

HOUSE BILL NO. 2172

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DOGAN.

5771H.011

D. ADAM CRUMBLISS, Chief Clerk

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Section A. Section 590.650, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 590.650, to read as follows: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

(3) **"Discriminatory policing", circumstances in which the peace officer's actions are based in whole or in part on the real or perceived race, ethnicity, religious beliefs, gender, English language proficiency, status as a person with a disability, or a person's national origin rather than upon specific and articulable facts, which, taken together with**

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.

18 **rational inferences from those facts, reasonably indicate criminal activity. "Discriminatory**
19 **policing" does not include investigations of alleged crimes when law enforcement must seek**
20 **out suspects who match a specifically delineated description;**

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

25 **(5) "Investigative stop", any stop by a peace officer of a motor vehicle involving at**
26 **least in part an investigation of a criminal violation other than a motor vehicle violation.**
27 **Investigative stops can involve calls for service, stops conducted in support of an agency**
28 **investigation, stops conducted because of a peace officer's observations, stops made at a**
29 **sobriety checkpoint or other road block, or other investigatory stops;**

30 **(6) "Minority group", individuals of African, Hispanic, Native American, or Asian**
31 **descent;**

32 **(7) "Ratio of disparity", the ratio of the rate of stops or other peace officer activities**
33 **for a non-white group as compared to the rate for the white group. The ratio of disparity**
34 **for the white group shall be the white group rate compared to the rate for non-white**
35 **groups;**

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

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

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

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

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

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

51 ~~[(3)]~~ **(4) Whether a search was conducted as a result of the stop;**

- 52 ~~[(4)]~~ **(5)** If a search was conducted, whether the individual consented to the search, **how**
53 **the individual's consent was documented**, the probable cause for the search, whether the
54 person was searched, whether the person's property was searched, and the duration of the search;
55 ~~[(5)]~~ **(6)** Whether any contraband was discovered in the course of the search and the type
56 of any contraband discovered;
57 ~~[(6)]~~ **(7)** Whether any warning or citation was issued as a result of the stop;
58 ~~[(7)]~~ **(8)** If a warning or citation was issued, the violation charged or warning provided;
59 ~~[(8)]~~ **(9)** Whether an arrest was made as a result of either the stop or the search;
60 ~~[(9)]~~ **(10)** If an arrest was made, the crime charged; and
61 ~~[(10)]~~ **(11)** The location of the stop.

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

65 3. (1) Each law enforcement agency shall compile the data described in subsection 2 of
66 this section for the calendar year into a report to the attorney general.

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

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

72 4. (1) The attorney general shall analyze the annual reports of law enforcement agencies
73 required by this section and submit a report of the findings to the governor, the general assembly
74 and each law enforcement agency no later than June first of each year.

75 (2) **The report shall identify situations in which data submitted by agencies indicate**
76 **that racial and ethnic groups are disproportionately affected by law enforcement activity**
77 **so that further analysis may be conducted to determine whether peace officers are**
78 **engaging in discriminatory policing;**

79 (3) **The report shall provide group ratios of disparity for all categories of stops,**
80 **post-stop activities, searches, and contraband found using appropriate benchmarks as**
81 **defined in subsection 1 of this section;**

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

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

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

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

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

94 5. (1) Each law enforcement agency shall adopt a policy on ~~[race-based traffic stops]~~
95 **discriminatory policing** that:

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

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

101 ~~[(a)]~~ a. Determine whether any peace officers of the law enforcement agency have a
102 pattern of stopping members of minority groups for violations of vehicle laws in a number
103 disproportionate to the population of minority groups residing or traveling within the jurisdiction
104 of the law enforcement agency; and

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

109 c. **Include a review of complaints received by the law enforcement agency and a**
110 **breakdown of which complaints were verified, found to be unfounded, remain active, and**
111 **what steps were taken to address verified complaints. The review of complaints shall**
112 **indicate the number of complaints alleging discriminatory policing that a law enforcement**
113 **agency received; and**

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

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

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

124 (2) Each policy shall be in writing and accessible by the public. The attorney
125 general shall certify that the discriminatory policing policy of each agency is substantially
126 equivalent to the requirements of this subsection.

