

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 363,
2 Page 82, Section 590.120, Line 46, by inserting after all of said section and line the following:

3
4 "590.650. 1. The provisions of this section shall be known and may be cited as "The John
5 Ashcroft Fourth Amendment Affirmation Act". As used in this section [~~"minority group" means~~
6 individuals of African, Hispanic, Native American or Asian descent] the following terms mean:

7 (1) "Benchmark", the number used as a basis of comparison in determining possible
8 disproportions in law enforcement activities, which shall only include the following:

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

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

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

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

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

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

27 (5) "Investigative stop", any stop, by a peace officer, of a motor vehicle based on reasonable
28 suspicion or probable cause and not a motor vehicle violation. Investigative stops can involve calls
29 for service, stops conducted in support of an agency investigation, stops conducted because of a
30 peace officer's observations, stops made at a sobriety checkpoint or other road block, or other
31 investigatory stops;

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

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

36 (8) "Significant disproportion", a ratio of disparity that differs significantly from the overall

Action Taken _____ Date _____

1 state ratio of disparity for any minority group for that category of peace officer activity. The
 2 attorney general shall determine what deviation from the overall state ratio of disparity warrants
 3 further scrutiny after considering factors other than discrimination. The attorney general shall find
 4 any ratio of disparity that is over one hundred twenty-five percent of the overall state disparity for
 5 any minority group for that category of peace officer activity to be a significant disproportion.

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

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

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

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

13 ~~[(3)]~~ (4) Whether a search was conducted as a result of the stop;

14 ~~[(4)]~~ (5) If a search was conducted, whether the individual consented to the search, how the
 15 individual's consent was documented, the probable cause for the search, whether the person was
 16 searched, whether the person's property was searched, and the duration of the search;

17 ~~[(5)]~~ (6) Whether any contraband was discovered in the course of the search and the type of
 18 any contraband discovered;

19 ~~[(6)]~~ (7) Whether any warning or citation was issued as a result of the stop;

20 ~~[(7)]~~ (8) If a warning or citation was issued, the violation charged or warning provided;

21 ~~[(8)]~~ (9) Whether an arrest was made as a result of either the stop or the search;

22 ~~[(9)]~~ (10) If an arrest was made, the crime charged; ~~and]~~

23 ~~[(10)]~~ (11) The time and location of the stop; and

24 (12) The municipal or state infraction for which the individual was stopped.

25
 26 Such information ~~[may]~~ shall be ~~[reported using a format determined by the department of public~~
 27 ~~safety which uses existing citation and report forms]~~ submitted to the attorney general as a single
 28 report indicating for each traffic stop the required information on the driver and stop. The format of
 29 the report shall be determined by the attorney general. No personnel information shall be disclosed.

30 3. (1) Each law enforcement agency shall compile the data described in subsection 2 of this
 31 section for the calendar year ~~[into a]~~ and send the stop report to the attorney general.

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

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

37 4. (1) The attorney general shall analyze the annual stop reports of law enforcement
 38 agencies required by this section and submit a report of the findings to the governor, the general
 39 assembly and each law enforcement agency no later than June first of each year.

40 (2) The report shall identify situations in which data submitted by agencies indicate that
 41 racial and ethnic groups are disproportionately affected by law enforcement activity so that further
 42 analysis may be conducted to determine whether peace officers are engaging in discriminatory
 43 policing.

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

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

49 (a) The total number of vehicles stopped by peace officers during the previous calendar

1 year;

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

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

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

10 5. (1) Each law enforcement agency shall adopt a policy on ~~[race-based traffic stops]~~
11 discriminatory policing that:

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

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

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

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

25 c. Include a review of complaints received by the law enforcement agency and a breakdown
26 of which complaints were verified, found to be unfounded, remain active, and what steps were taken
27 to address verified complaints. The review of complaints shall indicate the number of complaints
28 alleging discriminatory policing that a law enforcement agency received; and

