As a minimum  
217 penalty, the agency shall remain under review, with ongoing attorney  
218 general oversight, until such time as the agency's annual report shows  
219 that a significant disparity no longer exists or until such time as the  
220 attorney general's study determines that discriminatory policing is no  
221 longer a significant cause of the disparity. As a maximum penalty, or  
222 after six years of review, the attorney general shall order that the  
223 governing body or jurisdiction that the law enforcement agency serves  
224 be required, from that point forward, to forfeit twenty-five percent of  
225 its annual general operating revenue received from fines, bond  
226 forfeitures, and court costs for traffic violations, including amended  
227 charges for any traffic violations. The forfeited amount shall be paid  
228 to the general revenue fund of the state of Missouri, to be designated  
229 as additional funds for the peace officers standards and training  
230 commission. This penalty shall continue until such time as the law  
231 enforcement agency's annual report shows that a significant disparity  
232 no longer exists or until such time as the attorney general's study  
233 determines discriminatory policing is no longer a significant cause of  
234 the disparity.

235 [7.] 11. Each law enforcement agency in this state may utilize federal  
236 funds from community-oriented policing services grants or any other federal  
237 sources to equip each vehicle used for traffic stops with a video camera and  
238 voice-activated microphone.

239 [8. A peace officer who stops a driver of a motor vehicle pursuant to a

240 lawfully conducted sobriety check point or road block shall be exempt from the  
241 reporting requirements of subsection 2 of this section.]

242       **12. (1) Whenever a person suffers an ascertainable harm as a**  
243 **result of discriminatory policing, he or she may bring a civil action to**  
244 **recover damages, equitable relief, declaratory judgment, or other relief**  
245 **as deemed appropriate by the court.**

246       **(2) A peace officer, law enforcement agency, or any other person**  
247 **or entity brought as a defendant shall not be found liable for**  
248 **discriminatory policing under this subsection if the defendant can**  
249 **prove that the discriminatory policing was necessary to achieve a**  
250 **compelling governmental interest, and the least restrictive means were**  
251 **used to achieve the compelling governmental interest.**

252       **(3) Persons entitled to bring an action pursuant to this**  
253 **subsection may, if the unlawful practice of discriminatory policing has**  
254 **caused similar injury to other persons, institute an action as a**  
255 **representative or representatives of a class. Actions filed under this**  
256 **subsection shall be governed by supreme court rules applicable to class**  
257 **actions.**

258       **(4) Civil actions brought under this subsection shall be brought**  
259 **in the circuit court of the county in which the discriminatory policing**  
260 **took place or in which the law enforcement agency operates.**

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