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

128 6. When a motor vehicle has been stopped solely for a traffic violation, a peace
129 officer shall request only the following documentation from only the driver of the motor
130 vehicle:

131 (1) A driver's license or other verifiable, government-issued identification,
132 including foreign-issued identification;

133 (2) Motor vehicle registration; and

134 (3) Proof of insurance.

135 7. Each law enforcement agency shall establish policies to eliminate discriminatory
136 policing in the administration of consent searches. The procedures shall include the
137 following:

138 (1) A peace officer shall have specific and articulable facts about the individual
139 that, taken together with rational inferences from those facts, lead the peace officer to
140 reasonably believe a search is needed;

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

144 (3) Prior to requesting consent for a search, a peace officer shall communicate
145 orally or in writing, in a language that the person being questioned clearly understands,
146 that the person's consent must be voluntary, that the voluntary consent authorizes the
147 search even if the peace officer does not have probable cause to search, that the lawfulness
148 of the search cannot be challenged in court if consent is given, and that the person has the
149 right to refuse the request to search;

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

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

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

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

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

162 **8. (1) If a law enforcement agency fails to comply with the provisions of this section,**
163 **the governor may withhold any state funds appropriated to the noncompliant law enforcement**
164 **agency.**

165 **(2) If a law enforcement agency reports for three consecutive years a significant**
166 **disproportion, the attorney general shall study the efforts of the law enforcement agency**
167 **to decrease its disproportion during the prior three years. If the attorney general**
168 **determines that a significant disparity exists, the agency shall be subject to review for a**
169 **period of three additional years.**

170 **(3) If, in its second year of review, a law enforcement agency reports a significant**
171 **disproportion, and the attorney general's study determines that a significant disparity**
172 **exists, and the law enforcement agency cannot show good faith efforts, as determined by**
173 **the attorney general, to remedy the disparity, the attorney general shall require changes**
174 **in the agency's policies and practices, including techniques for identifying problem officers,**
175 **requirements that an officer's ratios of disparity along with any mitigating circumstances**
176 **be a part of the record used to evaluate promotions and reassignments, training of**
177 **supervisors in the skills necessary to eliminate discriminatory policing, and increasing the**
178 **quality and quantity of officer training related to discriminatory policing. The attorney**
179 **general's office shall work with other state agencies to provide financial assistance and**
180 **expertise to facilitate these changes.**

181 **(4) If, in its third year of review, a law enforcement agency reports a significant**
182 **disproportion and the attorney general's study determines a significant disparity exists, the**
183 **attorney general shall also study the record of the law enforcement agency during the**
184 **review period to determine if the disparities are of such magnitude that the law**
185 **enforcement agency should be further penalized. The attorney general shall take into**
186 **account whether the agency is making a good faith effort to achieve nondiscriminatory**
187 **policing. As a minimum penalty, the agency shall remain under review, with ongoing**
188 **attorney general oversight, until such time as the agency's annual report shows that a**
189 **significant disparity no longer exists or until such time as the attorney general's study**
190 **determines that discriminatory policing is no longer a significant cause of the disparity.**
191 **As a maximum penalty, or after six years of review, the attorney general shall order that**
192 **the governing body or jurisdiction that the law enforcement agency serves be required,**
193 **from that point forward, to forfeit twenty-five percent of its annual general operating**
194 **revenue received from fines, bond forfeitures, and court costs for traffic violations,**
195 **including amended charges for any traffic violations. The forfeited amount shall be paid**

196 **to the general revenue fund of the state of Missouri, to be designated as additional funds**
197 **for the peace officers standards and training commission. This penalty shall continue until**
198 **such time as the law enforcement agency's annual report shows that a significant disparity**
199 **no longer exists or until such time as the attorney general's study determines**
200 **discriminatory policing is no longer a significant cause of the disparity.**

201 [7:] **9.** Each law enforcement agency in this state may utilize federal funds from
202 community-oriented policing services grants or any other federal sources to equip each vehicle
203 used for traffic stops with a video camera and voice-activated microphone **or to purchase body**
204 **cameras.**

205 [~~8.—A peace officer who stops a driver of a motor vehicle pursuant to a lawfully~~
206 ~~conducted sobriety check point or road block shall be exempt from the reporting requirements~~
207 ~~of subsection 2 of this section.]~~

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