29 d. The results of the review shall be made public, however, no personnel information shall
30 be disclosed; and

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

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

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

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

41 6. Each law enforcement agency shall establish policies to eliminate discriminatory policing
42 in the administration of consent searches. The procedures shall include the following:

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

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

49 (3) Prior to requesting consent for a search, a peace officer shall communicate orally or in

1 writing, in a language that the person being questioned clearly understands, that the person's consent
2 must be voluntary, that the voluntary consent authorizes the search even if the peace officer does not
3 have probable cause to search, that the lawfulness of the search cannot be challenged in court if
4 consent is given, and that the person has the right to refuse the request to search;

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

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

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

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

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

17 7. (1) If a law enforcement agency fails to comply with the provisions of this section, the
18 governor may withhold any state funds appropriated to the noncompliant law enforcement agency.

19 (2) If a law enforcement agency's data shows for three consecutive years a significant
20 disproportion, the attorney general shall study the efforts of the law enforcement agency to decrease
21 its disproportion during the prior three years.

22 (3) If a law enforcement agency fails to provide documentation to the attorney general that
23 proves the agency's significant disproportions cannot be attributed to discriminatory policing, the
24 agency shall be subject to review for a period of three years.

25 (4) Documentation provided to the attorney general to analyze significant disproportions
26 shall be made public to the extent permitted by law.

27 (5) If a law enforcement agency subject to review shows a significant disproportion in its
28 data after its first year under review and the attorney general's study determines that the law
29 enforcement agency cannot show good-faith efforts to remedy the significant disproportion, the
30 attorney general shall require changes in the agency's policies and practices, including techniques
31 for identifying problem officers, requirements that an officer's ratios of disparity along with any
32 mitigating circumstances be a part of the record used to evaluate promotions and reassignments,
33 training of supervisors in the skills necessary to eliminate discriminatory policing, and increasing
34 the quality and quantity of officer training related to discriminatory policing. The attorney general's
35 office shall work with other state agencies to provide financial assistance and expertise to facilitate
36 these changes.

37 (6) If a law enforcement agency continues to show a significant disproportion in its data at
38 the close of its three-year review period and the attorney general's study determines that the
39 significant disproportion can be attributed in whole or in part to discriminatory policing, the attorney
40 general shall evaluate whether the agency is making a good-faith effort to achieve
41 nondiscriminatory policing. As a minimum penalty, the agency shall remain under review, with
42 ongoing attorney general oversight, until such time as the attorney general determines that
43 discriminatory policing is no longer a cause of the significant disproportion. As a maximum
44 penalty, or after six years of review, the attorney general shall order that the governing body or
45 jurisdiction that the law enforcement agency serves be required, from that point forward, to forfeit
46 twenty-five percent of its annual general operating revenue received from fines, bond forfeitures,
47 and court costs for traffic violations, including amended charges for any traffic violations. The
48 forfeited amount shall be paid to the general revenue fund of the state of Missouri, to be designated
49 as additional funds for the peace officers standards and training commission. This penalty shall

1 continue until such time as the attorney general determines that discriminatory policing is no longer
2 a cause of the significant proportion.

3 (7) A law enforcement agency may petition the attorney general to evaluate the agency's
4 vehicle stops report data using a different benchmark. The attorney general shall determine
5 appropriate benchmarks used in his or her evaluation of the data. The attorney general shall note in
6 his or her annual report if an alternative benchmark was granted and the reasons for using the
7 alternative benchmark.

8 [7.] 8. Each law enforcement agency in this state may utilize federal funds from community-
9 oriented policing services grants or any other federal sources to equip each vehicle used for traffic
10 stops with a video camera and voice-activated microphone or to purchase body cameras.

11 [8. A peace officer who stops a driver of a motor vehicle pursuant to a lawfully conducted
12 sobriety check point or road block shall be exempt from the reporting requirements of subsection 2
13 of this section.]"; and

14
15 Further amend said bill by amending the title, enacting clause, and intersectional references
16 accordingly.
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